

ORDER BELOW EXH.77 IN R.C.C. NO.259/2013.

MHAH150023822013

(State of Maharashtra Vs. Kisan Jare & Ors.)



This is an application on behalf of prosecution to reopen the already closed evidence of prosecution.

2. It is stated in application that, the record of the case shows that the prosecution has examined seven witnesses. Their depositions shows that they have clearly deposed before court that, at the time of incident accused person assaulted injured by means of axe, iron rod etc. In the result they sustain bleeding injury, thereafter, they treated and examined by doctor of Pandit Accidental Hospital, Ahilyanagar. Injury Certificate issued by doctor is also annexed with charge-sheet. Therefore, doctor who has examined injured is material witness for the just decision of the case. Record shows that, already APP filed application at Exh. 67, 71 and 75 for issuing summons and B.W. to doctor. Report at Exh. 70 and 76 shows that, summons has served to doctor. Also at Exh. 75 court passed order to issue B.W. to doctor. But, record does not shows that whether B.W. has issued by court or not. There is no report of B.W. on record, therefore, in the interest of justice and in the lite of guidelines given by Honble Bombay High Court in case of Mangal Vitthal Kayale Vs. G. Kayale, 1986 (2) Bom.C.R. 639 coercive action may be taken to secure the presence of witness else injustice will be caused. Hence, prayed to re-issue bailable warrant against doctor with direction to concern police to execute the same.

3. On behalf of accused say filed overleaf the application and contended that, the application is false. Previously court has given sufficient opportunity. The case is old one. Hence, application may be rejected.

4. Heard both sides. Perused record. Record shows that, the case was pending for evidence of medical officer since 02.12.2023. On several times witness summons were issued. Report at Exh. 72 and 76 shows that witness summons duly served to medical officer but, he failed to appear before the court. Therefore, as per Exh. 75 B.W. issued to medical officer but, still it's report not filed on record. In spite of service of summons as well B.W. prosecution failed to secure presence of medical officer and being old case pending for more than ten years on 08.07.2025 by passing order below Exh. 1 evidence of prosecution is closed. Thereafter, when case is for recording statement of accused under section 313 of Code of Criminal Procedure prosecution filed present application. However, in this application prosecution has not given any reason for not securing presence of medical officer in spite of service of witness summons and issuing B.W. As such this application is without any sufficient reason. Also, due to above stated facts the case is prolonged unnecessary.

5. However, no doubt medical officer is material witness therefore, only in the interest of justice application is allowed.

ORDER

1.	Reissue bailable warrant against medical officer.
2.	Prosecution is directed to take effective steps to keep present medical officer in the Court.

Date : 01/11/2025.

(Smt. Sandhya Y. Sul)
Judicial Magistrate First Class,
(Court No.2) Newasa.