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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 271/2025 & CRL.M.A. 21092/2025 (Interim Direction)**
ATIF AHMADPetitioner

Through: Mr. Asghar Khan, Mr. Anubhav Agrawal, Mr. Najmi Khan, Mr. Abdul Tahir Khan, Mohd. Jamal Khan, Mr. Nasir Hussain, Mr. Wasil Khan, Mr. Sahar Masroor, Ms. Arti Gupta and Mr. Aman Asht, Advs.

versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Digam Singh Dagar, APP for State with SI Akashdeep, PS Jamia Nagar.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ORDER
% **23.07.2025**

CRL.M.A. 21091/2025 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CRL.REV.P. 271/2025 & CRL.M.A. 21092/2025 (Interim Direction)

1. Petitioner herein seeks quashing of an order dated 23.05.2025 passed by the Ld. Additional Sessions Judge (SC-POCSO), South-East District, Saket Courts, New Delhi in criminal proceedings arising out of FIR No. 166/2020, dated 07.07.2020 registered at P.S. Jamia Nagar, under Sections 354, 354 (D) and 506 of IPC, with Sections 8 and 12 of the POCSO Act



subsequently added in the chargesheet.

2. Shorn of unnecessary details, brief facts leading to the present petition are that the complainant alleges that the petitioner stalked her for nearly two years, obtained her phone number by force, and continued harassment despite her ending contact in October 2019. He allegedly threatened acid attacks or shooting if she informed her family, unlawfully entered her home, gave her a phone, touched her inappropriately, and later slapped her multiple times in public, causing her to suffer unconsciousness.

2.1. The petitioner denies these allegations, claiming that they are false and malicious. During trial on 17.09.2024, the examination-in-chief of two prosecution witnesses, i.e. PW2 and PW3, was recorded, but cross-examination could not occur due to the petitioner/defence counsel's illness stated to be a senior citizen. A request on behalf of the petitioner's counsel was made. However, the trial court refused adjournment and later dismissed an application to recall witnesses, citing insufficient medical proof for that specific date.

3. In the aforesaid backdrop I have heard the learned counsels for respective sides and perused the casefile.

4. Learned counsel for the petitioner submit that non-appearance of the main counsel was *bona fide* due to medical reasons. It is contended that PW-2 and PW-3 are material witnesses and denial of opportunity to cross-examine them would severely prejudice the defence and amount to miscarriage of justice. It is submitted that the object of Section 311 Cr.P.C. (now Section 348 BNSS) is to ensure a fair trial by allowing the Court to recall any witness if their evidence is essential for the just decision of the case.



4.1. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in **Satbir Singh v. State of Haryana**¹, arguing that the power under Section 311 Cr.P.C. must be exercised liberally to ensure that justice is not defeated. Further reliance is placed on **Zahira Habibullah Sheikh v. State of Gujarat**², to urge that the object of Section 311 is to prevent failure of justice due to inadvertent omission or mistake in bringing material evidence on record.

5. Per contra, learned APP would oppose the petition and support the impugned order dated 23.05.2025 and argue that the reasons stated in the order under challenge do not warrant any interference.

6. Having heard, I am of the view that not allowing the application under Section 311 Cr.P.C. filed by the petitioner would result in serious prejudice to him and defeat the ends of justice by denying him the right to cross examine the material witnesses. Reasons thereof are stated herein after.

7. The impugned order shows that on 17.09.2024, the matter was listed for the examination of PW-2 and PW-3. However, due to the absence of the main defence counsel, the Trial Court closed the opportunity for their cross-examination. In the subsequent application under Section 311, *ibid*, it was submitted that these witnesses are crucial to the case, and in the interest of justice, cross-examination is essential. The main counsel, being a senior citizen, was unwell on the said date and could not appear physically; the proxy counsel informed the court of his inability to attend due to illness. It was further submitted that the non-appearance of the main counsel Sh.

¹ SLP (Crl.) No. 1258/2022,

²(2006) 3 SCC 374



Asghar Khan was not deliberate.

7.1. The Trial Court, however, felt that allowing the application would delay the proceedings, though it also noted that PW-2 (brother of the victim) and PW-3 (sister of the victim), who had already appeared on 17.09.2024, are material witnesses and, as per the settled protocols for expeditious hearings under the POCSO Act, 2012, and the law on speedy trials, their testimony should not be deferred without reasonable cause. The court also observed that adjourning their testimony would cause unnecessary inconvenience to these witnesses.

8. On perusal of the impugned order dated 23.05.2025, I am of the opinion that, the cross-examination of the material witnesses PW-2 and PW-3 seems to have been abruptly disallowed by the learned Trial Court without any fault on the petitioner's part. It appears that the petitioner never instructed his advocate to seek an adjournment and had fully briefed him to carry out the cross-examination on the next date of hearing. Unfortunately, his counsel was faced with personal difficulty owing to the medical issues. His counsel was confident that the learned Trial Court would grant him a short accommodation to conduct the scheduled cross-examination, especially since this was the very first occasion on which such an adjournment was being sought. In the premise, the petitioner ought not to be made to suffer for the personal difficulty of his counsel, particularly when the adjournment was sought solely for reasons beyond his control and not due to any lapse on his part.

9. As noted, the witnesses are crucial to the case, and the denial of their cross-examination causes irreparable prejudice to the petitioner's defence, undermining the principles of a fair trial enshrined under Article 21 of the



Constitution of India. Cross-examination is a substantive right, not a mere procedural formality, and its denial on account of counsel's unavoidable absence effectively deprives the petitioner of the opportunity to challenge material evidence. A brief adjournment would not have caused any significant delay in the proceedings, whereas the prejudice caused to the petitioner by closing the opportunity is both grave and irreversible. Trite it may sound that while justice delayed is justice denied but justice hurried is justice buried.

10. Moreover, any inconvenience to the witnesses could have been addressed by granting a short, time-bound adjournment, rather than permanently closing the petitioner's right.

11. I am in agreement with the submissions noted herein above.

12. Subject to payment of cost of Rs. 3,000/- for each of the witnesses, one effective opportunity shall be granted by the learned Trial Court to carry out their cross examinations.

13. However, the instant order shall not be construed on merits in any manner, let the learned Trial Court use its own discretion to further adjourn the matter as per its work of exigency.

14. Pending applications, if any, also stand disposed of.

ARUN MONGA, J

JULY 23, 2025/akc