

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No. 43016 of 2022 (O & M)

Date of Decision : 24.3.2023

*Khushpreet Singh**..... Petitioner**versus**State of Punjab**..... Respondent***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. S.S. Sarwara, Advocate, for the petitioner

Mr. Jashandeep Singh, AAG, Punjab

TRIBHUVAN DAHIYA J. (ORAL):**CRM No. 13933 of 2023:**

Application is allowed and the photocopy of statement of PW-2

Manjit Kaur is taken on record as Annexure P-5.

CRM-M No. 43016 of 2022:

This is a petition for quashing the order dated 11.7.2022 (Annexure P-4) passed by the Additional Sessions Judge, Fast Track Special Court, Patiala, stating that the petitioner/accused did not cross-examine PW-2/victim's mother, despite opportunity having been given for the purpose.

2. As per facts brought on record, PW-2/Manjit Kaur was examined before the trial Court on 6.1.2022, and her cross-examination was deferred on the request of the petitioner's counsel. On the next date, i.e., 6.5.2022, PW-2 was present for cross-examination but a request for adjournment was made and the case was adjourned to 27.5.2022 for her cross-examination. On that day PW-2 could not be present as she was not well. Request for adjournment was

made by her husband Tarsem Singh, which was accepted by the Court and the case was adjourned to 11.7.2022, when the impugned order was passed recording that despite opportunity, the petitioner did not cross-examine the witness/PW-2.

3. Learned counsel for the petitioner contends that the cross-examination of PW-2 was to be done virtually, and the petitioner's counsel could not reach on time for the purpose. On reaching the Court late, he was informed that trial has been adjourned. It was only later he came to know that on account of his non-appearance on the date fixed, the Court has recorded that despite opportunity the witness was not cross-examined.

4. Notice of motion.

5. Mr. Jashandeep Singh, AAG, Punjab, accepts notice on behalf of the respondent/State, and on instructions from ASI Narinder Singh, submits that trial of the case is going on and eight out of fourteen prosecution witnesses have been examined. The next date in the case is fixed 27.3.2023.

6. Learned counsel for the parties have been heard and case file has been perused.

7. On considering the facts aforestated and without going into the fact as to whether the petitioner's counsel was present on the day of passing the impugned order and failed to cross-examine the witness PW-2, it cannot be disputed that denial of the opportunity to cross-examine will have serious consequences for the petitioner/accused. His interests will be materially prejudiced in the case. The accused should not be made to suffer on account of any fault or slackness on the part of his/her counsel. Even otherwise, trial of the case is going on and no harm will be caused in case the witness is allowed to be recalled for cross-examination.

8. In view thereof, the petition is allowed, granting one opportunity to the petitioner to cross-examine PW-2. He is allowed to make an application for the purpose before the trial Court, upon which appropriate direction for re-calling PW-2 Manjit Kaur, for cross-examination by the petitioner shall be issued. No further opportunity for the purpose shall be granted to him.

(TRIBHUVAN DAHIYA)
JUDGE

24.3.2023
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No