

MHLA010029922017



Spl.Case ACB No.13/2017

State of Maharashtra

Vs. Rajani Khandu Kawale

ORDER BELOW EXH.57.
(Passed on 24.07.2026)

1. Perused application. This application has been submitted by the prosecution with a prayer for permission to re-examine PW-1 as the prosecution could not play the voice recording of the conversation between him and the accused during his examination-in-chief. The said voice recording is a necessary piece of evidence. Considering the nature of offence, it is prayed that, the permission sought may be granted in the interest of justice.

2. Instant application has been opposed by the advocate for accused on the ground that, the complainant was examined before three years ago. He was available for evidence, no questions were put to the witness on the point of recording of conversation between him and the accused. Now this application has been filed to fill the lacuna. Hence, he prayed that application be rejected.

3. Heard both sides. Perused the charge-sheet. The examination-in-chief and the cross-examination of the PW-1 was completed on 27.02.2019. Thereafter, other witnesses came to be examined and inadvertently the recorded conversation remained to be played before PW-1 for identification of his voice. The evidence of prosecution is still going on. On 01.04.2026 the cross-examination of PW-2 was completed. It seems that, the

prosecution was waiting for completion of cross-examination of PW-2 to file present application.

4. The reference of recorded conversation between the PW-1 and accused is already mentioned in the charge-sheet. There is reference about the same in the pre-trap and post-trap panchnama. Also the charge-sheet reflects that, transcript of the recorded conversation came to be prepared, which indicates that, the voice recording of the conversation was very much done and it is not a new piece of evidence, which is created later on to fill up lacuna in the case of prosecution.

5. The grounds raised in the say of accused do not justify rejection of this application. If copy of the voice recording has not being supplied to the accused, that can be done by issuing direction to the prosecution. By allowing this application the defence will not suffer any prejudice as no new fact will come on record. Moreover, the defence will get full opportunity to cross examine the PW-1 on the point of voice recording. If application is rejected, the prosecution will be denied permission to bring evidence on record, which is already available in the charge-sheet. It will cause prejudice to the case of prosecution and will result into failure of justice.

6. In similar circumstances an application filed by the prosecution was allowed. The said order was challenged before the Hon'ble Bombay High Court, Aurangabad Bench by filing Criminal Writ Petition No.430/2024. The Hon'ble Bombay High Court upheld the order passed by the Sessions Court allowing the application for re-examination of the informant for playing the recorded conversation before him and for identification of the

voices. Hence, the said order of Hon'ble Bombay High Court would also be applicable to the present application.

7. In view of the reasons discussed in Para No. 4 to 6, I am of the considered opinion that present application deserves to be allowed. Hence, the following order.

Order

- 1] Application is allowed.
- 2] Permission is granted to the prosecution to play the recorded conversation in presence of the witness and to put questions to him pertaining to said conversation.
- 3] The I.O. is directed to supply copy of the said voice recording to the defence in advance, before recalling PW-1.
- 4] The advocate for defence to supply pen drive for getting copy of the voice recording of the conversation immediately, before the PW-1 is re-summoned. The system operator is directed to provide copy of the voice recording in the pen-drive supplied by advocate for defence by following due procedure and by insuring that the original file is not affected in anyway.
- 5] The advocate for accused will have permission to cross-examine the PW-1 to the extent of the deposition of PW-1 that comes on record in his re-examination.

Sd/-

Latur.
Date : 24.07.2026

(R.B. Bhagwat)
Additional Sessions Judge-2,
Latur.