

2026.PHHC.058260



CRM-M-64601-2025

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CRM-M-64601-2025 (O & M)

Date of decision: 17.04.2026

DAVINDER KUMAR

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Nitin Sachdeva, Advocate for
Mr. Japjit Singh Johal, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

None for respondent No.2, despite service.

AMAN CHAUDHARY, J. (ORAL)

CRM-6847-2026

Respondent No.2 stood served, however, there was no representation on his behalf on the said date.

For the reasons mentioned in the application, the same is allowed and the main case is taken on Board today itself.

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1. The present petition arises out of the impugned order dated 30.10.2025 passed by learned Addl. Sessions Judge, Hoshiarpur, whereby opportunity of the petitioner to cross-examine PW 7 Dr. Gurpreet Singh, has been closed and the cross-examination has been ordered to be "NIL".

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2. Learned counsel submits that cross-examination of the aforesaid PW could not be done on account of petitioner's counsel being out of country from 23.10.2025 to 02.11.2025 due to certain family issues and was, therefore, unable to attend the Court. The case is now listed for 27.04.2026 before the trial Court for the purpose of deposition of remaining 3 witnesses. He seeks one opportunity to cross-examine him which may even be subject to costs.

3. Learned State counsel opposes the petition on the ground that the impugned order has rightly been passed.

4. Heard.

5. It is trite, that the client should not be made to suffer on account of the absence of the counsel, in regards whereof, it would be apposite to refer to the case of **Rafiq vs. Munshilal and another**, AIR 1981 SC 1400, wherein Hon'ble the Supreme Court had held that, "What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted." Reiterating the aforesaid view, in **Shaikh Mukthar and another vs. State of Andhra Pradesh**, (2020) 19 SCC 178, it was observed that the appellants should not have been penalised for the absence of their advocate on the date of hearing.

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6. The duty of the Court is to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The opportunity of cross-examining the witnesses, which is essential for the just decision of the case, having not been granted, due to the non-availability of the learned counsel, would result in the accused-petitioner suffering a penalty totally disproportionate to the gravity of the mistake, that too due to unforeseen circumstances, being beyond his control.

7. In a case where the right of the accused to cross examine the Investigating Officer was closed, Madhya Pradesh High Court in **Shyam Premchandani vs. State of Madhya Pradesh**, CRR-905-2025, dated 07.05.2025, to which no challenge was made, while granting him one opportunity to do so, had observed that, “The right to fair trial is one of the fundamental guarantee of the rule of law, aimed at ensuring administration of justice. Fair trial includes fair and proper opportunities allowed by law to prove defence by cross examination of prosecution witness. Denial of adequate opportunity to cross-examine a material prosecution witness may seriously prejudice the right to defend of the accused...”

8. This Court in **Hardeep Singh and another vs. State of Punjab**, CRM-M-12426-2025, decided on 05.03.2025, has held thus:

“7. From the order dated 06.05.2024, it is clear that there is no fault of the petitioners/accused persons. It was the representing counsel of the petitioners who failed to appear before the Court below, and due to his nonappearance, the trial Court inferred that no cross-examination would be conducted at the instance of the accused and, therefore, recorded it as “NIL.”

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To ensure an impartial decision at the end of the trial and also transparency in it's proceedings, trial Court ought to have either granted another opportunity for cross-examination by adjourning the proceedings to a shorter date or appointed an Amicus Curiae/legal aid counsel for completing the statement of the material witness by appreciating the inability of the petitioners—accused....”

9. In view of the above, present petition is allowed and the order dated 30.10.2025 is hereby set aside. The petitioner is granted one effective opportunity to get cross-examined the aforesaid witness on the next date of hearing fixed before learned trial Court, subject to payment of costs of Rs.10,000/- to respondent no 2.

17.04.2026

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No