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

+ **CRL.M.C. 7140/2025 & CRL.M.A. 30011/2025 STAY**

AKHTAR ALI & ORS.Petitioner

Through: Mr. Laksh Khanna, Ms. Riya Jain,
Ms. Diksh Suri, Advs.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Tarang Srivastav, APP with SI
Deepika, PS Vikaspuri.

**CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA**

ORDER
09.10.2025

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CRL.M.A. 30012/2025 & CRL.M.A. 30013/2025 (exemptions)

Allowed, subject to all just exceptions.

These application stand disposed of.

CRL.M.C. 7140/2025

1. The present petition has been filed seeking to set aside the impugned order dated 04.08.2025 passed by Ld. JMFC, Dwarka Courts, South West District, Delhi, in Cr. Case No. 11063/2019 titled *State v. Akhtar Ali & Ors.*, arising out of FIR No. 70/2008 registered at PS Vikas Puri, whereby the Petitioners' application under Section 311 CrPC for recall of PW-8 and PW-9 was dismissed.



2. Learned counsel for the Petitioners submits that the Petitioners are facing trial for offences of rioting, and that two key prosecution witnesses, PW-8 Manmohan, the injured eye-witness, and PW-9, the Investigating Officer, could not be cross-examined as the counsel for the accused was unable to appear on the relevant date due to personal exigencies. It has been submitted that the request for adjournment was wrongly rejected by the Trial Court on the ground of alleged casual conduct of the petitioners and that the recall of these witnesses for cross-examination is squarely covered under Section 311 of the Code of Criminal Procedure, 1973. It is further submitted that the power under Section 311 of the Code is intended to ensure a just decision in every case and its exercise cannot be treated as a review of any earlier order refusing adjournment. The denial of the opportunity to cross-examine these material witnesses, it is urged, has caused grave prejudice to the defence and rendered the trial one-sided. Reliance has been placed upon **Rajendra Prasad v. Narcotic Cell** (1999) 6 SCC 110, and **Zahira Habibulla Sheikh v. State of Gujarat** (2004) 4 SCC 158, to submit that inadvertent lapses or mistakes during trial should not defeat the ends of justice and that the right to a fair trial is an integral facet of Article 21 of the Constitution. It is, therefore, prayed that one final opportunity be granted to the Petitioners to cross-examine PW-8 and PW-9 in the interest of justice.

3. Issue notice. Notice is accepted by the Ld. APP appearing for the State. Learned APP submits that the trial has been pending for a considerable period of time and that recalling the witnesses at this stage would cause further delay in its conclusion. It has been pointed out that the Petitioners had already been granted two opportunities to cross-examine the witnesses on 06.05.2025 and 27.06.2025, yet they failed to do so. It is



further submitted that the counsel for the Petitioners was present before the Trial Court through video conferencing even on those dates but continued to seek adjournments on one pretext or another. It is further submitted that the application for recall is a mere delaying tactic aimed at protracting the trial.

4. Having considered the submissions of both sides and perused the record, this Court finds that the denial of an opportunity to cross-examine PW-8, the injured eye-witness, and PW-9, the Investigating Officer, has the effect of depriving the Petitioners of a fair opportunity to test the veracity of material witnesses. The record indicates that on 06.05.2025 and 27.06.2025, the learned counsel for the accused had sought adjournments citing personal exigencies and absence from station, which were declined by the Trial Court. It cannot be overlooked that cross-examination of these crucial witnesses is essential for a just and fair adjudication of the matter. The object of Section 311 of the Code of Criminal Procedure, 1973, is to empower the Court to summon or recall witnesses whose evidence appears necessary for the just decision of the case, and denial of such an opportunity would impinge upon the right to a fair trial, which is a fundamental guarantee under Article 21 of the Constitution of India.

5. Perusal of the impugned order 04.05.2025 indicates that the Trial Court erred in its interpretation of Section 311 of the Code of Criminal Procedure, 1973, by observing that allowing the recall of witnesses at this stage would amount to reviewing its earlier orders dated 06.05.2025 and 27.06.2025, whereby adjournments for cross-examination of PW-8 and PW-9 were declined. The Trial Court further noted that such recall would prejudice the prosecution and delay the trial that was on the verge of completion. However, this Court is of the considered view that the exercise



of power under Section 311 CrPC does not amount to reviewing any previous order but is intended to enable the Court to summon or recall witnesses if their evidence appears essential to the just decision of the case. The rejection of recall on the premise of it being a “review” misconstrues the scope and purpose of Section 311 CrPC, which is designed to advance the cause of justice rather than to defeat it.

6. In **Natasa Singh v. CBI** (2013) 5 SCC 741, the Supreme Court held that the object of Section 311 CrPC is to enable the Court to discover the truth and render a just decision by obtaining all relevant facts and proper proof thereof, and that the power must be exercised judiciously and not arbitrarily or to fill any lacuna in the case of either party. The Court emphasized that recalling or summoning of a witness should only be permitted when such evidence is essential for the just decision of the case, while ensuring that the opposite party is given an opportunity of rebuttal. It was further reiterated that a fair trial is the cornerstone of criminal jurisprudence, encompassing the rights of the accused, the victim, and society, and that denial of a fair opportunity to adduce or challenge evidence would amount to a violation of the right to a fair trial guaranteed under the Constitution.

7. In **Satbir Singh v. State of Haryana**, 2023 INSC 786, the Supreme Court referred to the decision in **Harendra Rai v. State of Bihar**, 2023 SCC OnLine SC 1023, wherein a three-Judge Bench held that Section 311 of the CrPC should be invoked only when it is “essential for the just decision of the case.”

8. In view of the above, the petition is allowed and the impugned order dated 04.08.2025 is set aside. The Petitioners are granted one last and final



opportunity to cross-examine PW-8 and PW-9 before the Trial Court. It is, however, made clear that no further adjournments shall be granted on any ground whatsoever, and failure to avail of this opportunity shall result in closure of the Petitioners' right to cross-examine the two witnesses. The Trial Court is directed to ensure the presence of both witnesses on the date fixed and to conclude the trial expeditiously in accordance with law.

9. The petition along with any pending application stands accordingly disposed of.

RAVINDER DUDEJA, J

OCTOBER 9, 2025/na