

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

**CRM-M-15185-2024
DECIDED ON: 22.03.2024**

NAVDEEP**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C., for quashing of order dated 19.01.2024 (Annexure P-3) passed in FIR No.31 dated 22.03.2022, under Section 18 of NDPS Act, registered at Police Station Sekhwan, District Batala, whereby application under Section 311 moved by the petitioner for recalling PW-1 ASI Mangal Singh, was dismissed.

2. Learned counsel for the petitioner has assailed the order dated 19.01.2024 (Annexure P-3), vide which his application under Section 311 Cr.P.C., has been declined on wrong surmises.

3. He submits that on 05.06.2023 PW-1 ASI Mangal Singh, who came present was only partly examined by the prosecution and his cross examination was deferred on request of learned counsel for the accused-petitioner and PW-1 was bound down for the next date of hearing and the case was fixed for 28.07.2023 for the said purpose. He has drawn attention of this Court to an order dated 28.07.2023, whereby it is only one witness namely ASI Joga Singh, who was also partly examined and his cross examination was also deferred and the case was adjourned to 25.08.2023 by recording that no other PW was present. Subsequent order dated 25.08.2023 indicates that no PW was present on that date and the case was

adjourned to 20.09.2023. On 20.09.2023, ASI Mangal Singh came present and he stood completely examined and no other cross examination has taken place and the opportunity for cross examination on behalf of the present petitioner was treated as nil.

4. This Court is prima facie convinced that without giving appropriate due opportunities, as is evident from the zimni orders placed on record with collective reading dated 05.06.2023, 28.07.2023, 25.08.2023 and 20.09.2023 alongwith order dated 19.01.2024 (Annexure P-3), which has been impugned before this Court that the trial Court has ignored material aspect as per its own judicial file, wherein zimni orders were passed, which are sufficient to infer this Court that no appropriate opportunity was provided to the present petitioner for cross examination of PW1 ASI Mangal Singh and, therefore, the dismissal of application under Section 311 Cr.P.C., is not tenable, which otherwise has been declined with specific observation that despite due opportunities provided, cross examination was not conducted attributing fault upon the petitioner.

5. In the light of above discussions made hereinabove, the order dated 19.01.2024 (Annexure P-3) is set aside and the trial Court is directed to provide two opportunities to the present petitioner for cross examining PW-1 namely ASI Mangal Singh or any other witness, whosoever could not be cross examined in that record, since all the zimni orders are showing absence of most of the PWs.

6. However, the petitioner shall pay Rs.5,000/-, as cost with the District Legal Service Authority, concerned.

7. The present petition stands disposed off, in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

22.03.2024

Meenu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No