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

+ CRL.M.C. 2071/2025, CRL.M.A. 9302/2025

GOVINDA KASHYAP

.....Petitioner

Through: Mr. Avadh Kaushik and Ms. Urvashi
Bhatia, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State
with Manu Dev PS Sabzi Mandi.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

29.07.2025

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1. Petitioner is aggrieved against an impugned order dated 04.12.2024 passed by the learned Trial Court, vide which an application filed by the petitioner herein under Section 311 of the Cr.P.C. to seek recalling of two witnesses who are stated to material ones i.e. mother and brother of his deceased wife i.e. PW-1 and PW-2 respectively, was dismissed.
2. The petitioner stands as an accused of alleged offences under Sections 304B/498A/406/34 IPC qua which an FIR No. 523/2022 dated 20.10.2022 was registered and the trial is under way.
3. Heard and perused the case file.
4. The application filed by the petitioner under Section 311 Cr.P.C. was primarily dismissed on the ground that the two witnesses in question had already been examined by his previous counsel, and their recall at this stage



would unnecessarily delay the trial proceedings. While I am in agreement with the Trial Court's concern about delay, it is equally important to remember that while *justice delayed is justice denied, justice hurried is justice buried*.

5. The petitioner is facing grave charges punishable with imprisonment extending from seven years to life. He fears that, if the testimonies of the said witnesses remain unchallenged, he may even face a charge under Section 302 IPC. His apprehension, though presently speculative, cannot be entirely brushed aside in view of the nature and seriousness of the alleged offences.

6. It is a well-settled principle that justice must not only be done but must also appear to be done. In this context, the Trial Court ought to have considered the fact that the petitioner, through his new counsel, discovered that the cross-examinations conducted earlier did not sufficiently address key aspects of the prosecution's case. While a mere change of counsel is not a valid ground for recalling witnesses, it assumes relevance where substantial omissions or inadequacies in previous examination are established.

7. In course of arguments learned counsel for the petitioner has specifically pointed out that crucial areas, including contradictions related to the CCTV footage and the post-mortem report, were not adequately explored by his former counsel. These omissions are material and go to the root of the case. It cannot be said that the current application is frivolous or intended to delay the proceedings. On the contrary, the trial is still at a relatively early stage, and the application appears to have been filed in good faith upon legal advice from newly engaged counsel.



8. The power under Section 311 Cr.P.C. is intended to enable the Court to summon or recall any witness if their evidence appears essential for a just decision, and this power can be exercised at any stage of the trial. In the present case, the petitioner faces grave charges carrying punishment up to life imprisonment, and the failure of his previous counsel to adequately cross-examine key witnesses—particularly on crucial aspects such as CCTV footage and the post-mortem report—could significantly prejudice his defence. The omission does not appear to be deliberate, and the application was filed promptly upon discovery by the newly appointed counsel, indicating that the petitioner is not engaging in dilatory tactics.

9. Procedural lapses or counsel's negligence should not defeat an accused's right to a fair trial, which is a fundamental right under Article 21 of the Constitution. It appears that denial of further opportunity as sought herein may lead to harsher legal consequences for the accused.

10. Furthermore, the trial is still at a relatively early stage, and a limited, one-time opportunity to recall the witnesses— will ensure substantive justice. Accordingly, the recall is not only justified but necessary to prevent a potential miscarriage of justice.

11. Taking a holistic and balanced view of the matter, the impugned order is set aside. The application under Section 311 Cr.P.C. stands allowed. The petitioner shall be given one effective opportunity to recall and examine the two aforementioned witnesses.

12. The prosecution is directed to ensure the presence of the said witnesses on the next date of hearing. It is, however, made clear that no adjournment shall be granted at the instance of the petitioner. However, Trial Court shall be at liberty to adjourn the matter at its own discretion,



subject to its exigencies and day-to-day workload.

13. The petition is disposed of accordingly.

ARUN MONGA, J

JULY 29, 2025

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