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

+ **CRL.M.C. 4375/2023 & CRL.M.A. 16657/2023**

SHAHNAZ

.....Petitioner

Through: Mr. Mukesh Kalia and Ms. Kanika,
Advocates.

versus

THE STATE N.C.T OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with SI Virender, PS Kamla
Market.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

01.09.2025

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1. Petitioner is before this Court seeking summoning of witness namely Shamshad Begum @ Samira as defence witness and thereby setting aside of order dated 28.04.2023 passed by learned Trial Court.
2. Criminal proceedings before the learned Trial Court arise out of an FIR No. 300/2014 dated 11.10.2014 under Sections 365/368/370/376/342/343/109/120B/34 of IPC and Sections 4/5/6/7 of Immoral Traffic Prevention Act, 1956 registered at police station Kamla Market. Petitioner is the accused/under trial.
3. At the very outset, my attention has been drawn to the Order dated 23.06.2023 passed by the Co-ordinate bench of this Court which reads as below:

“3. The learned ASJ was of the view that the evidence of Ms. Shamshad Begum @ Samira has no significance to the prosecution or



to the defence and she was not a material witness and the trial will not be prejudiced if her evidence is not recorded.

4. Learned counsel for the petitioner submits that Shamshad Begum @ Samira was a material witness and police itself had recorded her statement under Section 161 Cr.P.C.. She has herself stated to the I.O. that she knew the prosecutrix for the last few months and she was introduced to the accused by the prosecutrix while she was looking for work."

4. On resumed hearing today, Investigation Officer, who is present in this Court on being put a query as to whether Shamshad Begum @ Samira indeed made any such statement under Section 161 of Cr.P.C., he does not dispute the same.

5. In view thereof, I am of the view she is the material witness and ought to have been made part of the list of witnesses by the prosecution itself instead of making the accused to come to this Court as to seek the relief as sought herein.

6. Moreover, Section 311 Cr.P.C. is Worded in the Widest Terms. It uses the expression "any court at any stage of inquiry, trial or other proceeding... may summon any person... or recall and re-examine any person... if his evidence appears to it to be essential to the just decision of the case." The key test thus is "essential to the just decision of the case."

7. As an upshot, petition is allowed. Impugned order is set aside. It is directed that the I.O. shall take appropriate steps before the Trial Court to get the testimony of the aforesaid witness recorded in accordance with law.

8. The pending application, if any, stands disposed of.

ARUN MONGA, J

SEPTEMBER 1, 2025/rs/nk