

**MHRT040005032024**



**Order below exh.41 in Sessions Case No.24/2024**

1. The learned advocate of the accused Shri.S.S. Butala preferred the application u/s 231 of The Code of Criminal Procedure to defer cross examination of PW 1 till examination-in-chief of further witnesses father and mother of PW1 on the ground that if the other witnesses would be allowed to examine on the next date the other witnesses will be alert and will answer in cross examination after going through the evidence of PW1. Therefore it is prayed to defer the cross examination of PW1 till examination-in-chief of his father and mother.

2. The prosecution has filed say at Exh.50 and resisted the application on the grounds that cross examination of PW1 is incomplete. The accused has not mentioned provision under which the application is made. The accused has not given justifiable valid reason to defer cross examination. The judicial discretion should be used as per case to case basis. As per norms examination in chief of the witness has to be carried out followed by cross examination. It is prayed to reject the application.

3. Heard.

4. The learned APP relied upon ruling of **Hon'ble Allahabad High Court** in Ansad Badruddin Vs. State of U.P., in Application u/s 482 No.662 of 2024 in support of submission that there cannot be straight jacket formula providing for grounds on which judicial discretion can be exercised. The learned advocate further relied upon ruling of Rakesh and Another Vs. State of U.P. in the application u/s 482 No.364 of 2025 in support of submission that examination and cross examination of witness u/s 311 of Cr.P.C. can be exercised only in such cases where his examination is necessary for just decision of case and power cannot be invoked to harass the witness. Fairness of trial has to be seen not only from the point of view of the accused but also from the point of view of the victim and the society.

5. In this particular case evidence of PW1 informant is going on. He is brother of the deceased. As per the argument of learned advocate of the accused Shri.S.S.Butala chief examination is taken in parts after adjourning for 2 to 3 dates. He further submitted that the case u/s 498-A, 306 of IPC is of serious nature. The witnesses are related to each other and they may change their testimonies after going through the testimony of first witness or they may be tutored. The trial has to be conducted in sessions and on day to day basis. If the witnesses would be examined on different dates it will prejudice the accused as he has to conduct the cross examination on the sensitive issues. He further submitted that there would be no possibility of influencing witnesses as they are

highly interested witnesses. The accused are residents in Dapoli Taluka and witnesses are residing in Mumbai. There will be no possibility of threats. There will be no possibility of loss of memory. He is ready to conduct cross examination on the same day if examination-in-chief of all the witnesses is recorded. His intention is not to delay the trial. There would not be circumstance that witnesses will not be available if deferred as they are close relatives of deceased. Therefore the ruling in Ansad's case (cited supra) is applicable to accused also.

6. After going through the submissions of the parties it must be considered that witnesses to be examined are brother, father and mother of the deceased. Accused are the in laws of the deceased. According to learned advocate of the accused the PW1 has denied certain facts in the cross examination. There may be possibility of changing the testimonies. There is strength in the submission of learned advocate of the accused. No prejudice would be caused to the prosecution if examination in chief of witnesses i.e. brother, father and mother of the deceased is taken first and then they would be cross examined by the defence counsel. Therefore I pass following order.

**Order**

1. Application is allowed.
2. Prosecution to complete examination in chief of all the three relatives of the deceased on 06-12-2025.

3. The accused are allowed to conduct cross examination of brother, mother and father of the deceased after completion of examination in chief of all these witnesses as per section 231 of Cr.P.C.

Date-17/11/2025

(P.S.Chandgude)  
Additional Sessions Judge,  
Khed.

Certificate

I affirm that the contents of this pdf file order are same word as per original order.

Name of Stenographer : Mrs.V.S.Kulkarni

Court Name : Additional Sessions Judge, Khed.

Date of Decision : 17-11-2025

Order Signed by P.O. on : 17-11-2025

Order Digitally Signed by P.O. on : 18-11-2025

Order uploaded on : 18-11-2025