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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6546/2024, CRL.M.A. 25016/2024**
PAWAN DUGGALPetitioner

Through: Mr. Ajay Burman, Sr. Advocate with
Ms. Ruchi Kapur, Ms. Jaspreet Kaur
and Mr. Varun Seth, Advs.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Aman Usman, APP with Insp.
Sudhir Kumar, PS: Model Town.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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22.08.2024

CRL.M.A. 25017/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 6546/2024, CRL.M.A. 25016/2024

1. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of the petitioner for setting aside order dated 22.07.2024 passed by learned Additional Sessions Judge-04, North District, Rohini Courts, Delhi, whereby, application under Section 311 Cr.P.C. for recalling PW-46 SI Mukesh Kumar was dismissed.
2. In brief, as per the case of prosecution, petitioner is facing trial in FIR No. 0553/1999, under Sections 302/307/212/201/120B/34 IPC and Sections 25/27 Arms Act, registered at PS: Model Town.
3. Learned counsel for petitioner submits that an application under Section 311 Cr.P.C. was filed on behalf of petitioner for recalling PW-46 SI



Mukesh Kumar for confronting the 'acknowledgement receipt' issued by him, showing seizure of an arms licence of Dushyant Tokas, which was handed over by Dr. Rajesh Gupta, Physician at Pentamed Hospital, after the deceased was taken to the said hospital and the same was recovered from his body. He submits that however, the case of prosecution before the Court is that arms licence was handed over by one Dushyant Tokas to SHO, PS: Model Town on 07.11.1999, which is contrary to the acknowledgment receipt of handing over of the arms licence of Dushyant Tokas at Pentamed Hospital. The acknowledgment receipt is stated to have only come on record on moving an application under Section 91 Cr.P.C. by co-accused Vishal Kapahi, who has since expired. He further submits that the said acknowledgement receipt has been proved in cross-examination of DW-1 Dr. Rajesh Gupta (Physician), who was called from Pentamed Hospital.

4. On the other hand, learned APP for the State opposes the petition and submits that aforesaid application for recalling PW-46 SI Mukesh Kumar has been filed merely to delay the trial and it has also been noticed by the learned Trial Court in the impugned order that an earlier application filed for purpose of recalling PW-46 SI Mukesh Kumar has been dismissed on merits. However, it is pointed out by learned counsel for petitioner that liberty had been granted to prove the acknowledgement receipt at the stage of defence evidence vide order dated 10.10.2023. Learned APP further submits that the acknowledgement receipt which has been proved by DW-1 Dr. Rajesh Gupta had been produced by the SHO, PS: Model Town, pursuant to an application under Section 91 Cr.P.C. and an appropriate inference in this regard can be taken by the learned Trial Court at the stage of final arguments.

5. This Court is of the considered opinion that apparently there is a



discrepant version as to the seizure of the aforesaid arms licence on record as pointed out by learned counsel for petitioner. The aforesaid discrepancy may be significant from the perspective of the petitioner / accused and appropriate clarification in this regard can be given by PW-46. The application appears to have been rejected by the learned Trial Court without giving cogent reasons.

Considering the totality of the facts and circumstances, PW-46 SI Mukesh Kumar is permitted to be recalled before the learned Trial Court, subject to availability, for limited purpose of cross-examining the witness for confronting the seizure of arms licence/explanation, if any.

Learned counsel for petitioner is directed to ensure that cross-examination is preferably conducted on the same day, since it is an old case and no further adjournment in this regard shall be granted by learned Trial Court as far as feasible.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

AUGUST 22, 2024/R