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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7467/2025, CRL.M.A. 31242/2025 & CRL.M.A.
31243/2025
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.....Petitioner

Through: Mr. Swetabh Sharma, Advocate
versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for the
State with WSI Manoj Kumari, WSI
Priyanka, PS Janakpuri
Mr. M.P. Sinha, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
17.10.2025

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1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assails the order dated 25th April, 2025 whereby the application under Section 311 filed by the Petitioner (mother of the victim) seeking recall and re-examination of the victim has been rejected.
2. Mr. Swetabh Sharma, counsel for the Petitioner, submits that the Trial Court failed to appreciate the factual background. It is urged that the Petitioner, being the complainant and mother of the victim, had approached the police on learning of her husband's alleged sexual misconduct with their minor daughter. It is submitted that, under the influence of a counsellor attached to the Delhi Commission for Women, the child was allegedly tutored prior to her deposition dated 13th January, 2023, which culminated in a distorted version of events. Reliance is placed on portions of the complainant's own testimony dated 7th February, 2023, where she allegedly admitted that the FIR had been lodged amidst psychological distress and



external influence. It is, therefore, argued that in the interest of justice, the child ought to have been recalled and re-examined to clarify her deposition.

3. It is further contended that the Trial Court misread the application as one filed on behalf of the accused, as reflected in the opening paragraph of the impugned order, and this apparent misunderstanding vitiated its reasoning. Counsel submits that Section 311 of Cr.P.C. confers wide discretionary powers upon the Court to summon or recall any witness at any stage of the proceedings to secure the ends of justice, and that the provision ought to be interpreted liberally. It is contended that the Trial Court's finding, that the child could not have been tutored because she was residing at Nirmal Chhaya, fails to consider the possibility of influence occurring before her transfer, as specifically stated in the application.

4. The Court has considered the submissions and perused the record. The reference in the impugned order to the application having been filed "on behalf of the accused" is typographical and inconsequential, as the reasoning that follows makes it evident that the Trial Court correctly appreciated that the application was filed by the complainant seeking recall of the victim. The operative portion of the order demonstrates due application of mind to the factual and legal issues arising in the case as follows:

"5) Now, coming to the present case, the perusal of the records of the case shows that the child victim was first examined on 13/01/2023 and at that time the child victim was lodged in Nirmal Chhaya and she had come to depose before the court on the said date from the Nirmal Chhaya. Therefore, as the child victim has come from Nirmal Chhaya, she was not under influence of any of her family members and therefore, the contention of the Ld. Counsel for the applicant that the child victim was tutored, has no merits. On the aforesaid date, to ascertain as to whether the child victim was well oriented and capable of giving rational answers to questions and also to ensure that she was giving her evidence voluntarily and without any threat, pressure, fear, influence or coercion certain questions were asked to the witness and it was observed



that the witness was able to understand that she was in the court and has to make the statement and it was also observed that the PW-1 appeared comfortable before examination was started. The perusal of the deposition of the child victim shows that her testimony is not different from her earlier statement recorded during the investigation of the present case. Therefore, the contention of the Ld. Counsel for the complainant that on 13/01/2023, when the evidence of the child victim was recorded, she was tutored and her answers were absurd or were in the sense which was inaccurate is without any substance.

6) The PW-1 was examined and cross-examined on 13/01/2023. There are no justifiable and valid reasons given in the application for recalling the PW-1 for her further examination. The recalling of the PW-1 might be a disguise to Change the nature of the case against the opposite party especially considering that the PW-3, mother of the child victim during her examination has resiled from her previous statement and presently the child victim is residing with her mother. The similar application was earlier filed On behalf of the applicant/accused for recalling the child victim for her re-examination in which the contentions raised in the present application have already been considered and the said application was dismissed.

7) Therefore, in view of my above discussions, the present application filed by the applicant/accused is dismissed.

8) Now, the matter is listed for statement of the accused for 08/05/2025."

5. It is an admitted position that the victim was examined and cross-examined on 13th January, 2023, when she was produced from Nirmal Chhaya and found to be well-oriented and capable of giving rational answers. The deposition was recorded after the Court satisfied itself of her competence and voluntariness. The application under section 311 of Cr.P.C., was filed more than two years later and after the conclusion of prosecution evidence. The Trial Court, after noting that a similar request for recall had earlier been made and duly rejected on behalf of the accused, concluded that the present application was a disguised attempt to alter the nature of the prosecution case, particularly as the mother herself had resiled from her earlier statement. This reasoning cannot be faulted.

6. The scope of Section 311 Cr.P.C. has been authoritatively explained



by the Supreme Court in several judgments. The power to recall or summon witnesses is discretionary and must be exercised judiciously, not as a matter of course. The provision aims to ensure that the truth is brought on record, but it cannot be invoked to fill lacunae in evidence or to allow parties to reshape their case after evidence has closed. Once the prosecution evidence stands concluded, the recall of a material witness, especially a child victim of sexual offence, must be founded on demonstrable necessity, not conjecture.

7. In the present case, no such compelling reason has been shown. The plea of “tutoring” rests on speculative assertions without contemporaneous complaint or corroboration. The Trial Court’s satisfaction that the victim’s initial deposition was voluntary and consistent with her earlier statements recorded during investigation merits no interference. The sensitivity required in cases involving child victims must operate in both directions: to ensure their protection from coercion, but also to shield them from repeated exposure to the trauma of re-litigation.

8. In light of the above, this Court finds no infirmity in the Trial Court’s exercise of discretion. The impugned order is reasoned, supported by material on record, and consistent with the object of Section 311 of Cr.P.C. No ground for interference under Section 528 of BNSS is made out.

9. The petition, along with all pending applications, is accordingly dismissed.

SANJEEV NARULA, J

OCTOBER 17, 2025/ab