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

+ **CRL.M.C. 2287/2025**

**KISHAN RATHORE**

.....Petitioner

Through: Mr. Durgesh Kr. Dwivedi, Mr. Rahul Raj and Ms. Shweta Dixit and Ms. Manjeet Kaur, Advocates.

versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Shoaib Haider, APP for the State.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**

**04.04.2025**

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**CRL.M.A. 10292/2025 (Exemption)**

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

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3. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) read 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/accused, Kishan Rathore, to challenge the Order dated 24.02.2025, passed by the learned ASJ East Karkardooma Court in SC No. 581/2018, FIR No. 92/2018 under Section 376 of the Indian Penal Code, 1860 and Section 6 of POCSO Act, registered at Police Station Geeta Colony, Delhi *vide* which the learned ASJ, POCSO, has dismissed the Application under Section 311 of Cr.P.C. read with Section 348 of B.N.S.S.



seeking examination of three girls/friends aged about 7-8 years, who were claimed with the Prosecutrix at the time of commission of offence.

4. It is submitted in the Application that the names of these friends have been given by the Prosecutrix in her Statement under Section 164 Cr.P.C. and are, therefore, material witnesses, who may be permitted to be examined by the Petitioner/accused in his defence as defence witnesses. It is submitted that the learned ASJ has not rightly appreciated the importance of these witnesses and has dismissed the Application by a cryptic Order dated 24.02.2025. A prayer is made that these witnesses may be permitted to be summoned by the accused in his defence.

5. Learned APP for the State, on instructions from the Investigating Officer, submits that during the investigations, the Investigating Officer had approached the parents of these girls, who all have stated that their daughters are not aware of anything about the incident and do not want to give any statement. It is, therefore, submitted that this Application has been rightly dismissed by the learned ASJ.

6. **Submissions heard and the record perused.**

7. It is no doubt correct that the prosecutrix in her Statement under Section 164 Cr.P.C. had taken the name of four girls with whom she was playing but the Investigating Officer has already conducted the investigations wherein the parents of these girls, were not inclined and stated that they were not aware and did not want to be a witness in the present case. It is, therefore, in the given circumstances and also considering that the witnesses sought to be brought, are girls of tender age of 6-7 years; the Application has been rightly dismissed.

8. Pertinently, in the present Petition, it is also mentioned that the



Petitioner intends to re-examine PW-6, Dr. Vijay Patidar, Senior Surgeon SDN Hospital. However, it is submitted that the Petitioner does not want re-examination of PW-6 and the same has been inadvertently recorded incorrectly in the Petition. He, however, submits that he may be given the liberty to file a fresh Application under Section 311 Cr.P.C. before the Trial Court to seek the cross-examination of PW-6.

9. There is no merit in the Petition, which is hereby dismissed and disposed of accordingly.

**NEENA BANSAL KRISHNA, J**

**APRIL 4, 2025/RS**