



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

CRM-M-60574-2024

Date of decision: 25.02.2025

GURPREET SINGH @ GOPI @ GURPARTAP SINGH

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing/setting aside the order dated 06.03.2018 (Annexure P-7) passed by learned ASJ/JSC, Tarn Taran, vide which, the application for extension of time to deposit cost of Rs.10,000/- imposed upon the petitioner vide order dated 06.12.2017 (Annexure P-4) has been dismissed and further prayer is for quashing/setting aside the order dated 21.10.2024 (Annexure P-10) passed by learned ASJ/JSC, Tarn Taran whereby application for grant of another opportunity to pay the cost of Rs.10,000/- imposed upon the petitioner has been dismissed in case bearing FIR No.29 dated 23.02.2015 under Section 21 of NDPS Act, 1985, registered at Police Station Sarhali, District Tarn Taran.

2. Learned counsel for the petitioner submits that after presentation of the challan, charges were framed on 07.12.2015 and PW-1, namely, SI Prabhjit Singh and PW-2 ASI Balwinder Singh appeared before the trial Court. Their examination-in-chief was recorded and it was the first date, after



framing of the charges, when the prosecution witnesses had appeared and on the first date of hearing, the opportunity to cross-examine the aforementioned witnesses was declared as nil, as discernible from order dated 31.07.2017 (Annexure P-3). Thereafter, the petitioner moved an application under Section 311 Cr.P.C. seeking an opportunity to cross-examine the aforesaid witnesses. The application filed by the petitioner was allowed vide order dated 06.12.2017 (Annexure P-4) subject to a cost of Rs.10,000/- and both the witnesses were summoned for 06.01.2018. However, on the said date, both the witnesses did not appear. The same is evident from order dated 06.01.2018 (Annexure P-5) and on the next date of hearing i.e. on 16.02.2018, their bailable warrants issued due to non-appearance. Thereafter, the petitioner got absented from the hearing before the learned trial Court on 16.03.2018 and he was declared as a proclaimed offender vide order dated 05.06.2018. The petitioner was arrested on 06.02.2020 and was released on bail on 21.10.2022. Then after two years, the case was fixed for defence evidence and the petitioner realized that the cost imposed vide order dated 06.12.2017 was not deposited, due to the absence of the petitioner and his subsequent declaration as proclaimed offender and thereafter on account of Covid-19, the order for depositing of the cost of Rs.10,000/- was not complied with. As such, the petitioner approached the trial Court, however, the said application was dismissed by impugned order dated 21.10.2024 on the ground that there is no provision under the Cr.P.C. to review the order dated 06.03.2018 (Annexure P-7).

3. Notice of motion.

4. Mr. Sandeep Kumar, DAG, Punjab, who is present in the Court,



accepts notice on behalf of respondent-State and *per contra*, opposes the prayer made by the petitioner on the ground that the petitioner has delayed the trial as he absented himself from the trial Court and has not deposited the costs, in spite of grant of opportunity to cross-examine the witnesses. As such, the petitioner does not deserve any leniency and the trial Court is fully justified in passing the impugned order.

5. Having heard learned counsel for the parties and after perusing the records, this Court finds force in the arguments advanced by learned counsel for the petitioner and the petitioner has the right of fair trial as enshrined under Article 226 of Constitution of India and any denial of the best available evidence or opportunity of effective and substantial hearing to accused/petitioner in proving his defence would amount to denial of free and fair trial.

6. A two judge Bench of the Hon'ble Supreme Court in **'VN Patil Vs. K. Niranjan'** in Criminal Appeal No. 267 of 2021 decided on 04.03.2021 examined the scope of the power under Section 311 of Cr.P.C and following was observed:-

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is ‘at any stage of enquiry or trial or other proceeding under this Code’. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion.”



Further, a Division Bench of this Court in 'Sukhdev Singh vs. State of Punjab', 1982 Cr. LJ 2201 has held that:-

"The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount an should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds".

7. In view of the above, present petition is allowed and impugned orders dated 06.03.2018 (Annexure P-7) and 21.10.2024 (Annexure P-10) are hereby set aside, subject to depositing cost of Rs.15,000/- in Legal Aid Fund,



which includes the cost of Rs.10,000/- imposed upon him vide order dated 06.12.2017, within a period of two weeks and the learned trial Court is directed to summon the prosecution witnesses, who appeared as PW-1 and PW-2 and grant the petitioner two effective opportunities to cross-examine them.

February 25, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |