

IN THE COURT OF PAWAN KUMAR, ADDL. SESSIONS JUDGE-V, JAMUI
ST No. 158/2009, IA No. 2/2026 & 3/2026
(Arising out of P.S-Khaira Case No. 65/2003)

Date of order of Proceeding	Order with signature of the court	Official action taken
<u>02.02.2026</u>	Present- Sri Chandra Bhanu Singh, Ld. APP for State. Sri Chandra Mohan, Ld. Counsel for defence. Accused persons namely Jehal Ravidas and Brahmdeo Ravidas are present in person and rest accused Shibu Sah is represented through his counsel which is allowed for today only. Ld. Counsel for defence filed rejoinder of petition dated 31.01.2026 as filed by prosecution U/s 311 Cr.P.C. 1. Learned Addl. Public Prosecutor pressed two petitions filed under Section 311 Cr.P.C. dated 17.01.2026 and 31.01.2026, whereby prayer has been made for examining the informant of the case, namely Narayan Sah, the wife of the deceased Gopal Sah, namely Guni Devi, and the Investigating Officer of the case, namely Ram Vijay Sharma. 2. It is submitted on behalf of the prosecution that on 17.01.2026 a petition under Section 311 Cr.P.C. was moved for recalling the informant Narayan Sah and the wife of the deceased Gopal Sah, Guni Devi, on the ground that they had approached the prosecution through their learned counsel Sri Chandradeo Prasad Gupta and stated that they had no knowledge about the pendency of this trial and that no summons or warrants had ever been served upon them, due to which they could not appear before the Court earlier for recording of their statements. It is further submitted that on 31.01.2026 another petition under Section 311 Cr.P.C. was filed for examination of the Investigating Officer, Ram Vijay Sharma, as he was present before the Court in connection with another Sessions Trial, namely ST No. 305/2010. 3. It is further submitted that the present case pertains to a triple murder and that three public witnesses have already been examined, who have supported the prosecution case. Since the informant and the wife of the deceased have themselves approached the prosecution and have expressed their willingness to depose, their examination is necessary. It is also submitted that although the name of Ram Vijay Sharma was inadvertently omitted from the list of witnesses, the case diary clearly reflects that he was one of the Investigating Officers of the case and had conducted substantial part of the investigation, therefore, his examination is essential for the just decision of the case. 4. It is further submitted that both the aforesaid petitions under Section 311 Cr.P.C. could not be filed together as the present place of posting of the Investigating Officer Ram Vijay Sharma was not	

IN THE COURT OF PAWAN KUMAR, ADDL. SESSIONS JUDGE-V, JAMU

ST No. 158/2009, IA No. 2/2026 & 3/2026

(Arising out of P.S-Khaira Case No. 65/2003)

continued...

known earlier, and only upon his appearance before the Court for deposition in another case did the prosecution come to know about the same. Lastly, it is submitted that the petitions have not been filed with any deliberate intention to delay the proceedings or to fill up any lacuna in the prosecution case, but solely to enable the Court to arrive at a correct conclusion and to render a just decision and may kindly allow the petitions under section 311 Cr.P.C.

5. Per contra, learned counsel for the accused persons vehemently opposed the prayer of prosecution to allow petitions under section 311 Cr.P.C and submitted that he has already filed rejoinders dated 19.01.2026 and 02.02.2026 to the petitions filed by the prosecution. It is contended that earlier, on 12.01.2026, on a petition filed by the prosecution under Section 311 Cr.P.C., Dr. Sayed Nausad Ahmad was examined and discharged, and thereafter the prosecution has again filed the present petitions dated 17.01.2026 and 31.01.2026 deliberately with the sole object of filling up lacunae in the prosecution case. It is further submitted that the statements of the accused under Section 313 Cr.P.C. were already recorded on 06.06.2023 and the case was pending only for production of the carbon copy of the post-mortem report and for final arguments. It is also contended that the informant was fully aware of the proceedings and deliberately chosen not to appear before the Court, and has now approached the prosecution only when the case is at the verge of conclusion. Lastly, it is prayed that since the prosecution has filed repeated petitions under Section 311 Cr.P.C. with the intent to hamper and delay the proceedings of the case, the present petitions deserve to be dismissed.
6. Heard learned Addl. Public Prosecutor for the State and learned counsel for the accused at length. Perused the petitions dated 17.01.2026 and 31.01.2026 filed under Section 311 Cr.P.C., the rejoinders filed on behalf of the accused, and the materials available on record.
7. Section 311 Cr.P.C. confers very wide discretionary powers upon the Court to summon, recall or re-examine any witness at any stage of the inquiry or trial, if his evidence appears to be essential for the just decision of the case. The object of the provision is to enable the Court to discover the truth and to render a just decision, and such power is to be exercised judiciously, keeping in view that it should not be used to fill up lacunae in the prosecution case or to cause prejudice to the accused.
8. The scope and object of Section 311 Cr.P.C. has been authoritatively settled by the Hon'ble Supreme Court in ***Rajendra Prasad v. Narcotic Cell Through Its Officer In-Charge, Delhi*** (decided on 12.07.1999) AIR 1999 SC 2292. The Hon'ble Supreme Court

IN THE COURT OF PAWAN KUMAR, ADDL. SESSIONS JUDGE-V, JAMUI
ST No. 158/2009, IA No. 2/2026 & 3/2026
(Arising out of P.S-Khaira Case No. 65/2003)

continued...

Court has drawn a clear distinction between an inherent 'lacuna' in the prosecution case and an omission or inadvertence on the part of the prosecution. It has been held that:

"Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be fore-closed from correcting errors. 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. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

9. It has also been categorically held that the power under Section 311 Cr.P.C. is plenary and can be exercised at any stage of the trial, provided the evidence sought to be adduced is essential for a just decision of the case.
10. In the present case, the prosecution seeks examination of (i) the informant Narayan Sah, (ii) Guni Devi, wife of the deceased Gopal Sah, and (iii) the Investigating Officer, Ram Vijay Sharma. The explanation offered by the prosecution is that the informant and the wife of the deceased could not earlier be examined as they claim that no summons or warrants were served upon them, and that they themselves have now approached the prosecution expressing willingness to depose. As regards the Investigating Officer, it has been stated that though his name was inadvertently omitted from the list of witnesses, the case diary reflects that he conducted substantial part of the investigation, and his examination is essential for a proper appreciation of the evidence. The prosecution has also explained the filing of two separate petitions on different dates and has asserted that the prayer is not intended to delay the trial or to fill up lacunae.
11. On the other hand, the defence has vehemently opposed the petitions on the ground that repeated applications under Section 311 Cr.P.C. have been filed at a belated stage, after recording of the statements of the accused under Section 313 Cr.P.C., and when the case was at the stage of arguments. According to the defence, the present petitions are a clear attempt to fill up lacunae and to protract the proceedings.
12. Having considered the rival submissions, this Court is of the view that mere delay or the fact that the case is at an advanced stage

IN THE COURT OF PAWAN KUMAR, ADDL. SESSIONS JUDGE-V, JAMUI

ST No. 158/2009, IA No. 2/2026 & 3/2026

(Arising out of P.S-Khaira Case No. 65/2003)

continued...

cannot by itself be a ground to reject a petition under Section 311 Cr.P.C., if the Court is satisfied that the evidence sought to be adduced is essential for a just decision of the case. The informant and the wife of the deceased are natural and material witnesses, particularly in a case relating to alleged triple murder. Similarly, examination of the Investigating Officer is ordinarily of great significance, as he is required to explain the manner of investigation, the steps taken, and the documents proved during investigation. Non-examination of the Investigating Officer may cause serious prejudice to the prosecution as well as to the defence, as the defence also gets an opportunity to cross-examine him.

13. At the same time, the concern of the defence regarding possible prejudice and delay cannot be ignored. Such prejudice, however, can be adequately safeguarded by granting full opportunity of cross-examination to the accused and by ensuring that the trial is not unnecessarily protracted.

14. In view of the foregoing discussion and the law laid down by the Hon'ble Supreme Court in *Rajendra Prasad (supra)*, this Court is satisfied that the examination of the informant Narayan Sah, Guni Devi, and the Investigating Officer Ram Vijay Sharma is essential for the just decision of the case. The petitions do not appear to be filed merely to fill up lacunae, but to place material evidence before the Court.

15. Accordingly, the petitions dated 17.01.2026 and 31.01.2026 filed by the prosecution under Section 311 Cr.P.C. are allowed, subject to the following conditions:

(i) The prosecution shall ensure the presence of the said witnesses on the dates fixed by the Court without seeking unnecessary adjournments and shall conclude the evidence within fortnight.

(ii) The accused shall be given full and effective opportunity to cross-examine the witnesses.

With the above observations, both petitions stand disposed of. Put up for evidence on 03.02.2026.