

MHAH030035012024



REG. CRI. CASE NO. 415/2024

The State of Maharashtra
Vs.
Uday Kashinath Ovhal and Ors.

ORDER BELOW EXH.22

The prosecution has moved present application for recording the evidence of witness under Section 311 of the Code of Criminal Procedure.

2. It is the contention of the prosecution that earlier two witnesses have deposed that the accused beat their daughter Akanksha by iron rod. Her medical certificate is available on record. But the investigation officer failed to record his statement. Hence, prayed to issue summons to said witness on her given address.

3. The accused opposed application on the ground that the medical certificate can be proved through medical officer and not injured witness. the statement of said witness is not recorded. Hence, in the absence of previous statement of witness it will not possible to bring on record contradictions and admissions. The witness can not be summoned as per the wish of the prosecution. There is statutory requirement to be followed and without statement on record the witness can not be called. Hence, prayed to reject the application.

4. Heard the learned APP. She argued that the witness namely Akanksha is the injured witness in this case and her medical certificate is available on record. Though the investigation officer has failed to record her statement, mere on this ground she cannot be denied to appear before the Court as a witness. It is submitted that Section 311 of the Code of

Criminal Procedure is specific in this regard. Hence, prayed to allow the application.

5. On the other hand, the learned counsel for the accused vehemently argued that the investigation officer did not seem it necessary to record the statement of said witness. Therefore, her statement is not recorded. If the witness is called to depose before the Court it will affect the right of the accused as her previous statement is not available on record. Prior to call Akanksha as a witness it is necessary to record her statement. To support his contention he has relied on the authority of **Kishore Singnapurkar and Ors. Vs. The State of Maharashtra and Ors. 2012 ALL MR(Cri.) 2886**. It is further submitted that Prakash Bankar (PW.2) has admitted that due to falling down his daughter suffered injury on her shin bone. He has further admitted that he has filed false case to teach lesson to the accused. In view of said admissions, no purpose will be served by calling daughter of informant. Hence, prayed to reject the application. Hence, he submitted that the application be rejected, if allowed as per the authority her statement be recorded.

6. On the other hand, learned APP has submitted that the matter is at the stage of evidence. The role of the said witness is important in this case, as she is injured and her medical certificate is on record. As per the learned APP if an opportunity is not given to examine said witness it will cause irreparable loss to the injured. To support her contention she relied on the authority of **Sanjay Vasant Kadam Vs. State of Maharashtra 2015(3) AIR Bom R(CRI)908**. Hence, prayed to allow the application.

7. Considering submissions of both the parties it is necessary to see whether the evidence of Akanksha is required to be recorded in this case.

In this regard, the report (Exh.17), evidence of Swati Bankar (PW1) and Prakash Bankar(PW2) shows that the reference of said witnesses has come on record. It is alleged that the accused has beaten said witness by means of iron rod. Therefore, being injured said witness is an important witness in this case. Particularly, when her medical certificate is available on record. As per section 311 of the Code of Criminal Procedure the Court may at any stage of the trial can summons any person as a witness. If his evidence appears to it to be essential to just decision of the case. Thus, in view of above discussion, the evidence of Akanksha is essential to decide the case. The accused has every right to cross examine the witness therefore, no prejudice will be caused to him.

8. So far as the giving direction to the investigation officer to record the statement under Section 161 of the Code of Criminal Procedure is concerned in the case of **Kishore Singnapurkar and Ors. Vs. State of Maharashtra and Ors.** (cited supra) the Hon'ble Bombay High Court has granted liability to the investigation officer to record the statement of the witness. However, in the authority of **Sanjay Kadam Vs. State of Maharashtra** (cited supra) the Hon'ble Bombay High Court has discussed on the judgment filed by the accused in detail. In paragraph No. 19 it is observed that the facts of the case of **Kishore Singnapurkar** (cited supra) were peculiar. Therefore, the directions were given to record statement of witness under Section 161 of the Code of Criminal Procedure were with the consent of the parties. Therefore, it does not laid down any principle of law.

9. As such from the reading of the citation it is clear that while granting permission to call a person as a witness under Section 311 of the Code of Criminal Procedure there is no need to direct the investigation

officer to record statement of witness under Section 161 of the Code of Criminal Procedure. Therefore, in my humble opinion the authority filed by the accused will not be applicable here. In the result, I pass the following order -

ORDER

- 1] The application is allowed.
- 2] Issue witness summons to Akanksha Prakash Bankar.

Ahmednagar
Date :20.01.2026.

(L. S. Padhen)
Chief Judicial Magistrate,
Ahmednagar.