



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO.103 OF 2026

Ajay Kumar, aged 50 years, Occ.
Service, r/o 28A, Merlin Jabakusum
SN Roy Road, New Alipore Kolkata.

... APPLICANT

VERSUS

Central Bureau of Investigation, Nagpur
Bungalow No.23, Greens Road, Civil Lines,
Nagpur – 440001

... NON-APPLICANT

Shri Prakash Naidu, Advocate for the applicant.
Shri PK. Satyanathan, Special Public Prosecutor for non-applicant.

CORAM: M.M. NERLIKAR, J.
DATE :09.06.2026.

ORAL JUDGMENT :

1. Heard the learned Counsel appearing for the parties.
2. By way of the present application, the applicant is challenging the order dated 07.03.2026 passed below Exhibit 272 by the Special Judge, Special Court for CBI, Nagpur whereby the application filed by the applicant under Section 311 of Code of

Criminal Procedure (“CrPC”) for summoning the Superintendent of CBI (ACB), Nagpur and Director of Central Forensic Science Laboratory (CFSL), CBI, New Delhi i.e. Forensic Expert for examining them as defence witnesses, was rejected.

3. Learned Counsel for the applicant submits that the Trial Court has failed to take into consideration the very object of Section 311 CrPC. The two witnesses who are sought to be summoned are material witnesses whose evidence is necessary in order to come to the just decision of the case, otherwise great prejudice would be caused to the accused. Though the application under Section 311 CrPC at Exh. 272 was filed after recording of the statement under Section 313 CrPC however, it is a settled position of law that the same can be filed at any stage before the delivery of the judgment and therefore, the Trial Court has erred in rejecting the application. The circumstances which led to the delay in filing of the application was that no communication could be established between the Counsel and his client and therefore the application could not be filed immediately however, it is submitted that before advancing final arguments, he has filed the application. The Court ought to have allowed the said application in order to arrive at a just decision

as examination of both these witnesses would not cause any prejudice to the prosecution as they will also get an opportunity to cross-examine the said witnesses and in such circumstances, according to the learned Counsel, the impugned judgment and order is liable to be quashed and set aside. He further submitted that if the defence is deprived from examine these two witnesses it would amount to denial of fair trial.

4. On the other hand, learned Counsel for the non-applicant opposes the application on the ground that this is nothing but an attempt to prolong the trial. At the time of final arguments, the application was filed in order to fill the lacunae in the defence evidence. Both the witnesses have no concern with the case as the Senior Scientific Officer of the CFSL was already examined and cross-examined at length. After recording of the Section 313 CrPC statement on 04.11.2025, the accused had stated that he does not want to examine any defence witnesses. However, at the advanced stage of trial both the witnesses are sought to be examined to fill in the lacunae and to protract the trial. Therefore, the application is prayed to be rejected as there is no merit in the application.

5. I have considered the rival submissions. The power under

Section 311 of CrPC has been couched to enable the Court to arrive at a just decision. The Court has wide discretion under Section 311 to summon and examine any witness even when such witness is not listed in the charge-sheet, if the evidence appears to be essential for a just decision. Therefore, it would be necessary to reproduce Section 311 of CrPC, which reads thus :

“311. Power to summon material witness, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

6. It is not in dispute that in the present case total 14 witnesses are examined and the statement of accused under Section 313 was recorded on 04.11.2025. Thereafter, the application under Section 311 CrPC has been filed on 02.02.2026. In the application in paragraph 2, following averments were made :

“2.....However, during the course of recording of the statement of the accused under Section 313 of the Criminal Procedure Code, the accused did not have an opportunity to meet his advocate in order to discuss the future aspects, as regards to leading defence evidence, since the counsel for the accused was

preoccupied in a time-bound matter of CBI V/s Gautam Basutkar (Special Case No.9/2025) at Amravati and the accused could not solicit appropriate instructions as regards to leading defence evidence in support of his contentions. That when the accused was subjected to recording of statement under Section 313 of the CrPC, the accused being a layman could not understand the gravity of the aspect that he was required to confirm and narrate before the Hon'ble Court in the course of recording of his statement that he intends to examine certain witnesses as his defence witnesses. ...”

7. The prosecution has filed its reply and specifically resisted the application by putting their case as under :

“1. That, the accused applicant at para 1 of its application submitted that 'the prosecution has relied upon forensic report as regards to the identification of the voice of the accused and though the prosecution has filed the report of the forensic expert as regards to the voice identification, the prosecution has deliberately avoided to examine the said witnesses, despite the said witness being a very crucial witness to validate the authenticity of the said report. The said report, however, came to exhibited through the Investigating Officer'. The contention is misleading. CFSL report (Spectography report) is at Exh.95 and same is not exhibited through Investigating officer. Shri Subrat Kumar Choudhary, Sr. Scientific Officer cum- Assistant Chemical Examiner (PW-3) was testified on the said report and he asserted his report. He was cross examined by defence council at length. Moreover Exh. 219 is not a CFSL report/spectography report and it is only a letter address to Director CFSL.

2. That, the accused applicant has contended that during the recording of his statement under Section 313 Cr.PC., he did not have an opportunity to consult

his advocate regarding the future course of leading defence evidence, as the counsel was engaged in a time-bound matter of CBI v. Gautam Basutkar (Spl.case 09/25) at Amravati. The contention of accused is totally false. On perusing the court of the case dated 04.11.2025 it is very clearly mentioned that Sh. Prakash Naidu council for the accused is present which cannot be denied by the accused. When the defence council is available on that particular date before this Hon'ble Court then it is not possible that at the same time he is present before the another court at Amravati in Spl. Case no.09/25 which is around 200 Km from Nagpur. On perusal of court record/ecourt of Hon'ble court Amravati it is also very clear that defence council was not present there and only CBI prosecutor was present and the case was posted only for filing summon application.”

8. So as to decide the controversy in issue, it is necessary to refer the case of ***Rajaram Prasad Yadav vs. State of Bihar and anr. (2013) 14 SCC 461***, particularly paragraph 17 wherein the Supreme Court has culled out parameters with respect to Section 311 CrPC, which are as follows-

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

17.1 Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

17.2 The exercise of the widest discretionary power

under Section 311 Cr.PC. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3 If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

17.4 The exercise of power under Section 311 Cr.PC. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5 The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6 The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7 The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8 The object of Section 311 Cr.PC. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

17.9 The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10 Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

17.11 The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12 The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13 The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14 The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

9. Upon perusal of the parameters laid down by the Hon'ble Supreme Court, it is abundantly clear that though wide discretionary power are conferred under Section 311 CrPC but the same must be exercised judiciously and not arbitrarily. It also imposes a duty on Court to determine the truth and to render a just decision. Therefore, the power under Section 311 of CrPC must be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons and the same must be exercised with great caution and circumspection. A fair trial encompasses the interests of the accused, the victim, and society at large. It necessarily includes the grant of fair and adequate opportunities to the accused, and such assurance must be upheld, as it constitutes both a constitutional mandate and a fundamental right under Article 21 of the Constitution of India. Keeping in mind these parameters as well as right to fair trial, it would be necessary to consider the present case.

10. Admittedly, the two witnesses who are sought to be summoned are the Superintendent of CBI (ACB), Nagpur and Director of Central Forensic Science Laboratory (CFSL), CBI, New Delhi i.e. Forensic Expert. The Superintendent, CBI, ACB, Nagpur is acting in a supervisory capacity and there is no role played by the

Superintendent of Police, CBI (ACB) in the entire investigation practically. So under such circumstances the question would be whether evidence of these two witnesses are essential or not.

11. So far as the Director, CFSL, CBI, New Delhi i.e. Forensic expert is concerned, even he is not concerned with the case. It is not out of place to mention at this juncture that the Senior Scientific Officer of CFSL, New Delhi is already examined and cross-examined as PW3. Similarly, the Investigating Officer has also been examined as PW14. Under such circumstances, both these officers are not material witnesses and do not have any concerned with the case. It is the duty of the defence counsel to satisfy that the evidence which is required to be tendered is absolutely essential to determine the truth. Therefore, it cannot be said that they have direct nexus with the case when other material witnesses have already been examined. Though wide discretionary power has been conferred under Section 311 CrPC however, the word “any person” appearing in Section 311 CrPC denotes the evidence that is likely to be tendered by a witness must be germane to the issue involved. No doubt the applicant is having every right to examine defence witness but that witness should be a material witness having some nexus with the case or any

person who will throw light on the issue involved in the case and the evidence should be essential for a just decision of the case. The observations of the Supreme Court in the case of ***Vijay Kumar vs. State of Uttar Pradesh, 2011 8 SCC 136*** specifically paragraph no. 14 are relevant which reads as under:

“ 14. There is no manner of doubt that the power under Section 311 of the Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasised that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for the just decision of the case.”

12. Upon close scrutiny of the case, it appears that the application filed is nothing but an attempt to protract the trial and fill in lacunae which defeats the very object of Section 311 CrPC. The litmus test for adjudicating upon the application under Section 311 is that it ought not to be allowed to fill in lacunae or delay the trial

as the primary object of the criminal trial is to discover the truth and ensure fair trial under Article 21 of the Constitution of India.

13. Further, the contention of the applicant that accused did not have an opportunity to meet his advocate during the course of recording of the statement under Section 313 CrPC and thereafter communication could not be established between the accused and his advocate deserves no consideration as the Trial Court in detail has dealt with the same and has given following findings-

“26. In this case, it is necessary to take into consideration whether the evidence of the Superintendent, CBI, ACB, Nagpur, and the Director, CFSL, CBI, New Delhi is essential to arrive at a just decision. Admittedly, the accused was a public servant and posted as Senior Division Material Manager, South East Central Railways (SECR), Nagpur Division, Nagpur, during the period 2015-16. He was responsible for the purchase of requisitioned (Non-Stock) items for different departments of SECR, Nagpur Division. Admittedly, he was selected in the Indian Railways through UPSC in 2001.

27. In this background, it reflects from the record that after the completion of the prosecution evidence, i.e., after examining a total of 14 witnesses, the statement of the accused under Section 313 of Cr.PC. was recorded on 04.11.2025. On perusal of the Roznama dated 04.11.2025, it appears that Advocate for the accused, Shri Naidu, was present on that day. The statement of the accused under Section 313 of Cr.PC. was recorded vide Exh. 268, and the matter was adjourned for arguments with the consent of both

sides.

28. It reveals that before recording the statement of the accused under Section 313 of Cr.PC. on 04.11.2025, two earlier dates were fixed for recording the statement. On the earlier date, i.e., 03.11.2025, the accused and his Advocate were present before the Court, and an adjournment application was tendered. This means that before recording the statement of the accused under Section 313 of Cr.PC., the accused and his Advocate had met. Even on the date of recording the statement, the Advocate for the accused was present. Therefore, there is no substance in the submissions in the application that the accused neither had an opportunity to meet his Advocate nor to discuss future aspects regarding leading defence evidence.

29. It appears further that during the recording of the statement of the accused under Section 313 of Cr.PC., the accused answered that he did not want to examine himself on oath and did not want to examine any witness in support of his defence. Considering the position of the accused in his service, he cannot be termed a 'layman'. Therefore, the statement of the learned Advocate on this point is not acceptable.

30. In this background, the answers of the accused, that he did not want to examine himself and did not want to examine any witness at the time of recording his statement under Section 313 of Cr.PC., disclose that, with full understanding, the accused answered the questions that he does not want to examine any defence witnesses. This fact is material while dealing with this application.”

14. Therefore, the application has been filed with an intention to prolong the trial and to fill lacuna under the garb of fair trial, abuse of the process cannot be permitted.

15. In view of the above, I am of the opinion that the evidence of these two witnesses are not necessary for a just decision of the case. The Trial Court dealt with the Exhibit 272 in detailed by giving cogent reasons and rightly exercised his discretion, and therefore, I do not find any error in the findings of the impugned order. Hence, as there is no merit in the application, the same is rejected.

16. Needless to mention that the above observations are restricted to the present application only.

(M.M. NERLIKAR, J.)

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