2026:BHC-AS:22450

IN THE JUDICATURE OF HIGH COURT AT BOMBAY
APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1170 OF 2026
IN
CRIMINAL APPLICATION NO.467 OF 2025

Niket Mehta ...Applicant

IN THE MATTER BETWEEN

Prashant Mehta ...Applicant
VERSUS
The State of Maharashtra ...Respondent

NILAM SANTOSH KAMBLE
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Date: 2026.05.12 15:34:56 +0530

Mr.Alovkik R. Pai a/w Mr.Suryajeet N. Ravrane, for the Applicant in IA No.1170 of 2026.
Ms.R.D. Humane, APP for Respondent-State.
Ms.Minal Chandnani a/w Ms.Diksha Mehta, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 7th MAY 2026

P.C. :

. By this Application, the Applicant is seeking recall of the order dated 23rd February 2026 passed in Criminal Application No.467 of 2025, whereby this Court had directed the Judicial Magistrate Court ('the learned Magistrate' for short) to expedite the pending trial.

2. It appears from record that the Respondent No.2 has filed C.C.No.7/SW/2025 private complaint before the learned Judicial Magistrate, 12th Court, Bandra, Mumbai under the offence punishable under

Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 read with Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS' for short). The Applicant has been arraigned as Accused No.4 in the said complaint. On 8th December 2025, the learned Magistrate was pleased to issue process against the Applicant and co-accused and kept the matter for appearance of Accused on 8th April 2026. On 15th December 2025 the Respondent No.2 preferred Criminal Application No.467 of 2025 before this Court to expedite the hearing of the pending complaint. The Applicant was neither impleaded as party to the said Criminal Application nor was served with any copy of the said Application.

3. On 31st December 2025, the Applicant preferred a Criminal Revision Application challenging the order of the issuance of the process. The Respondent No.2 appeared through his Advocate before the Sessions Court in the said Criminal Revision Application. On 23rd February 2026, this Court passed the order on the Application of Respondent No.2 to expedite the hearing of C.C. no.7/SW/2025. The Applicant is praying for recall of the said order.

4. It is contention of the learned counsel for the Applicant that the order to expedite the trail was obtained by playing fraud upon this Court

as the Applicant has been arraigned as Accused in the complaint filed by the Respondent No.2 before learned Magistrate. When this Court passed the order, on that day, the order of issuance of the process was already passed against the Applicant, and without adding the Applicant as party the Application was filed before this Court to expedite the trial by stating that out of the five witnesses, three witnesses have been examined. In fact, three witnesses were examined before issuance of the process order under Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023(for short 'BNSS Act'), so question of expediting the trial would not arise.

5. The learned counsel further submitted that after the order of issuance of the process Respondent No.2 should have added Applicant as party Respondent or should have informed this Court that the Applicant being the original accused in the said complaint ought to have been impleaded as party Respondent. However, without doing so, the order was obtained. The learned counsel further submitted that the State/APP was not contesting party before the learned Magistrate.

6. The learned counsel further submitted that by taking undue advantage of the order passed by this Court, the Respondent No.2 has been making submissions before the learned trial Court and even before the Sessions Court, before whom the Applicant has challenged the order of

issuance of process passed by the learned Magistrate, stating that the High Court has expedited the trial. Therefore, Sessions Court cannot proceed with the matter which shows *malafide* intention of the Respondent No.2, and requested to allow the Application.

7. He relied on *Vikram Bakshi & Ors. V/s. R.P. Khosla & Anr* (2025 SCC Online SC 1783).

8. It is contention of the learned counsel for the Respondent No.2 that record shows that three witnesses were examined before the learned Magistrate Court and the Application was filed before this Court to expedite the trial on the basis of the medical condition of the Respondent No.2, as he had undergone multiple bypass surgeries.

9. The learned counsel further submitted that he had not made submission before this Court that trial is in progress, it was made by the learned APP. As per Section 403 of the BNSS Act, this Court has no power to recall the order, unless there is a clerical or arithmetical error. The learned counsel further submitted that, on the last date, this Court has modified the order and Respondent No.2 has challenged the said order before the Hon'ble Apex Court and in the modified order, this Court has not recalled the order of expediting the trial and has observed that the trial be conducted in a routine manner and as per law. The learned counsel further submitted

that once this Court has passed order, this Court has no authority to recall the order and requested to reject the Application.

10. I have heard both learned counsel's.

11. This Court on 23rd February 2026 has passed the order, it read as under:-

> ". Heard learned counsel for the applicant and learned APP for the respondent-state.
>
> 2. Learned counsel for the applicant submits that the applicant has suffered contralateral by-pass surgery. Out of five witnesses, three witnesses have been examined and only two witnesses have remained to be examined. Hence, it is requested to allow the application.
>
> 3. Learned APP submits that, the trial is in progress and requests to reject the application.
>
> 4. I have heard both learned counsel.
>
> 5. Considering the medical condition of the applicant and already three witnesses have already been examined, I pass following order:
>
> ORDER
>
> (i) The application is allowed.
>
> (ii) The Trial Court is requested to expedite the trial and dispose of the matter as early as possible."

12. This Court has passed above order on the submissions of learned counsel for Respondent No.2 that Respondent No.2 had suffered contralateral by-pass surgery and out of five witnesses, three witnesses have

been examined and only two witnesses remained to be examined. It appears from record that the learned counsel for Respondent No.2 has made false statement before this Court regarding examination of three witnesses.

13. The learned counsel for Respondent No.2 was aware of the fact that three witnesses were examined before issuance of the process order and thereafter issuance of the process order was passed on 8th December 2025 which was challenged before learned Sessions Court on 31st December 2025. The Application for expediting trial was filed on 15th December 2025. It shows that misleading submissions regarding examination of three witnesses and only two witnesses remained to be examined was made before this Court.

14. It is significant to note that on the date when this Court passed the order, the order of the issuance of the process had already been passed against the Applicant by the learned Magistrate. Therefore, it was duty of the Respondent No.2 to add Applicant as party Respondent in the said Application or inform the Court about issuance of the process order against the Applicants as the Applicant was the contesting party in the private complaint.

15. It is contention of the learned counsel for Respondent No.2 that no substantive reliefs were sought against the present Applicant in the said

Application and only relief of expediting the trial was prayed.

16. In my view, the plea now taken by Respondent No.2 appears to be an afterthought, particularly when the Respondent No.2 was fully aware that the present Applicant was contesting party in the present complaint. Once issuance of process order is passed, the Applicant becomes the contesting party and he ought to have been added as Respondent in the Application seeking expeditious trial. It appears from record that conduct of the Respondent No.2 was dishonest as after obtaining the order of expediting the trial from this Court, the Respondent No.2 approached the learned Sessions Court where order of issuance of the process was challenged by the Applicant and tendered the order of this Court stating that trial is expedited by this Court. It shows dishonest intention of the Respondent No.2 from the beginning. It is significant to note that when learned Sessions Court stayed the issue process order it was challenged before this Court stating that this Court has directed the learned Magistrate to expedite the trial and dispose of the matter as early as possible. In view of the order passed by this Court, the learned Additional Sessions Judge ought not to have stayed the order of issuance of process. The conduct of the Respondent No.2 indicates that Respondent No.2, with *malafide* intention, obtained order from his Court by playing fraud with this Court.

17. Section 403 of BNSS Act states about not to alter the judgment or final order disposing of a case. In the present case the order of this Court was not final order or judgment it was the order of expediting the Trial. Other important fact is that the learned counsel for Respondent No.2 was aware that the learned APP was not contesting party before the learned Magistrate Court as the State/APP was a formal party. But he did not point out this fact to this Court and learned APP on instructions made submission that trial is in progress.

18. As per view of the Hon'ble Apex Court in the case of Vikram Bakshi (Supra), if an order is obtained by practicing fraud and misleading the Court, then the Court has power to recall the order.

19. As observed above the Respondent No.2 had obtained the order from this Court to expedite the trial by playing fraud with this Court and with dishonest and *malafide* intention, Hence, I pass following order.

ORDER

(i) The Application is allowed.

(ii) The order passed by this Court dated 23rd February 2026 is hereby recalled.

(SHIVKUMAR DIGE, J.)