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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : NOVEMBER 24, 2016

+ **CRL.M.C. 1088/2016 & CrI.M.A.4658/2016**

SUDHIR @ VICKY

..... Petitioner

Through : Mr.Shivam Chowdhary with
Mr.Dron, Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Panna Lal Sharma, APP.
SI Jitender, PS Anand Vihar.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner to challenge the legality and correctness of an order dated 29.10.2015 whereby the application to recall PW-5 (Master Gaurav Pal) was dismissed.

2. I have heard the learned counsel for the parties and have examined the file. The petitioner along with others is facing trial in case FIR No.1133/2014 under Sections 364A/120B IPC registered at Police Station Aman Vihar. On 14.10.2015 PW-5 (Master Gaurav Pal) was present

to record his statement. Mr.Shashank Chowdhary, Advocate, had filed a fresh power of attorney on behalf of the petitioner which was taken on record. PW-5 was completely examined and cross-examined; PW-4 (Mahender Pal) was partly examined. Subsequently, an application under Section 311 Cr.P.C. was filed on behalf of the petitioner to recall PW-5 (Master Gaurav Pal) as the proxy counsel who had put appearance on behalf of the petitioner was not in a position to cross-examine him effectively being a fresher one. By a detailed order dated 29.10.2015, the said application was dismissed.

3. Since PW-5 (Master Gaurav Pal) was duly examined and cross-examined on 14.10.2015, I find no fault in the impugned order to decline the application moved under Section 311 Cr.P.C. to recall him. PW-5 (Master Gaurav Pal) is a child who was the victim of kidnapping for ransom. He was duly examined by the counsel for other co-accused persons. The petitioner's counsel Mr.Shashank Chowdhary adopted the cross-examination conducted by the counsel for co-accused and no request, whatsoever, was made to defer the cross-examination of the witness as the main counsel Mr.Shivam Chowdhary, was not available in the court due to certain difficulty. Nothing has come on record to show if Mr.Shivam Chowdhary was to represent the petitioner that day as counsel. The petitioner has not asked for an adjournment due to non-availability of his counsel. The child aged around seven and a half years cannot be allowed suffer harassment to appear for examination time and again, when he has already been cross-examined.

4. The impugned order based upon fair appreciation needs no intervention.

5. The petition is dismissed. All pending application(s) stand disposed of. Copy of the order be sent to court concerned.

(S.P.GARG)
JUDGE

NOVEMBER 24, 2016/sa

