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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 3895/2019
SANDEEP CHILLAR Petitioner
Through: Mr. Kundan Kumar, Adv.

versus

STATE Respondent
Through: Mr. Ashok Kr. Garg, APP for State
with SI Manoj, PS Kanjhawala.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **02.03.2020**

The petitioner vide the present petition assails the impugned order dated 28.05.2019 of the learned trial Court of the ASJ-03, North West, Rohini in FIR No.452/2017, PS Kanjhawala, under Sections 302/307/120B/201/34 of the Indian Penal Code, 1860 and Sections 25 & 27 of the Arms Act whereby an application under Section 311 of the Cr.PC, 1973 filed *inter alia* on behalf of the present petitioner and two other co-accused persons named Pradeep and Shiraj seeking recalling of PW3 for cross examination,- was declined.

On behalf of the petitioner it has been submitted that on the date 04.05.2019 when the matter was fixed for examination of the PW1, PW2 & PW3 who were present before the learned trial Court, the statements of PW1 and PW2 were recorded in the pre-lunch session and they had been examined, cross-examined and discharged and PW 3 had been examined-in-chief and as observed vide proceedings dated 04.05.2019 itself of the

learned trial Court after the completion of the examination-in-chief of witness PW 3, Mr. Gajraj Singh, learned counsel for the accused person named Sandeep i.e. the present petitioner and of the co-accused Pardeep and Shiraj submitted that he, the counsel sought discharge from the case submitting that he had instructions from the pairakar of the said accused to withdraw his vakalatnama and all the said accused submitted that they would engage a new counsel and in the said circumstances, the counsel Mr. Gajraj Singh was discharged. Vide proceedings dated 04.05.2019, it has been observed that Mr. Gajraj Singh had withdrawn his vakalatnama and Mr. Rajiv Mohan was held up in Tis Hazari Courts after lunch and that witness Himanshu present submitted that he was being threatened to depose against the prosecution in the case and the State objected to the adjournment on behalf of the present petitioner submitting to the effect that that since the witness was being threatened, therefore, no further opportunity should be granted and thus the right of the accused persons to conduct cross examination of PW3 was closed.

The petitioner thus submits that the petitioner having not been given an opportunity to cross examine PW 3, he would be gravely prejudiced by the said order dated 04.05.2019 and vide order dated 28.05.2019, vide which an application under Section 311 of the Cr.PC, 1973 seeking the recalling of the said order was declined.

On behalf of the State it has been submitted that it was the duty of the petitioner to have cross examined the witness PW 3 on the date that was fixed before the learned trial Court i.e. 04.05.2019 in as much as there were threats being meted out by the petitioner and his co-accused, no further

opportunity could have been granted for the cross examination of the witness.

On a consideration of the rival submissions, it is apparent that on the date 04.05.2019 as reflected through the proceedings before the learned trial Court as per copy of the said order placed on record as Annexure A5, there was no counsel present to conduct the cross examination of PW3, the witness who stated to be an injured in the case and thus apparently, a material witness in the matter.

It is thus considered essential and appropriate, in the interest of justice, that one single opportunity is granted to the petitioner herein to conduct the cross examination of the witness PW3 Himanshu Dabas on a date to be fixed by the learned trial Court, on which date, the witness PW3 who is stated to be in custody in another case, in the event of his continuously being in custody would be produced by the Superintendent Jail, Delhi before the learned trial Court with adequate security.

The petition is disposed of.

ANU MALHOTRA, J

MARCH 02, 2020

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