



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

CRM-M-46137-2025
Date of decision: 22.08.2025

AHMED KHAN ALIAS AMARJEET

...Petitioner

VERSUS

STATE OF UT CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present: Mr. Karan Vir Nanda, Advocate
 for the petitioner.

Mr. J.S.Toor, Addl.P.P., U.T., Chandigarh.

YASHVIR SINGH RATHOR, J. (Oral)

1. The present petition is directed against the order dated 15.07.2025 (Annexure P-5) passed by Special Court, Chandigarh in FIR No.15 dated 28.01.2020 under Section 22 of NDPS Act at Police Station Sector 31, Chandigarh vide which the application under Section 311 Cr.P.C. moved by the prosecution has been allowed and Dr. Atul Bajaj, CFSL Expert has been allowed to be examined.

2. By way of application in hand, the prosecution pleaded that report of CFSL dated 05.06.2020 has been placed on file to prove the nature of the contraband seized from the accused. However, due to inadvertence and oversight, the prosecution evidence was closed by the Public Prosecutor without examination of the expert, who had prepared



the report. It is further submitted that CFSL report is a vital document and examination of the concerned expert is necessary to prove the same and to ensure a just adjudication of the case. Non-examination of the expert was not deliberate or intentional but same took place due to bonafide oversight. It is further submitted that powers of the Court under Section 311 Cr.P.C. are wide and can be exercised at any stage of inquiry or trial to summon any witness if his evidence appears essential to the just decision of the case. No prejudice will be caused to be accused in case said expert is summoned and examined and it has been prayed that application in hand be allowed.

3. Accused in his reply to the said application (Annexure P-3) has opposed the same as not maintainable. It is submitted that no cogent and valid grounds have been given to summon and examine Dr. Atul Bajaj at this stage as prosecution evidence has already been closed by the Public Prosecutor. The trial is going on for the last five years and the Public Prosecutor has led evidence of the prosecution and the application in hand has been moved at a belated stage just to fill up the lacuna which cannot be permitted. The version of the prosecution that the witness could not be examined due to oversight is not sound and plausible and the application deserves to be dismissed.

4. After hearing the parties, learned trial Court allowed the application.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the material on file.



6. Section 311 Cr.P.C. provides that any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. A bare perusal of the aforesaid provision makes it clear that the Court has been empowered to summon any person as a witness at any stage of inquiry, trial or other proceedings and the Court can even summon a witness of its own and it is not necessary that any of the party should move an application if the evidence of the witness to be summoned is essential to the just decision of the case. It is also well settled that power of the Court to call any witness can be invoked even if the evidence of both the parties had been closed so long as the Court remains seisin of the proceedings. Reference in this regard can be made to AIR 1991 (SC) 1346 “**Mohanlal Shamji Soni v. Union of India**”,. In the present case, the report of CFSL is already a part of the final report under Section 173 Cr.P.C., but the expert, who had examined the contraband and prepared the report could not be cited as a witness inadvertently and now he is sought to be examined. It is not in dispute that his examination is essential to prove the report and on account of his non-examination, the report cannot be looked into and led in evidence. The expert could not be cited as a witness inadvertently in the list of witnesses along with the final report. However, the lapse on the part of



the State is not such which would dis-entitle the State to examine him at this stage even after closing of the prosecution evidence till the Court is seized of the matter as the report of CFSL is a relevant piece of evidence and is essential for just decision of the case. Moreover, no prejudice will be caused to the accused in case, PW-Dr. Atul Bajaj is allowed to be examined as accused will get an opportunity to cross-examine him and to challenge the veracity of this report.

7. Learned trial Court has also exercised the jurisdiction vested in it on sound judicial principles and for cogent reasons. The impugned order thus does not suffer from any illegality or infirmity and there is no reason to take a contrary view. Resultantly, the present petition deserves to be dismissed and it is ordered accordingly.

(YASHVIR SINGH RATHOR)
JUDGE

22.08.2025
Priyanka Thakur

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No