

IN THE COURT OF SESSIONS JUDGE,
DAMAN.

Sessions Case No.16/2022 C.N.R.No.UTDD01000372025

State V/s. Nitish & Anr.

Order Below Exh.86

(Passed on 19/11/2025)

1] This application is purportedly filed under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') for recalling the prosecution witnesses.

2] The accused strongly resisted the application by filing their say and thereby prayed for rejection of the same.

3] Heard learned Public Prosecutor Shri. Hariom Upadhyay and learned counsel Shri Mario Lopej for the accused. Perused the application, say and the record.

4] From perusal of the record it transpires that, prosecution examined in all eleven witnesses to prove its case till date. The prosecution wants to re-examine the witness only on the point of identifying the deceased in CCTV footage. It is pertinent to note here that, the CCTV footage was not played before the Sudhir Gauri Ram (PW4).

5] It is the cardinal principle of criminal law that the prosecution should be given equal opportunity to prove its case like the defence. In addition thereto, the legislature in its wisdom

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has incorporated Section 311 of the Code with a view to afford an opportunity to both the sides to prove their respective cases. The said provision also empowers the Court to summon a witness, re-examine the witness etc. The court while considering the said application, however, is required to strike a balance between the rights of both the sides and to ensure that the same would cause no prejudice to the accused.

6. In the present set of facts, Sudhir Gauri Ram (PW4) is already examined and the accused persons are facing trial for capital offence. This case, therefore, is a fit case to invoke Section 311 of the Code enabling the prosecution to re-examine Sudhir Gauri Ram (PW4) as prayed for by the prosecution as the said exercise would cause no prejudice to the accused as he is armed with the powerful tool i.e. cross-examination. Hence, I pass the following order.

ORDER

1. The application is hereby allowed.
2. The prosecution is directed to issue witness summons to Sudhir Gauri Ram (PW4) and ensure his presence on next date without fail.

Place : Daman.
Date: 19/11/2025.

(Rajesh S. Tiwari)
Sessions Judge,
Daman.

CERTIFICATE -

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of P.A. : Dhiraj Gajbhiye

Court Name : Court of Sessions Judge, Daman.

Date : 19.11.2025

Signed by Presiding
Officer on : 19.11.2025

Uploaded on : 19.11.2025

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