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

+ **CRL.M.C. 9146/2025**

PICHA MUTTHU

.....Petitioner

Through: Mr. Hitendar Mahalwal and Mr.
Tushar Singh, Advocates

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for
the State with SI Neetu.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

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22.12.2025

CRL.M.A. 38247/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 9146/2025 & CRL.M.A. 38246/2025

3. By way of the present petition, the petitioner is seeking setting aside of the impugned order dated 19.09.2025, passed by the learned Additional Sessions Judge-06 (POCSO), Saket Courts, New Delhi in SC No. 460/2019, whereby the application filed by the petitioner herein, under Section 233 read with Section 311 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.') for summoning of school electrician/technical staff, in defence evidence, was dismissed.
4. Issue notice. The learned APP accepts notice on behalf of the State.



5. Briefly stated, the facts of the case are that FIR No. 122/2019 was registered on 08.08.2019 at PS C.R. Park, Delhi under Section 376 of the IPC and Section 6 of the POCSO Act, on the complaint made by the mother of the minor victim. The allegation, in substance, was that the child complained of pain and a burning sensation in her private parts, and it was alleged that a sweeper working in the school used to enter the washroom and insert his finger. The said person was alleged to be the present petitioner. The petitioner has been in judicial custody since 08.08.2019. During the course of investigation, the Investigating Officer recorded the statements of school staff and other material witnesses under Section 161 of Cr.P.C. and also obtained CCTV footage of the relevant dates from the school premises, which purportedly depicts the movement of the petitioner. Upon conclusion of investigation, the charge-sheet was filed on 04.10.2019 before the learned Trial Court. Thereafter, charges were framed and the prosecution witnesses were examined.

6. In September, 2025, after the conclusion of prosecution evidence, the petitioner filed an application under Section 233 read with Section 311 of the Cr.P.C. seeking summoning of the school electrician/technical staff as defence witnesses. The grounds urged in the said application were, inter alia, as under:

“2. That the prosecution case rests primarily on CCTV footage dated 01.08.2019, wherein the accused is seen entering and exiting the girl's wasproom at about 09:35:39 hrs and 09:35:56 hrs respectively, i.e., for a total duration of approximately 15 seconds.

3. That the prosecution is attempting to interpret this short stay adversely against the accused, suggesting that even within this limited duration, the alleged act could have been committed.

4. That it is already admitted on record through PW-7 Ms. Kavita



Malik (Teacher) that she had directed the accused to switch off the cooler and that the switch was located inside the girls' washroom. Thus, the entry of the accused into the washroom is not in dispute and stands reasonably explained.

5. That the crucial fact now requiring judicial scrutiny is whether the time of approximately 15 seconds is reasonably consumed in entering the washroom, locating the cooler switch, switching it off, and then coming out. This is a purely technical and factual aspect which can only be explained by the School Electrician / Technical Staff of Balwantray Mehta Vidya Bhawan, who is directly responsible for the maintenance of electrical fittings and is conversant with the placement and functioning of the cooler switch.

6. That the Investigating Officer (PW-13), candidly admitted in crossexamination that though he noted the CCTV timings, he never inquired into the practical aspect of the switch operation nor examined the relevant school staff to ascertain the time ordinarily required to perform such an act. This material lapse in investigation cannot be used to the detriment of the accused. The accused is, therefore, entitled to lead defence evidence to fill this gap and place the true factual position before this Hon'ble Court."

7. The aforesaid application came to be dismissed by the learned Trial Court vide the impugned order dated 19.09.2025. While rejecting the application, the learned Trial Court, inter alia, observed as under:

"....6. Perusal of the case file reflect that the prosecution has examined PW-4 Ms. Richa Sharma, Principal of the School, PW-7 Ms. Bina Chhabara, Nursery teacher of the school, PW-8 Kavita Malik, Nursery Teacher of the school and PW-11 Ms. Rosi, who was working as female Aaya in the school and accused to supervise the movement of the girls students going in the washroom/toilet. However, Ld. Counsel for the accused never asked even a single question from any of the above witnesses regarding the location of the switch of the cooler in the girls washroom. They all were the employee of the school at the relevant point of time. However, no question was asked from them regarding the location of the switch board. Further, the argument of the Ld. Defence counsel that only the school electrician/ technical staff could inform the location of the switch board and also as to how much time is required to enter into the washroom and switching of the switch board is without any merits. The Ld. Counsel had sufficient opportunity to ask the prosecution witnesses about the location of the switch but no such



question was ever put to any of the witness. In fact, no question was asked even from PW-8 Kavita, who has stated that she had instructed the accused to switch off the water cooler.

7. Further, a general application has been filed to summon the school electrician, who was in the school between 30.07.2019 to 07.08.2019. The name and address of such school electrician has also not been provided. In fact there is nothing on record to show that there was any school electrician/ technical staff with the school at relevant point of time. The application is without any merits and is **dismissed**.”

8. The learned counsel appearing for the petitioner argues that the learned Trial Court has adopted an unduly technical approach in rejecting the application for summoning defence witnesses. It is submitted that at the stage of defence evidence, the accused has a valuable right under Section 233 of the Cr.P.C. to summon witnesses necessary for his defence, and such right ought not to be curtailed when the proposed evidence is relevant and limited in scope. It is further contended that the rejection of the application on the ground that no questions were earlier put to the prosecution witnesses regarding the location of the switch board is factually incomplete. PW-8 herself deposed that she had instructed the accused to switch off the water cooler but did not know the location of the switch. The Investigating Officer (PW-13) also admitted that she never examined whether the alleged offence could have been committed within the time span of about 15 seconds reflected in the CCTV footage. In these circumstances, summoning of the school electrician or technical staff was necessary to clarify the technical and factual aspect concerning the placement of the switch board and the ordinary time required to locate and switch it off. It is thus prayed that the present petition be allowed.

9. The learned APP for the State, on the other hand, opposes the present



petition and argues that the learned Trial Court has rightly dismissed the application filed by the petitioner, as the proposed school electrician or technical staff has no direct relevance to the allegations involved in the present case. It is submitted that ample opportunity was available to the defence during the course of prosecution evidence to put questions regarding the location of the switch board to the school witnesses who were examined, but no such attempt was made. The application was thus filed at a belated stage only to fill lacunae in the defence case. It is further contended that the impugned order does not suffer from any infirmity or illegality and reflects a proper exercise of judicial discretion. The matter is already at the stage of final arguments, and allowing such an application at this stage would unnecessarily delay the conclusion of the trial. The present petition, therefore, deserves to be dismissed.

10. This Court has **heard** arguments addressed on behalf of the petitioner as well as the State, and has perused the case file.

11. This Court notes that the prosecution had examined several material witnesses who were employees of the school at the relevant point of time, including the Principal, nursery teachers, and the female *Aaya* entrusted with supervising the movement of girl students to and from the washroom. These witnesses were best placed to depose regarding the layout of the washroom area, the placement of fixtures, and the routine functioning of the school premises. The learned Trial Court has clearly observed that despite ample opportunity, the defence chose not to put even a single question to any of these witnesses with respect to the location of the switch board of the water cooler or the manner in which the same was operated.



12. This Court further finds merit in the observation of the learned Trial Court that the defence cannot, at the stage of defence evidence, seek to remedy its own omission during cross-examination by summoning a new category of witnesses. The contention that only the school electrician or technical staff could depose regarding the location of the switch board or the time required to switch off the cooler is unpersuasive. The location of a switch board inside a washroom is not a matter requiring specialised or technical expertise, and the school staff examined by the prosecution were competent witnesses on this aspect. Even PW-8, who admittedly instructed the accused to switch off the cooler, was not questioned by the defence on the location of the switch board, despite such opportunity being fully available.

13. This Court also notes that in the application filed by the petitioner, neither the name nor the particulars of the alleged school electrician or technical staff were disclosed, nor was any material placed on record to demonstrate that such a person was in fact employed by the school during the relevant period. The learned Trial Court, therefore, correctly exercised its discretion in holding that the application was devoid of merit.

14. The powers conferred under Sections 311 and 233(3) of the Cr.P.C. are discretionary in nature and are required to be exercised with circumspection, and not in a routine or mechanical manner. The governing consideration for allowing such applications is whether the evidence sought to be adduced is indispensable for a just and proper adjudication of the case. Further, the Hon'ble Supreme Court in **Mayankkumar Natwarlal Kankana Patel & Anr. Versus State of Gujarat and Anr.**: 2025 INSC 1475 has held



that though the power under Section 311 is wide, it is to be exercised sparingly and only when the evidence sought is indispensable for arriving at the truth. In the facts of the present case, this Court is not persuaded that the proposed witness to be examined satisfies the test of necessity or relevance so as to warrant exercise of such discretion.

15. The impugned order does not reflect any illegality, perversity, or material irregularity warranting interference by this Court. The matter is now already listed for final arguments.

16. Accordingly, as this Court finds no infirmity in the impugned order dated 19.09.2025, the present petition is dismissed. Pending application also stands disposed of.

17. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

18. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

DECEMBER 22, 2025/zp

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