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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1720/2024 & CRL. MA 6600/2024

RAM SINGH

.....Petitioner

Through: Mr. Rohit Bhardwaj, Mr. Shiv Nath
Sawhney and Mr. Himanshu Kaushal,
Advocates.

versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Shoaib Haider, APP for State
with WSI Rajesh PS North Avenue,
Delhi.

Ms. Sowjhanya Shankasan, Advocate
for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

26.09.2024

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1. By way of present petition, the petitioner seeks to partially assail the order dated 05.01.2024 passed by the learned ASJ-01 (POCSO), Patiala House Courts, New Delhi to the extent that his application filed under Section 311 Cr.P.C. seeking recall of the child victim as well as of her mother for their cross-examination was dismissed.

2. Learned counsel for the petitioner, upon instructions, submits that he is restricting his challenge in the present petition only to recall the mother of the child victim, the examination having already been conducted in the year 2018. He further submits that certain relevant facts were not put to the witness as the trial has been conducted on behalf the petitioner/accused, who is the uncle of the child victim, by a counsel appointed by Legal Aid. He also submits that the trial will not be delayed as the petitioner seeks only one



opportunity to cross-examine the aforesaid witness since the trial is still at the stage of prosecution evidence.

3. On the last date of hearing, this Court, on the request of the child victim and her mother, has appointed Ms. Sowjhanya Shankaran, Advocate as the Amicus Curiae, to represent them. She, along with the learned APP for the State, opposes the present petition and submits that the relevant questions have already been asked to the child victim as well as her mother. It is further stated that both the child victim and her mother were lastly examined on 06.02.2018 and 29.08.2018, respectively, and that the application for recall was delayed for almost six years.

4. The Court, while considering an application under Section 311 Cr.P.C., has to balance the rights of the accused as well as the victim. The challenge in the present case arises in the context of dismissal of an application under Section 311 Cr.P.C. for recall of both the child victim as well as her mother. Learned counsel for the petitioner states, upon instructions, that he would restrict his challenge only to the recall of the mother of the child victim.

5. The Courts have time and again set out the parameters of exercising powers under Section 311 Cr.P.C. A plain reading of Section 311 Cr.P.C. reflects that the same provides recourse to the section at any stage of the trial. Fair trial is the hallmark of criminal procedure. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the parties to adduce evidence for the just decision of the case. Such adducing of evidence is a valuable right. In regard to this, in Natasha Singh v. CBI reported as **(2013) 5 SCC 741**, the Supreme Court has observed:-

“16. Fair trial is the main object of criminal procedure, and it is



the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such a right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."

6. This Court has also made a query to the learned counsel for the petitioner, as to what remains to be cross-examined and the learned counsel states that he would be satisfied in case only one opportunity may be given for the cross-examination of the mother of the child victim.
7. Considering the aforesaid, the petition succeeds to the aforesaid limited extent only. The Trial Court shall fix a date for the same. Learned counsel for the petitioner assures the Court that the cross-examination would be conducted on the said date and no adjournment would be sought.
8. The petition succeeds to the aforesaid limited extent only and is disposed of accordingly alongwith pending application.
9. This Court appreciates the efforts put forth by learned Amicus Curiae, Ms. Sowjhanya Shankaran, Advocate.

MANOJ KUMAR OHRI, J

SEPTEMBER 26, 2024/rd