



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.10717 of 2025
Date of Decision: 25.02.2025

Kamalpreet Singh @ Bablu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Dhiraj Jindal, Advocate,
for the petitioner.

Mr. Rubal Panwar, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 13.02.2025 passed by the trial Court in case bearing CIS No.NDPS-119-2019, titled as *State vs. Kamalpreet Singh @ Bablu*, arising out of FIR No.14 dated 29.03.2019 registered under Section 22 of of Narcotic Drugs and Psychotropic Substances Act, 1985 (For short “NDPS Act”) at Police Station Kheri Nodh Singh, District Fatehgarh Sahib, whereby an application filed by the petitioner-accused under Section 311 Cr.P.C. seeking recall of a witness namely, PW-2 ASI Jatinderpal Singh for the purpose of conducting his cross-examination had been dismissed.

2. The petitioner is facing trial for commission of the

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aforementioned offence before the trial Court. After conclusion of evidence of the prosecution, the petitioner filed an application for recall of PW-2 ASI Jatinderpal Singh. The learned trial Court has dismissed the same by observing that this witness was already cross-examined at length; that the evidence of prosecution stood closed, that the application had been moved when the statement of the petitioner under Section 313 Cr.P.C. had to be recorded, that the petitioner could not be allowed to fill up the lacuna in his case and that no ground for recalling the witness had been made out. Feeling aggrieved, this petition has been filed.

3. It is argued by learned counsel for the petitioner that the impugned order dated 13.02.2025 is liable to be set aside as while passing the same, the learned trial Court ignored the fact that the further cross-examination of PW-2 was necessary so as to bring the truth on record. Though he had been cross-examined previously by counsel for the petitioner but certain material questions could not be asked from the witness and it was for that purpose, that his cross-examination was necessary. Accordingly, it is urged that the petition may be allowed and he may be granted an opportunity to further cross-examine PW-2.

4. Learned Assistant Advocate General, Punjab who has advance notice of the petition has submitted that the impugned order is well reasoned and does not warrant any interference. While submitting that no illegality had been committed by the learned trial Court while passing the impugned order, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable

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length and have gone through the material placed on record.

6. It is well settled proposition of law that an application under section 311 Cr.P.C must not be allowed only to fill up lacunas in the case of the prosecution, or of the defence or to give an unfair advantage to the opposite party. *In Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (2) Scale 654*, Hon'ble Supreme Court has held that the power conferred under Section 311 Cr.P.C. should be invoked by the court only to meet the ends of justice and for strong and valid reasons and it should be exercised with great caution and circumspection. Though, Section 311 Cr.P.C. confers vast discretion upon the Court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. The provisions of this section should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 Cr.P.C. has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Reference in this context can be made to *Vijay Kumar vs. State of U. P. : (2011) 8 SCC 136* as well as to the judgments rendered by this Court in *Bhag Singh vs. Madan Lal Walia : 1998 (3) Civil Court Cases 597(1)(P&H)* and *Joginder Singh vs. Devinder Kumar : 1999(1) Civil Court Cases 202(P&H)*.

7. On applying the above discussed position of law to the present case, it has been seen that in his application (Annexure P-2) as filed before the learned trial Court, the petitioner has sought recall of PW-2 by simply saying that his counsel wanted to further cross-examine this witness as some

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relevant and necessary questions could not be put to him at the time of cross-examining him by his previous counsel. Copy of the sworn deposition of PW-2 has also been placed on record by learned counsel for the petitioner on asking of this Court and it is revealed that he had been cross-examined at length. There was no mention in the application filed by the applicant as to why the further cross-examination of PW-2 was required and what material question could not be put to the said witness. Even in this petition, it has not been mentioned as to what relevant and necessary question was required to be put to PW-2. It clearly appears that the petitioner sought further cross-examination of PW-2 either to delay the disposal of the case or to fill the lacuna in his case which he could not be allowed to do. Since the petitioner failed to make out a case having any strong and justified reason for allowing recall of PW-2, therefore, in my considered opinion, no illegality or infirmity can be stated to have been committed by learned trial Court in declining the relief as prayed by the petitioner.

8. Keeping in view the aforesaid facts and circumstances, I do not find any ground to interfere with the impugned order, passed by the trial Court. Hence, the present petition is dismissed.

(MANISHA BATRA)
JUDGE

25.02.2025
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No