

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 110 of 2024

Arising Out of PS. Case No.-687 Year-2015 Thana- NAUBATPUR District- Patna

Manish Kumar @ Bablu Singh @ Bablu Kumar Son Of Sahajanand Singh @
Sahaja Singh Resident of village- Gonwan, Gonawan, PS- Naubatpur District-
Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dinesh Prasad Singh Son Of Rajeshwar Singh @ Anmol Singh Resident of
village- Gonwan, PS- Naubatpur District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Yogesh Kumar
For the Respondent/s	:	Mr.Anil Prasad Singh

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 23-08-2024

Heard

2 This revision petition has been preferred by the applicant being aggrieved with the order dated 31.10.2023 passed by the Additional Sessions Judge VII, Danapur in Sessions Trial No 400 of 2018 (State -Versus- Manish Kumar @ Bablu Kumar & Others) whereby the learned Additional Sessions Judge VII rejected the application of the applicant filed under Section 311 of the Cr P C for recalling the prosecution witness No 4 Nitish Kumar for his cross examination.



3 It is submitted by the learned counsel for the petitioner that the said trial for the offence punishable under Sections 302/34 of the IPC and Section 27 of the Arms Act has been pending before the learned Additional Sessions Judge VII, Dnapur. During the course of trial, PW 4 Nitish Kumar appeared before the trial Court and his examination-in-chief was recorded. His cross-examination has also been done on behalf of the three accused persons on that day and subsequent date also. The matter was fixed on 29.03.2022 for cross examination of PW 4 Nitish Kumar on behalf of the petitioner, who was in jail. On the said date, he was produced before the trial Court at about 3 pm. At the time of cross examination of the said witness, learned counsel for the petitioner was not present before the trial Court. Since no body appeared on behalf of the petitioner for cross examination of PW 4, therefore, opportunity of cross examination of the said witness has been closed by the concerned trial Court.

4 Since witness Nitish Kumar is the material witness and one of the victims of the case, therefore, for recalling the said witness for cross examination, an application was filed by the petitioner which was rejected by the trial Court vide its order dated 07.05.2022. However, liberty was granted to the petitioner to file an application afresh after examination of all the prosecution



witnesses. Learned counsel further submits that after examination of all the prosecution witnesses, a fresh application under Section 311 of the Cr P C has been filed which has been rejected by the learned trial Court vide the impugned order dated 31.10.2023. He submits that this witness is an important witness of the case and one of the victims, therefore, his cross examination is essential. Therefore, he prayed that one opportunity may be given to the petitioner to cross examine the said witness.

5 Perusal of the impugned order and order sheets annexed with the petition clearly show that on 29.03.2022 when PW 4 Nitish Kumar was present before the Court, the counsel for the applicant was not present. Due to that, this witness was not cross examined. Since the applicant was in custody and was unable to engage another counsel, it would be appropriate to grant one opportunity to the applicant to cross examine the above witness.

6 Accordingly, this revision petition is allowed. The impugned order dated 31.10.2023 passed by the learned Additional Sessions Judge VII, Danapur is set aside. The learned Additional Sessions Judge VII is directed to provide an opportunity of cross examination of the witness, i e, PW 4 to this applicant/accused.



7 Learned counsel for opposite party No 2-informant is also present in this Court. He submits that the said witness is the family member of opposite party No 2, therefore, if this Court directs, PW 4 will remain present before the concerned trial Court for his cross examination.

8 Looking to the above, learned counsel for opposite party No 2 is directed to produce PW 4, namely, Nitish Kumar before the trial Court positively at 11 am on 24.09.2024. On that date, the learned counsel for the applicant-petitioner will also remain positively present before the trial Court and cross examine the PW 4 Nitish Kumar. It is made clear that no further adjournment will be given to the applicant for this purpose.

9 This order should be communicated to the learned trial Court immediately.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2024
Transmission Date	29.08.2024

