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

+ **CRL.M.C. 9812/2024**

JAMAL ALIAS RANJHA

.....Petitioner

Through: Mr. Akash Bhandari, Mr. Kushal Kumar, Mr. Anmol Sachdeva, Ms. Mega Saroa, Mr. Janak Raj Ambavat, Advs.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the State with SI Sudhanshu Singh, PS Seelampur.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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13.12.2024

CRL.M.A. 37612/2024 (Exemption)

Exemption allowed, subject to all just exceptions. Application stands disposed of.

CRL.M.C. 9812/2024

1. The present petition has been filed challenging the order dated 09.12.2024 vide which the right of the petitioner to cross examination of PW-1 and PW-30 was closed by the learned Trial Court.
2. Learned counsel for the petitioner submits that PW-1 and PW-30 are the material witnesses and cross examination is essential for adjudication of the matter in dispute. Learned counsel submits that



PW-1 and PW-30 were tender to cross examination on 20.11.2024. However, on that day, learned counsel for the petitioner was not well and even his medical certificate was produced/filed.

3. Learned counsel states that vide the impugned order, the request to recall the PW-9 for cross examination was also declined. However, on instructions, it has been stated at bar that no fresh petition shall be filed for the purpose of recalling of PW-9.
4. Learned counsel submits that the matter is fixed today at 02:00 PM for the purpose of recording statement under Section 313 Cr. PC. Learned counsel submits that if these witnesses are not recalled for the purpose of cross examination, the petitioner would be prejudiced.
5. Issue notice.
6. Learned APP for the State has accepted the notice.
7. Learned APP submits that all contentions of the petitioners were duly entertained by the learned Trial Court vide impugned order. Learned APP submits that sufficient opportunities had already been given for the purpose of the cross examination of the PW-1 and PW-30 and therefore there is no ground to interfere with the order dated 09.12.2024.
8. Though, the cross examination is salutary right however, at the same time, it has been held by the Apex Court in various cases from time to time that fairness in trial has to be seen not only from perspective of the accused but also from the perspective of the prosecution and the victim. However, the Court has to also take into account that due to the fault of the lawyer, the petitioner may not suffer.



9. Taking into account, the peculiar facts and circumstances, let the PW-1 and PW-30 be recalled subject to the cost of Rs.10,000/- to be deposited with Delhi State Legal Services Authority. However, the learned Trial Court shall fix an early date for the purpose of recalling of PW-1 and 30. Prosecution shall ensure that PW-1 and PW-30 are produced on the date fixed. If the accused fails to cross examine PW-1 and PW-30 on the date they are produced, no further opportunity shall be given except in the exceptional circumstances to be decided by the learned Trial Court.
10. With these observations, the petition along with pending applications, if any, disposed of.
11. Copy of this order be given *dasti* under the signature of the Court Master.

DINESH KUMAR SHARMA, J

DECEMBER 13, 2024

Pallavi/KR