



\$~40

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

+ **CRL.M.C. 933/2025**

BENI PRASAD YADAV

.....Petitioner

Through: **Ms. Malvika Kulkarni, Advocate.**

versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Ms. Meenakshi Dahiya, APP for the
State with Inspector Rizwan Khan, PS
Amar Colony.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **12.02.2025**

CRL.M.A. 4284/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CRL.M.C. 933/2025

3. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) analogous with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the Petitioner, Beni Prasad Yadav, to challenge the Order dated 15.01.2024 *vide* which the Application under Section 311 of Cr.P.C. (analogous to Section 348 of B.N.S.S.), has been dismissed by the learned ASJ.
4. Briefly submitted, the Petitioner is in judicial custody in the FIR No. 266/2017 under Sections 302/396/397/412/120B of the IPC, registered at



Police Amar Colony, since 03.12.2017. The Charges were framed on 15.12.2018 and 31 witnesses have already been examined.

5. The Petitioner sought recall of **PW-2**, ASI Prem Raj, Receiver of PCR Call; **PW-3**, SI Chet Ram, Receiver of the Crime Examination Report from the Finger-Print Expert; **PW-6**, Ct. Amit Singh, Photographer of the Crime Scene; **PW-7**, Sh. Tushar Jain, son of the deceased victim; **PW-11**, Sh. Manak Lal, The Complainant; **PW-12**, Dr. Bharti Bhardwaj, Scientific Officer; **PW-13**, Rajan Saraki, Domestic Help, the only eye-witness to the alleged offence; **PW-22**, ASI Ravi Kumar, Finger-print Expert in the Crime Team and **PW-26**, Dr. Monika Shahi, Scientific Officer at Forensic Science Laboratory.

6. The witnesses are sought to be recalled on the ground that they are formal police witnesses, who have not been cross-examined on behalf of the Petitioner. It is further submitted that the present Application is limited only to the police witnesses and no recall of private witnesses, namely, PW-11, Sh. Manak Lal, PW-13, Sh. Rajan Saraki and PW-7, Sh. Tushar Jain, is sought since these witnesses have been extensively cross-examined by learned counsel for the co-accused and the cross-examination was adopted on behalf of the Petitioner.

7. **Learned ASJ had dismissed** the Application essentially on the ground that the statement of the witnesses have been recorded way back in 2019 i.e. six years back. Senior most counsel of the DLSA i.e. Chief Legal Defence Aid Counsel had been provided to the Petitioner, on his request. However, he has been engaging a private counsel intermittently. Moreover, the witnesses have been cross-examined *in extenso* by learned counsel for the co-accused, which has been adopted on behalf of the Petitioner. The case



is pending for more than seven years and there are eight accused, out of which five are in the custody. Allowing the present Application shall result in de novo trial, which would prejudice not only the witnesses but also the other co-accused, whose trial shall be further delayed. Consequently, the Application was dismissed.

8. Submissions heard and the record perused.

9. Though in the Application, the police witnesses had been termed as formal witnesses, but they are all material witnesses in regard to the facts deposed by them. Though the trial may get a little delayed but considering the significance and importance of the testimony of PW-2, PW-3, PW-6, PW-12, PW-22 and PW-26, the Application is allowed. They may be recalled for cross examination on behalf of the Petitioner, subject to the availability of the witnesses. No adjournment for cross-examination of any of the witnesses, who are summoned for a particular date, shall be granted to the learned counsel for the Petitioner.

10. With these observations, the Petition is allowed to the extent as detailed herein.

11. The Petition is disposed of accordingly.

NEENA BANSAL KRISHNA, J

FEBRUARY 12, 2025/RS