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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2203/2025, CRL.M.A. 9853/2025**
MOHD. NAIM

.....Petitioner
Through: Mr. Rajesh Kumar Singh, Mr. Rohish Arora, Mr. Amit Bidhuri, Mr. Yogesh Sharma, Mr. Saksham Verma and Ms. Priyanka Singh, Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent
Through: Mr. Shoaib Haider, Ld. APP for the State with SI S. Sisodia P.S. Kalindi Kunj.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

02.04.2025

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CRL.M.A. 9852/2025 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

CRL.M.C. 2203/2025

3. A Petition under Section 528 of the BNSS has been filed on behalf of the Petitioner to challenge the Order dated 01.03.2024, whereby the Application under Section 311 Cr.P.C seeking the right to cross-examine the Prosecutrix, has been dismissed.
4. It is submitted in the Petition that the examination-in-chief of the



victim 'Z' as PW1 was recorded on 28.09.2022, but because of the ill health of learned counsel for the accused, he was unable to cross-examine the victim on the same day and requested the learned Trial Court for short adjournment for cross-examination, but the request was not acceded to and the right to cross-examine PW1 was closed. No further opportunity was granted to the Petitioner for cross-examination.

5. It is submitted that the adjournment was sought only on account of ill health of the Counsel and for no other reason.

6. It is further asserted that on 27.01.2023, sister of the victim has filed a false and frivolous Application for cancelation of the Bail granted to the Petitioner vide Order dated 09.02.2021, but the same has been dismissed since there was no ground to cancel the Bail of the Petitioner.

7. Learned counsel for the Petitioner submitted that the earlier counsel due to inadvertence and lack of knowledge of law, did not move the Application and it is only when he was engaged by the Petitioner at the stage of Final Arguments, he realized that no cross-examination of the Prosecutrix was conducted which would be highly detrimental to the proper adjudication of the case.

8. The impugned Order under **Section 311 Cr.P.C** has been challenged on the ground that the observations of the learned Trial Court are harsh as it has failed to appreciate that the accused should be provided ample opportunity to establish his innocence before the Court. Reliance has been placed on Rajaram Prasad Yadav vs. State of Bihar (2013) 14 SCC 461. It is, therefore, submitted that the impugned Order be set aside and one opportunity be given to the Petitioner to cross-examine the Prosecutrix.

9. Learned APP has opposed the Application and has submitted that it is



a well reasoned Order and for the dereliction of the Petitioner, the victim cannot be made to suffer. Further, Learned APP has contended that this Application under Section 311 Cr.P.C was filed after a delay of one year for which there is no explanation. The Petition is, therefore, liable to be dismissed.

10. Submissions heard and record perused.

11. The only explanation forthcoming from the Petitioner for not cross-examining PW1 on 28.09.2022 when her examination-in-chief was recorded was that on the previous day, the Counsel was not feeling well and was, therefore, unable to prepare the cross-examination. Though the ground given was specious and has been rightly rejected by the learned Trial Court, but considering that the Charges have been framed under Section 354/506 IPC and Section 8/12 POCSO Act, one opportunity is granted to the Petitioner to cross-examine the Prosecutrix, who may be summoned on the date before the Trial Court for the purpose of cross-examination, in case she is available. No further opportunity on any ground shall be granted.

12. The Petition is allowed subject to payment of cost of Rs.10,000/- to be paid to the Prosecutrix.

13. The Petition is accordingly disposed of along with the pending Application(s).

NEENA BANSAL KRISHNA, J

APRIL 2, 2025/va