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

+ **CRL.M.C. 9830/2024**

MOHD ARSHAD

.....Petitioner

Through: Mr. Mohammad Mustafa and Mr.
Ashwani Kumar, Advocates.

versus

THE STATE

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State.

Inspector Sudhir Kumar, P.S.: Jamia
Nagar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.12.2024

CRL.M.A. 37689/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 9830/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner impugns order dated 12.09.2024, whereby the learned Additional Sessions Judge, Saket Courts, Delhi has dismissed an application moved on behalf of the petitioner under section 311 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking to recall PW-3 Salma, who is the sister of the deceased, for further cross-examination.

2. Learned counsel appearing for the petitioner submits, that the petitioner is facing trial for the offence under section 302 of the



Indian Penal Code, 1860 ('IPC') in case FIR No. 370/2022 dated 10.09.2022 registered under section 302 IPC at P.S. : Jamia Nagar, Delhi; and the essential allegation is that the petitioner committed the murder of one Arshad on intervening night of 09/10.09.2022.

3. Learned counsel submits, that since the petitioner belongs to a disadvantaged stratum of society, he has been represented at the trial by a learned legal-aid counsel; and that in the course of cross-examination of PW-3 Salma conducted on 21.11.2023, the learned legal-aid counsel did not question the witness on certain critical aspects of the matter, including about the presence of the petitioner (accused) at a certain *jhuggi* on 09.09.2022 at around 03:00-04:00 p.m. Learned counsel further submits, that as the record would show, the FIR dates back to 10.09.2022, but the examination-in-chief of PW-3, who is a prime witness in the case, was conducted on 14.03.2023 and then again on 21.11.2023, on which (later) date the examination-in-chief was concluded. Thereafter, PW-3 was put to cross-examination only on one single date *i.e.* 21.11.2023 and on the very same date the cross-examination was also closed.
4. Learned counsel submits, that though the learned legal-aid counsel did cross-examine PW-3 on 21.11.2023, since the entire cross-examination was completed on the same day, there was no opportunity for the learned legal-aid counsel to confer with the petitioner; and he therefore did not put extremely relevant questions to the witness, including about the petitioner's *alibi* as regards his presence at the spot on 09.09.2022.



5. In the circumstances, learned counsel submits, that the petitioner would suffer serious prejudice if he is deprived of an opportunity to further cross-examine PW-3.
6. Issue notice.
7. Mr. Tarang Srivastava, learned APP appears for the State; accepts notice; and submits that the petitioner was accorded adequate opportunity to cross-examine PW-3, and as is seen from the record, PW-3 was extensively examined on 21.11.2023 and no ground is made-out for granting another opportunity to the petitioner to do so.
8. Upon a conspectus of the facts and circumstances of the case, the following considerations weigh with the court:
 - 8.1. The petitioner is facing trial for the offence under section 302 IPC, and if convicted, he would, at the very least face a life sentence in the case;
 - 8.2. The FIR is dated 10.09.2022 and relates to an incident of 09.09.2022; the trial has been going-on with reasonable expedition; and though it is correct that an opportunity to cross-examine PW-3 was granted to the petitioner on 21.11.2023, the record also shows that the examination-in-chief of PW-3 was concluded on 21.11.2023 and her *cross-examination was also conducted and closed on that day itself*. There is accordingly some merit in the petitioner's contention that the learned legal-aid counsel, who was then representing the petitioner, would not have had the opportunity to confer with the petitioner in relation to what came to be recorded in the examination-in-chief of PW-3; and therefore certain aspects that were required



to be put to PW-3 in her cross-examination, may have been omitted; and

8.3. *If there is any merit in the petitioner's alibi as regards his presence at the scene of the crime on the relevant date and time; but the petitioner is denied adequate opportunity to prove his alibi, it could result in the petitioner's wrongful conviction for the offence under 302 IPC which entails a life sentence, at the very least.*

9. In view of the aforesaid circumstances, this court considers it appropriate and in the interests of justice, that the petitioner be granted a *limited, time-bound opportunity* for further cross-examination of PW-3 Salma.

10. Accordingly, the present petition is allowed, with the following directions:

10.1. The petitioner is granted *one solitary opportunity* for cross-examining PW-3 Salma *for upto 02 hours on 01 single date;*

10.2. Since the matter is stated to be posted before the learned trial court on 03.02.2025 and 07.02.2025, the learned trial court is directed to recall PW-3 Salma either on 03.02.2025 or 07.02.2025, as per convenience of the court as well as of the learned counsel for the petitioner; and to permit to the petitioner upto 02 hours for cross-examining PW-3 on the date so given; and

10.3. It is made clear that no adjournment shall be granted to the petitioner for further cross-examination of PW-3.



11. Learned counsel appearing for the petitioner submits, that the petitioner would now wish to engage private counsel to conduct the cross-examination. He is permitted to do so.
12. The petition is disposed-of in the above terms.
13. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 16, 2024/ak