

**IN THE COURT OF THE HON'BLE CHIEF JUDICIAL
MAGISTRATE, AT DHARASHIV**

R.C.C. No. 398 of 2002

State of Maharashtra

V/s

Pavanraje and others

Claim :- Application for setting aside "no cross" order and for recall of pw-17 for cross-examination

Herein above matter accused No. 7 Sanjay Hariram Agrawal most humbly begs to submit as under:-

MAY IT PLEASE YOUR HONOUR

- 1) That the present matter is fixed on today's board of this Hon'ble Court. The statement U/s. 313 of Cr.P.C. of accused No. 7 was recorded on 10/06/2026. Thereafter matter is posted for defence evidence of accused.
- 2) That, prosecution Witness No. 17, namely Sunil Digambar Patil (hereinafter referred to as "PW-17"), was examined-in-chief by the prosecution on 17/11/2014.
- 3) That on the said date, the then engaged advocate for the Accused was constrained due to some issue and, therefore, an application for adjournment/time for cross-examination of PW-17 was moved on behalf of the present accused at exh. 791. However, the said application for time came to be rejected by this Hon'ble Court and an order of no-cross was passed closing the right of the Accused to cross-examine PW-17.
- 4) That, thereafter further proceedings in the present case came to be stayed by the order of Hon'ble High Court for a period of about ten years, and thereafter by the Hon'ble Supreme Court of India for about

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one year till 19/05/2025 and thus the trial remained in abeyance during the said periods of stay.

5) That after vacation of the stay, further prosecution witnesses have been examined and thereafter the statement of the Accused No. 7 under Section 313 of the Code of Criminal Procedure has been recorded, and the matter has now reached the stage of defence evidence. Meantime senior advocate of present accused No. 7 is suffering from serious condition and hospitalized till today. Therefore, new advocate was appointed on 10/06/2026.

6) That due to the long lapse of time, change of counsel, and the intervening stay orders, the accused was under the bona fide impression that all material prosecution witnesses had been duly cross-examined. Only when the present counsel for the accused recently inspected the entire record and proceedings, after his engagement consequent upon the serious medical problems of the earlier advocate, then it came to light that PW-17 had not been cross-examined and that the "no cross" order dated 17/11/2014 was in force.

7) That the earlier advocate for the accused has, in the meantime, suffered serious medical issues, the Accused has been constrained to change his counsel due to such circumstances.

8) That PW-17 is a material witness for the prosecution, and Proper and effective cross-examination of PW-17 is absolutely essential for enabling the accused to put forth his defence and to test the veracity, correctness and completeness of the testimony of PW-17.

9) That the accused has never intended to abandon or waive his right of cross-examination of PW-17; on the contrary, an application for adjournment was moved on the very day of the examination-in-chief, which unfortunately came to be rejected, resulting in closure of cross-examination. The failure to cross-examine PW-17 is thus not voluntary or deliberate, but is the result of (i)

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rejection of adjournment, (ii) subsequent long-drawn stays by superior courts, and (iii) serious medical condition of the earlier advocate, culminating in change of counsel and late discovery of the omission.

10) That cross-examination is a substantive right of the accused and is an integral component of the right to fair trial guaranteed under Article 21 of the Constitution of India. Denial of an effective opportunity of cross-examination of a material prosecution witness would cause grave prejudice to the present accused and seriously impact the fairness of the trial.

11) That this Hon'ble Court is vested with very wide powers under Section 311 of the Code of Criminal Procedure to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of any inquiry, trial or other proceeding, if such evidence appears to be essential to the just decision of the case.

12) That in several decisions, the Hon'ble Supreme Court has held that the power under Section 311 CrPC must be exercised to advance the cause of justice and to ensure a fair trial, and that where denial of cross-examination would result in miscarriage of justice, recall of a prosecution witness for cross-examination may be permitted, even at a later stage of the trial.

13) That considering facts and circumstances of the present case, recall of PW-17 for cross-examination will not result in any undue prejudice to the prosecution. On the contrary, it will enable this Hon'ble Court to have the benefit of a full and fair adjudication of the rival versions and thereby reach a just decision in the matter. The Accused undertakes that he shall not seek any unnecessary adjournment and that the cross-examination of PW-17 shall be conducted on the date fixed by this Hon'ble Court without fail.

14) That the present application is made bona fide, in the interest of justice and fair trial, and not with a view to delay the proceedings or to

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fill up any lacunae in the defence. All other grounds which are not specifically mentioned herein will be advanced at the time of argument of present application.

Hence it is prayed

That, present application may be allowed and Set aside the "no cross" order dated 17/11/2014 passed in respect of PW-17 in the present case; and Prosecution Witness No. 17, Sunil Digambar Patil may be recalled for the purpose of recording of cross-examination on behalf of the present accused No. 7.

Date :- 22/06/2026

Accused No. 7


Sanjay Hariram Agrawal

Through,

Adv. Sanket S. Tambe,

Dharashiv