



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

**CRM-M No.47661 of 2024  
Date of Decision: 23.09.2024**

**Aasif Alias Aasbo ..... Petitioner**

**Versus**

**State of Punjab ..... Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

**\*\*\***

Present: Mr. H. S. Chaddha, Advocate  
for the petitioner.

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**RAJESH BHARDWAJ, J.**

1. Petitioner has approached this Court impugning the order dated 17.08.2024 (Annexure P-1) whereby a criminal misc. application filed under Section 311 of Cr.P.C. for recalling of witnesses namely, PW-1 ASI Jognath, PW-3 DSP Ajay Singh, PW-5 SI Sartaj Singh for further cross examination in the main case FIR No.79, dated 08.07.2022, registered under Sections 18, 27 of NDPS Act at Police Station Nurpur Bedi has been erroneously dismissed by the trial Court. Further prayer has been made for staying the proceedings before the trial Court during the pendency of the present petition.

2. It has been submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the present FIR wherein recovery of 3kg Opium has been allegedly recovered from him. He has submitted that initially, petitioner was represented by the counsel whom he engaged through the inmates in the jail. He made various efforts to contact his counsel and apprise him about the material facts however, he could not meet him. Thereafter, he engaged another counsel and it was



found that the material witnesses have already been examined but they have not been cross-examined properly on the material points. He has submitted that the petitioner is facing the prosecution for an offence under the NDPS Act and provisions of the same are stringent in nature. He has submitted that the alleged quantity recovered falls under the commercial quantity and thus, in case the charges are proved against him, the minimum sentence he would suffer is 10 years rigorous imprisonment. He has submitted that compliance of provisions of Section 50 of the NDPS Act has not been made in the present case as his earlier counsel has not efficiently cross-examined the witnesses. It is submitted that no question regarding compliance of Section 50 of the NDPS Act and link evidence on the factual aspects are put to the witnesses. He has submitted that the provisions of Section 311 Cr.P.C. can be invoked at any stage prior to the pronouncement of the judgment. He has relied upon the judgments passed by Hon'ble the Supreme Court in "**Roy V.D. versus State of Kerala**", 2000(4) RCR Criminal and by this Court in "**Rajiv Sood vs. State of Punjab**", 2016(1) RCR (Criminal) 67; "**Karamjit Singh vs. State of Punjab**", 2024(2) RCR (Criminal) 825; "**Ajay Mehra vs. Surinder Singh**", 2019(4) RCR (Criminal) 979 and "**Sanjiv Kumar Rama vs. State of Punjab**", 2024 (1) RCR (Criminal) 232 and Hon'ble High Court of Karnataka in "**Sri. Umesh B. M. vs. State of Karnataka**", 2023(3) KCCR 2188. He thus, submits that the petitioner be provided one opportunity for recalling these three witnesses for their cross-examination. He also undertakes that he would not prolong the trial and would cross-examine the witnesses as per the terms and conditions of the order to be passed by this Court.



3. Notice of motion.

4. On asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State. He has submitted that the witnesses prayed to be recalled have already been cross-examined by counsel for the petitioner and thus, there is no infirmity in the impugned order passed.

5. Heard. On hearing counsel for the parties and perusing the record, it is apparent that petitioner is facing the prosecution for an offence under the NDPS Act. The recovery in the present case is 3 kg of Opium which falls under the commercial quantity. As submitted by counsel for the petitioner, earlier counsel did not cross-examine the witnesses regarding the compliance of Section 50 of the NDPS Act and the link evidences. There is no denial to the fact that provisions of the NDPS Act are stringent in nature and hence, as per the law settled, compliance also required to be done meticulously. The apprehension of the petitioner that in case the charges are proved for the laxity of his counsel in inefficiently cross-examining the prosecution witnesses then he would suffer an irreparable loss. He submits that as per the law settled, this Court has ample power in invoking its power under Section 311 Cr.P.C. where the facts and circumstances of the case make out a case for invoking its power. In the case in hand, apprehension of counsel for the petitioner cannot be ignored. He has changed his counsel and he wants to further cross-examine the three witnesses on the material points.

6. There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For the decision of the issue involved, the provisions of



Section 311 Cr.P.C. is necessary which read as under:

**“311. Power to summon material witnesses, or examine person present-** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

7. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328** held as under:-

“12. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

8. In the facts and circumstances of the case, the impugned order dated 17.08.2024 is *set aside*. The trial Court is directed to provide



maximum three dates to the petitioner for further cross-examining the witnesses i.e. PW-1, PW-3 and PW-5. It is being clarified that petitioner would not be allowed to prolong the trial and if the trial Court finds the petitioner violating the directions of the Court then it would be at liberty to proceed with the trial in accordance with law.

9.               Petition is allowed in above-mentioned terms.

23.09.2024  
*m. sharma*

( RAJESH BHARDWAJ )  
JUDGE

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