



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

CRR-1968-2024

Date of decision: 04.10.2024

Surinder Singh @ Kali

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Amritpal Singh Maan, Advocate for the petitioner.
(Legal Aid Counsel)

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by petitioner/accused against the order dated 13.08.2024 passed by the Court of learned Special Judge, Patiala vide which the application filed by the petitioner for recalling PW-3 ASI Palwinder Singh, PW-4 SI Shamsher Singh, PW-5 Gurmeet Singh, PW-7 Mukesh Kumar and PW-9 Inspector Ranbir Singh for the purpose of their cross examination was dismissed.

2. Notice of motion.

3. Mr. J.S. Dhaliwal, AAG, Punjab, accepts notice on behalf of the State.

4. The counsel for the petitioner while referring to impugned order dated 13.08.2024 submits that the cross examination of PW-4 SI Shamsher Singh, PW-5 ASI Gurmeet Singh, PW-7 Mukesh Kumar and PW-9 Inspector Ranbir Singh was declared as 'nil' opportunity given. The counsel for the petitioner further submits that in case, there was no



representation on behalf of the petitioner then the trial Court should have provided him a legal aid counsel to cross examine the aforesaid prosecution witnesses. That the impugned order is not sustainable and deserves to be set aside.

5. On the other hand, the State counsel submits that proper opportunity was given to the petitioner to cross examine the prosecution witnesses and as such now, there is no occasion to recall the said prosecution witnesses which were not cross examined on behalf of the petitioner at the appropriate stage of trial.

6. I have considered the submissions made by counsel for the parties.

7. The present petition has been filed by the petitioner through legal aid counsel, to challenge order dated 13.08.2024 passed by the learned trial Court whereby application filed by the petitioner under Section 311 Cr.P.C to recall certain prosecution witnesses whose cross examination at the earlier stage was treated as 'nil', was dismissed.

8. In case, the petitioner was not represented by any private counsel, then the trial Court was under obligation to provide a legal aid counsel to the petitioner at the expense of the State so that the petitioner would have been able to cross examine the prosecution witnesses, as per the mandate of Section 304 Cr.P.C. The trial Court before declaring the cross examination of certain PWs as 'nil' on behalf of the petitioner should have ensured that the petitioner was properly represented by a pleader for his defence. It appears that at the relevant time, petitioner was represented by a private counsel who did not bother to cross examine the PWs. In the given

circumstances, the trial Court should have allowed the application moved by petitioner under Section 311 Cr.P.C, in the interest of justice and further in order to avoid miscarriage of justice.

9. In light of the above, without expressing any opinion on the merits of the case, the present petition is allowed and impugned order dated 13.08.2024 passed by the Court of Judge Special Court, Patiala is hereby set aside and the trial Court is directed to grant one effective opportunity to the petitioner to cross examine PW-4 SI Shamsher Singh, PW-5 ASI Gurmeet Singh, PW-7 Mukesh Kumar and PW-9 Inspector Ranbir Singh by summoning them for a particular date. In case, on a particular date, petitioner is not represented by any counsel then the trial Court is duty bound to provide him a legal aid counsel, so that the prosecution witnesses presented could be effectively cross examined on behalf of the petitioner.

04.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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