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

DECIDED ON : 15th FEBRUARY, 2017

+ **CRL.M.C. 626/2017**

SUMIT AGGARWAL

..... Petitioner

Through : Mr.Maninder Singh, Advocate with
Mr.Sanjay Chaubey & Mr.Karan
Mehta, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Ms.Manjeet Arya, APP.

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

S.P.GARG, J. (Oral)

CRL.M.A.No.2686/2017 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 626/2017 & CRL.M.A.No.2685/2017 (Stay)

1. Present petition under Section 482 Cr.P.C. has been preferred to challenge the legality and correctness of an order dated 18.01.2017 whereby the opportunity to lead further defence evidence was closed. Status report not filed.
2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the petitioner is facing trial in case FIR

No.139/2007 registered under Section 304B IPC at PS Mayur Vihar Phase-I. The prosecution has already examined its witnesses. The petitioner examined DW-1 (Mohd.Ehtesham) on 18.01.2017. The petitioner intended to examine another defence witness i.e. SHO, PS Mayur Vihar who was not available despite service that day. The Trial Court closed defence evidence observing that vide order dated 22.11.2016 the petitioner was given only one substantive opportunity to complete defence evidence.

3. Since the defence witness i.e. SHO, PS Mayur Vihar was not available despite service, impugned order closing defence evidence cannot be sustained. It was beyond the petitioner's power to ensure the presence of the defence witness that day. It was for the Trial Court to issue coercive process to ensure presence of the witness remaining absent despite service.

4. Considering the facts and circumstances of the case, SHO, PS Mayur Vihar is permitted to be examined in defence by the petitioner on the next date of hearing before the Trial Court or any other date given by the Trial Court for that purpose.

5. Petition stands disposed of in the above terms. Pending application also stands disposed of.

6. Copy of the order be sent to the Court concerned.

7. Order '*dasti.*'

(S.P.GARG)
JUDGE

FEBRUARY 15, 2017 / tr