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

+ **CRL.M.C. 449/2019**

ROHIT KRISHNAN MAHANTA

.....Petitioner

Through: Mr. Manu Sharma, Mr. Abhir Datt,
Mr. Kartik Khanna and Ms.
Mahima Wahi, Advocates

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for respondent-
State with Inspector Sanjay Singh
Rawat

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **29.01.2019**

CRL.M.A. 1957/2019 (Exemption)

Allowed subject to all just exceptions.

CRL.M.C. 449/2019

Trial Court's impugned order of 28th November, 2018 declines petitioner's application under Section 311 of Cr.P.C. for recalling Maninder Singh (PW-1) for further cross examination while observing that PW-1 had not consumed alcohol and as per FSL report, the alcohol consumed by deceased was within the permissible limit and to summon PW-1 would mean harassment to the witness.

Petitioner's counsel assails the impugned order on the ground that FSL report was not in existence when PW-1 was cross-examined and cross-examination of this witness is necessary to confront him with the

FSL report as this aspect is crucial for fair trial.

Learned Additional Public Prosecutor for respondent-State opposes this petition by submitting that the trial court has rightly declined petitioner's application. Attention of this court is drawn to the deposition of PW-1 to submit so.

Upon hearing and on perusal of impugned order, I find that though the alcohol found in the blood of deceased is in permissible limit, but PW-1 needs to be cross-examined on this aspect, otherwise it will prejudice the case of petitioner.

Accordingly, the impugned order, so far as it declines petitioner's application, is hereby set aside with direction to the trial court to summon PW-1 for further cross-examination in respect of FSL report alone.

A copy of this order be sent to trial court for compliance.

This petition is accordingly disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 29, 2019

v