

ORDER BELOW EXH- 42.

Accused have filed this application to deffer examination of witness namely Sunil Panhalkar intended by prosecution to open the case. It is contention of accused that the present witness intended by prosecution to examine is not listed in witness list. Further his statement is not on record. Prosecution not at examine original informant of the case. If accused cross examine this witness it would open their defence and cause prejudice to them. Thus prayed to allow their application and deffer examination of present witness until examination of informant and other witnesses.

2. The then Ld. A.P.P. has filed her say back side of the application and strongly oppose. She contended the evidence of witness intended by prosecution to examine having no concern with the evidence and other witnesses. The prosecution intended to examine witness to the extent of bank account details. No question would arise to open the defence of accused. The statement of witness has been recorded by I.O. Present witness is bank Manager and recalling him for examination is not just and proper. Prosecution having liberty to examine witness as per their choice. Thus prayed to reject the application.

3. I have heard counsel for accused and Ld. A.P.P. at length. The counsel for accused give much importance to the proviso of section 242 of Cr. P. C. and reiterate the contents of application. He place his reliance over the judgment of Hon'ble Apex court in Sunita Devi Vs.

State of Bihar¹. Herein Hon'ble apex in para 24 give some guidelines to conduct the criminal trial. Per contra Ld. A.P.P. opposed the application and submitted that for convenience of trial prosecution intent to present witness at first. The evidence of present witness related with the bank documents and his evidence not prejudice to the accused. He placed his reliance over the judgment Hon'ble Bombay High Court in State of Maharashtra Vs. Rajaram Mane and Ors.² Herein Hon'ble court observe that, on considering the scheme of Cr. P. C. it can be said that, it is choice of prosecution to examine the witness in any order and further it is choice of prosecution to drop some witness. The court can not decide the manner in which examination of witnesses will go on.

4. Perused record. It shows that, name of present witness is not listed in witness list. However, his statement has been recorded by I.O. and filed along with chargesheet. Hence, preliminary objection raised by accused that, prosecution intent to examine witness not listed in witness list is not acceptable. As per record present witness is the bank witness and vide exh. 40 he has filed related documents on record. Prosecution intend to examine this witness for proving the same.

5. It is case of accused that, on examination of present witness their defence would be open and prejudice to them if it reveal before examination of informant and other witnesses. Considering the submission of accused the witness examine by prosecution is not

1 Criminal Appeal No. 3924 of 2023.

2 2018 All MR (Criminal) 238.

related with informant and other witnesses. He is completely independent witness and depose to the extent of documents filed by him on record. It is not attempt of prosecution to disturb or collect evidence on record before examining other witnesses. Therefore, no prejudice would be caused to accused. Further the authority supra cited by accused Sunita Devi deals with guiding principle for conducting trial. Further more the guidelines directed by court are not useful for accused to deffer the examination of this witness. Hence, I humbly submit that, the above ratio is not useful for accused.

6. It is choice of prosecution to examination to witness as per requirement of case. Court having no authority to direct the prosecution. Examination of witnesses and its rank is choice of prosecution. In present case on examination of bank witness Sunil Panhalkar no prejudice would be caused to the accused. However, his evidence is just for the beginning of case. Accused not specified any reason what prejudice they would caused on examination of present witness. Hence, an authority cited supra by prosecution State of Maharashtra is squarely applicable at this stage. Thus in result of on going discussion I pass following order,

ORDER

1. Application stands rejected.
2. Prosecution grant permission to examine witness namely Sunil Panhalkar as opening witness of this case before examining informant and other witness.
3. Prosecution make arrangement for presence of witness on next

date and accused are directed to cross examine him.

4. Parties to take note.

(R. P. Thore)

J.O.Code No.MH02897

Judicial Magistrate First Class,
Ajara.

Place- Ajara.

Date- 06.11.2025.

