

MHAU040016862024



ORDER BELOW EXH.61 IN SESSIONS CASE NO.103/2024

The State Vs. Arun

1] Accused Nos.1 to 9 have moved this application for setting aside no cross order as well as for recalling the witness PW1 Balu Barku Sonawane.

2] It is contended that, learned counsel of present accused remained absent on last date as he was out of station. Therefore, the Court has rejected the application of adjournment Exh.51 and passed order below Exh.57.

3] Learned APP filed say. He submitted that, present case is of an offence of a serious nature i.e. of murder. Accused had approached the Hon'ble Supreme Court for bail and the Hon'ble Supreme Court has expedited the matter and directed to examine the witnesses as early as possible. Said matter was fixed as per the convenience of the learned counsel of accused but, still he remained absent to cross examine the witness and claimed adjournment. Hence, the Hon'ble Court has rejected the adjournment so also no cross examination order was passed. With this, he prayed to reject the application with costs.

4] Heard learned APP and learned counsel of accused. The record demonstrates that, the witness was present on 10.07.2025 but, due non-production of accused before the Court, witness was bond

over. On 17.07.2025 chief examination of PW1 Balu Sonawane is recorded. Thereafter, the adjournment application Exh.56 was filed and rejected. Then present accused filed application Exh.57 for grant of time to engage the advocate but, it was also rejected on the same day. On 22.07.2025 the witness remained present. Present accused engaged the advocate and filed present application.

5] It is significant to note that, present accused are in jail since June, 2024 and rest of the accused are on bail. But, due to absence of counsel of accused, their right of speedy trial could not be availed. Thus, it is required to be considered by considering fair opportunity given to the accused.

6] Admittedly, the chief examination was conducted on 17.07.2025 and on 22.07.2025 present application for setting aside no cross order and recall of witness is filed. Hence, since the accused have shown readiness to cross examine the witness, one last opportunity can be granted to accused.

7] The ground mentioned by the accused for setting aside the said order is required to be allowed by giving them one chance of fair trial. It shows that, learned counsel of accused could not appear before the Court within time, which has certainly caused delay in trial of the accused and the witness was required to sent back for absence of the counsel. Hence, for the same present accused are required to be imposed bhatta to be given to the witness which has caused him to attend the Court due to fault of the accused. Thus, by taking into consideration the right of accused of fair trial as well as delay caused

by the counsel of accused, the application deserves to be allowed on certain conditions. Hence, order :-

ORDER

- 1] Application Exh.61 is allowed subject to witness bhata of Rs.2,500/- to be paid by accused Nos.1 to 9 collectively.
- 2] Accused Nos.1 to 9 are hereby directed to conduct the cross-examination of the witness on next date without fail, failing which will result in no cross order.
- 3] Learned counsel is directed to expedite the matter as accused Nos.1 to 9 are languished behind the bars since June, 2024.
- 4] Issue summons to PW1 Balu Harku Sonawane.

Date : 24.07.2025

(Smt.S.K. Upadhyay)
Additional Sessions Judge,
Vaijapur.