



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-M-17256-2025 (O&M)
Decided on : 01.04.2025**

SANJEEV BHATIA

. . . Petitioner(s)

Versus

STATE OF HARYANA

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

Through this petition, the order dated 24.03.2025 of the Additional District and Sessions Judge, Faridabad, whereby the application filed by the petitioner related to list of witnesses to be examined in defence was declined.

2. Brief factual matrix of the case is that in the trial being conducted in FIR No.352 dated 09.10.2021 under Sections 323, 376(2)(n) and 506 IPC, the prosecution evidence was closed, and after recording the statement of the accused/petitioner under Section 313 Cr.P.C., the case was fixed for defence evidence and the Court directed for the filing of the list of defence witnesses. The order of the trial Court dated 20.12.2024 reads thus:

“Statement of the accused under Section 313 of the Cr.P.C. recorded.

Adjourned to 12.01.2025 for defence evidence, if any and for arguments. List of witnesses, to be examined by the accused in his defence, be also filed on or before the date fixed.”



3. Pursuant thereto, adjournments were sought by the defence counsel, which were granted, and the condition of last opportunity was also mentioned in orders of the trial Court on all hearings subsequent to 28.01.2025. Thereafter, list of witnesses was sought to be filed by the defence counsel, which was dismissed vide impugned order of the trial Court dated 24.03.2025, which reads as under:

“List of witnesses, to be examined by the accused in his defence, filed by learned defence counsel. Same is declined being filed at an belated stage.

Adjourned to 01.04.2025, for final argument in the present case else Court shall decide suo motu on merits.”

4. Heard.

5. Trite to say that right to fair trial is an indefeasible right guaranteed by every criminal justice system, which includes the right of the accused to be given an opportunity of fair hearing, as also the right to advance evidence in his favour.

6. While dealing with a similar case wherein the application containing a list of witnesses to be examined was dismissed citing the ground that the accused had made a statement under Section 313 Cr.P.C. that he did not wish to lead evidence in defence, the Hon’ble Supreme Court in *Fazal Khan v. State of (NCT) of Delhi, 2014 (1) CRR 86*, held that denial of an opportunity to lead defence evidence can lead to gross miscarriage of justice. It was observed that, “7....Even assuming that in a given situation, an accused, especially one charged with a capital offence, makes a statement under Section 313 Cr.P.C. that he does not wish to lead evidence in *defence* but subsequently, realises the mistake and wishes to produce such evidence, the prayer for summoning such evidence can not be summarily rejected. The



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Trial *Court* would in such cases do well to *examine* whether the prayer, no matter belated, was mala fide intended to prolong and delay the conclusion of the trial. There is no gainsaying that the *right* of the accused to lead evidence in *defence* is a valuable *right* not only because of demands of fairness and justice that must permeate the judicial determination of his guilt or innocence but one that is recognised under Section 233(3) Cr.P.C. Such a invaluable *right* cannot be scuttled simply because of an accused making a statement under Section 313 Cr.P.C. declining at that stage to lead evidence.”

7. Be that as it may, in consonance with the principle of natural justice, the impugned order dated 24.03.2025 is hereby set aside, **subject to payment of cost of Rs.10,000/-, to be paid by the petitioner to the complainant.**

Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

01.04.2025

Kavita

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No