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

+ **W.P.(CRL) 3352/2025 & CRL.M.A. 30525/2025**

MD ANAS

.....Petitioner

Through: **Mr. Kartik Murukutla, Advocate**
(through VC)

versus

STATE NCT OF DELHI

.....Respondent

Through: **Ms. Rupali Bandhopadhyaya, ASC with**
Mr. Abhijeet Kumar and Ms. Amisha
Gupta, Advocates for the State

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

14.10.2025

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1. Criminal Writ Petition under Article 226 of Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed for recall of Prosecution witnesses PW1, PW2 and PW3 in FIR No. 0085/2021 registered at P.S. Jamia Nagar for further cross-examination on behalf of the Petitioner/Accused.

2. It is submitted that an FIR No. 0085/2021 dated 06.03.2021 under Section 377/506 IPC Section and 6 POCSO Act was registered against the Petitioner. Chargesheet has been filed. The statement of the PW1/Victim was recorded on 17.04.2023 and further examination was deferred on account of FSL Report being awaited. Further examination and cross-examination of the Victim was completed on 05.08.2023. Thereafter, the statements of PW2/Mother and PW3/Father were recorded on 04.01.2024.



3. The statement of the Accused under Section 294 Cr.P.C. was recorded on the same day. The Prosecution evidence was completed on 04.04.2025. The statement of the Accused was recorded on 21.08.2025. At the stage of defense evidence, there has been a change of Counsel and the present Counsel was appointed in the end of April 2025 by the Petitioner.

4. On perusing the entire Trial Court Record and on receiving instructions from the Applicant, an Application for recall of Prosecution witnesses, namely, PW1, PW2 and PW3 under Section 348 B.N.S.S. was filed, but the same was dismissed by the learned Trial Court on 21.08.2025.

5. The ***Impugned Order is challenged on the ground*** that the Prosecution is based primarily on the testimony of these three witnesses regarding the incident of sexual assault, which was continuing for a period of 15-20 days before the registration of FIR. There are contradictions in the testimony of the three witnesses regarding this time period including the presence/absence of PW1 in the Tuition Class. This aspect has not been cross-examined thus, far.

6. As per the Petitioner, the alleged Victim did not attend his classes from February end and this is further evidenced by a message that the Accused received from the mother of the Victim. This aspect may also be considered for further cross-examination, which would assist the Trial Court in final adjudication.

7. It is submitted that under Section 348 B.N.S.S., the Court has widest possible power and the discretion in granting such an Application is not limited in any way; *albeit* caution is to be exercised to ensure interest of justice. The jurisdiction of the Court must be dictated by the exigencies of



situation, fair play and good sense, as observed in the case of Mohanlal Shamji Soni v. Union of India AIR 1991 SC 1346.

8. Further reliance is placed on Vijay Kumar v. State of UP, (2011) 8 SCC 136; Manju Devi v. State of Rajasthan, 2019 SCC Online SC 552; P. Sanjeeva Rao v. State of AP, (2012) 7 SCC 56; Dev Kumar Yadav v. State, 2019 SCC Online Del 8485.

9. The Petitioner seeks recall of only three Prosecution witnesses who are material and it is stated on this account no delay may be anticipated. The Petitioner has submitted that to ensure speedy trial, the documents were admitted under Section 294 Cr.P.C. thereby obviating the need of examining some witnesses. No prejudice shall be caused to any of the parties or to the speedy conduct of trial. A prayer is, therefore, made that Prosecution witnesses No. PW1, PW2 and PW3 may thus be recalled for further cross-examination by the Petitioner.

10. The ***learned Prosecutor on behalf of the State*** has opposed this Application on the ground that the learned Trial Court has considered all the aspects, while dismissing the Application. The change of Counsel cannot not be a ground to permit further cross-examination. Moreover, the Counsels have been changed a number of times and if every time this ground was permitted, there would be endless recall of the witnesses. Furthermore, the witnesses have been examined in January, 2024 while the present Application has been filed after an inordinate delay and is an afterthought. There is no merit and the Petition, which may be dismissed.

Submissions heard and record perused.

11. First and foremost, it has been rightly submitted that change of Counsel cannot be a ground for recalling of the witnesses, especially of the



Victim who cannot be traumatized by being recalled time and again. **Secondly**, there is no justifiable ground disclosed for recall of the witnesses. The only aspect on which the witnesses are sought to be recalled, is to put the put the suggestions pertaining to the defense of the Petitioner. It is claimed that the Victim and the family were not in Delhi at the time of alleged offence and also the WhatsApp received from the mother of the Victim. However, this defense has already been taken under Section 313 Cr.P.C. and there was nothing which prevented the Petitioner to adduce evidence in his defense to show that the child had not been attending the classes during that period or to prove the WhatsApp message allegedly received from the mother.

12. There is absolutely no ground made out for recalling of the three witnesses. The learned Trial Court has dismissed the Application with the reasoned Order, with which no interference is merited.

13. The Petition alongwith pending Application, is accordingly dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 14, 2025

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