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

+ **CRL.M.C. 769/2018**

SURENDER KUMAR

..... Petitioner

Through: Mr. N.K. Srivastava, Advocate

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Dharmendra Kumar, PS
Mandir Marg.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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19.11.2018

Crl.M.A.2812/2018 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CRL.M.C. 769/2018

The petitioner is facing trial in the court of Additional Chief Metropolitan Magistrate (ACMM), New Delhi in case FIR No.124/2007 of Police Station Mandir Marg involving accusations of offences punishable under Sections 279/304-A of the Indian Penal Code, 1860 (IPC) in which respect notice under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was issued and served on 31.10.2007. The prosecution had examined PW-1 to PW-5 during the period 08.07.2009 to 13.04.2011. It was recorded that the said witnesses had been tendered to the petitioner (accused) for cross-examination, he not having availed of the opportunity to

do so. The petitioner subsequently moved an application under Section 311 Cr.P.C. submitting that he had not had the benefit of an advocate to assist in his defence and, therefore, the opportunity may be re-opened. The said request was declined by order dated 11.09.2017, challenge to the said order by a Criminal Revision Petition No.430/2017 in the court of sessions having been repelled by order dated 25.09.2017.

He has approached this court against the above backdrop by moving a petition under Section 482 Cr.P.C., restricting his prayer to recall PW-2, PW-3 and PW-4 only.

The trial court record which has been placed before the court upon perusal confirms that the ACMM while presiding over the trial during the above mentioned period did not even ascertain the status of the presence or availability or otherwise of the defence counsel. The entitlement to the assistance of an advocate in a criminal trial is one of the important rights of an accused it being hallmark of fair procedure. Though it does appear that the appellant had engaged some counsel who had appeared with him till 24.07.2008, there is nothing in the proceedings recorded thereafter to show that the ACMM made any inquiry or issued any directions for the appellant to ensure presence of the advocate or, if the appellant was not in a position to engage a counsel of his own at that stage, to offer assistance of an advocate at State expenses.

In the above facts and circumstance, the petition deserves to be allowed. The impugned orders are set aside. It is directed that the witnesses, namely, PW-2 Mr. N.C. Biswas, PW-3 SI Karambir and PW-4 Head Constable Gajender Singh, shall be recalled and tendered for cross-

examination to the petitioner on date(s) to be fixed for such purposes.

The counsel for the petitioner, who is appearing in the present petition, confirms that he has been engaged by the petitioner formally for assisting him as his defence counsel. He undertakes to appear on each and every date of hearing scrupulously and avail of the opportunity for cross-examination, not seeking any adjournment.

The petition stands disposed of in above terms.

Dasti.

NOVEMBER 19, 2018

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R.K.GAUBA, J.