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

+ **CRL.M.C. 4343/2025**

JAGTAR SINGH

.....Petitioner

Through: Mr. Rishi Pal Singh and Ms. Radha Rani, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the State with SI Pinki, P.S.- Kanjhawala. Ms. Sanya Kumar, Advocate (DHCLSC) alongwith Complainant in person.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

% **09.09.2025**

1. Petitioner is before this Court seeking setting aside of an order dated 22.04.2025 passed by the learned Trial Court whereby the learned Court had dismissed application by the petitioner seeking to recall PW-2/Victim for further cross-examination.
2. The petitioner was arrested on 16.09.2023 in FIR No. 0362/2023 under Section 376 IPC and Sections 4/21 of the POCSO Act, and has remained in judicial custody since then. Investigation is complete, charge sheet filed, charges framed, and prosecution evidence led, including the testimony of PW-2, the minor victim, whose deposition is central to the case. The petitioner's application for Narco Analysis was dismissed on



30.05.2025. A subsequent application to recall PW-2 for further cross-examination has been rejected vide impugned order dated 22.04.2025, despite alleged contradictions and unexplored issues in the earlier cross examination of the victim. Ground taken for recall is/was that the previous counsel has not asked relevant/important questions from the victim which were necessary to be asked for fair decision. Hence, the present petition has been filed.

3. Arguments of Learned senior are on lines of grounds pleaded *inter alia* urging that the victim/PW-2's deposition appears inconsistent, tutored, and influenced, warranting further scrutiny. Due to lack of clarity in the earlier record, several crucial questions, particularly regarding contradictions between her Section 161 Cr.P.C. statement, trial testimony, and medical/forensic evidence could not be put to her. It is argued that Section 311 Cr.P.C. (now Section 348 BNSS) empowers the Court to recall a witness if essential for a just decision, which is vital in POCSO cases where child testimony is often decisive. Reliance is placed on various precedents seeking liberal exercise of recall powers to secure fair trial rights. He submits that limited recall of PW-2 for further cross-examination would not prejudice the prosecution but instead aid in ensuring truth and justice.

4. Learned APP for the State opposes the petition on the ground that order passed by the trial court is well reasoned and warrants no interference.

5. In the aforesaid backdrop I have heard the rival contentions and perused the case file.

6. I have perused the impugned order which is *inter alia* premised on the reasoning that, the victim (aged about 6 years) was examined, cross-examined, and re-examined on 05.06.2024, and any omission in



marking the starting point of cross-examination was later corrected in the order dated 04.09.2024. The cross-examination was conducted fully by the accused's then counsel, and all questions were answered by the victim. The application to recall her was filed over ten months later by new counsel. The Trial Judge held, in my view too, rightly, that dissatisfaction of new counsel with the earlier cross-examination is no ground to recall a child victim, especially under the POCSO Act, where repeated cross-examination risks re-traumatization. The accused had already been given adequate and fair opportunity to cross-examine, hence the application was dismissed.

7. Not only I concur with the view taken by the learned Sessions Judge but having gone through the testimony, I do not see any reason as to why the victim should be put to agony of being re-called and also go through the turmoil of what she is hard trying to forget. No new material contradictions or circumstances have been shown to justify recall. Thus the balance between the accused's right to fair trial and the victim's right to dignity weighs against reopening her testimony.

8. Moreover, as noted, the victim was already examined, cross-examined and re-examined on 05.06.2024, and the defence had a full and fair opportunity to put questions to her. The omission in the record as to where the cross-examination commenced was subsequently corrected by the learned Trial Judge on 04.09.2024, thereby removing any procedural defect and ensuring no prejudice was caused.

9. The application to recall was filed after more than ten months, making it belated and suggestive of an attempt to prolong the proceedings rather than serve the cause of justice. The Trial Court's discretion was exercised on sound principles, and there is no reason to interfere.



10. I, therefore, do not find any grounds to interfere.
11. The petition alongwith accompanying application is disposed of.

ARUN MONGA, J

SEPTEMBER 9, 2025/rs