

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.439 OF 2022
WITH
CRIMINAL APPLICATION NO.153 OF 2023**

Sanaulla Jauwad Hussain	... Applicant
V/s.	
State of Maharashtra	... Respondent

Mr. Gaurav Bhawanani i/b Khan Abdul Wahab for the Applicant.

Mr. Arfan Sait, APP for the State.

Mr. Madhukar Sanap, Unit 8 DCB/CID Mumbai is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 3, 2023

P.C.:

1. Challenge in this petition is to the order rejecting application under Section 311 of Code of Criminal Procedure, 1973.
2. The applicant is original accused who is being tried for offences punishable under Sections 302, 506(2) read with Section 34 of the Indian Penal Code, 1860. Along with Section 3 and 25 of Arms Act, 1959. After first stage of trial, 22 prosecution witnesses were examined.
3. On 20th June 2022, Doctor who carried out post-mortem and retrieved the bullet was examined. On 6th September 2022,

the forensic expert was examined as PW-22.

4. According to applicant, size of the bullet differs from the evidence of PW-18 and PW-20.

5. The applicant, has therefore, filed an application to recall of witness PW-18 (post-mortem expert). By the impugned order the said request is rejected.

6. Parameters for exercise of power under Section 311 of Code of Criminal Procedure, 1973 have laid by the Apex Court in the case of **Natasha Singh Vs. CBI** reported in (2013) 5 SCC 741. The Apex Court has held that such power needs to be exercised if, the evidence of persons ought to be recalled is essential to arrive at just decision of the case. The Court must satisfied itself, that it was infact essential to examine such witness or recall him for further examination. In order to arrive at such conclusion, the accused needs to show grave and material prejudice to the applicant as regards his defence.

7. In the facts of the case, in my opinion, necessary material brought on record by the prosecution in the form of evidence of post-mortem surgeon and forensic expert is already on record. Based on the material put before if, the concerned Court needs to draw a legal inference.

8. Considering the reasons stated in the application, in my opinion, I am satisfied that no prejudice would be caused to the applicant if, post-mortem surgeon has no material necessary for the purpose of explaining alleged difference in size of bullets.

Therefore, there is no reason to interfere with the impugned order.

9. The Criminal Revision Application is, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)