

ORDER

Learned APP has filed application u/Sec.311 of Cr.P.C. In the application it is stated that, the above case set down for recording of statements of accused. CW1 is complainant, spot mahazar and injured witness and CW2 is eyewitness. Even though this Hon'ble Court issued warrants against CW1 and CW2, they have not yet appeared before this court. The examination of above witnesses are material witnesses to prove the guilt of accused. Therefore, she requested to examine CW1 and CW2 in the interest of justice and equity. Hence, she requested to consider this application.

2. Learned Counsel for accused has filed detailed objection contending that, the application filed by the prosecution is not maintainable either under law or on facts, as the matter is posted for the recording statements of accused. Even though several opportunities were provided to CW1 and CW2 to be present before the Court and give their evidence, but they have not turned up to be present before the Court inspite of issuance of warrants. Thus, they had no interest in conducting the case nor had intention to abide law. Thus, the prosecution nor their witnesses are due diligent in conducting the case. The present application is filed with intent to just to drag the proceedings for one or the other reason and to harass the accused only. The prosecution had tried to fill up the lacuna in the case, which is highly belated and had not given any cogent reason for non examining CW1 and CW2, whose presence was not secured. If the application allowed, then the accused be will be put to great injustice as already sufficient process were issued and the case is set down for

recording of statement of accused. Therefore, he prayed for dismissal of application in the interest of justice and equity.

3. Based on the rival contentions of the parties, the following points arise for my consideration:-

1) Whether the learned APP has made out grounds to allow the application?

2) What order?

4. Heard both sides. Perused the records.

5. My findings to the above points are as under:

Point No.1 : In the Affirmative,

Point No.2 : As per final order, for the following ;

REASONS

6. **Point No.1:-** It is relevant to note that the present case of the year 2024. The Investigation Officer charge sheeted against the accused for the alleged offence u/Sec.115(2), 126(2), 351(2) and 352 of BNS against accused before this Court. Perused the record it indicates that the above matter of the year 2024, the accused was enlarged on bail by this court on 05.05.2025. After heard before charge, there is a sufficient material appears against accused. Hence, charge recorded. Accused has denied charge contents and claims to be tried. Therefore, this Court commenced trial and issued process against CW1 to CW3 on 19.05.2025. Further it indicates from order sheet that, this Court ordered for issue bailable warrant against CW1 to 3 on 16.06.2025 and 16.07.2025. Despite

that, the prosecution has not yet secured presence of CW1 to CW3. Therefore, this Court ordered for issue witness warrant, proclamation against CW1 to 3 through local Police officers and senior police officers on 01.09.2025, 24.09.2025, 29.10.2025. Despite that, the prosecution has failed to secure presence of CW1 and 2. Therefore, on 17.12.2025, adverse order passed against stay by rejecting prayer of learned APP. Consequently, CW1 and 2 are dropped out. Now, admittedly, the prosecution is not vigilant in conducting this case in proper and effective manner. After lapse of more than one and half year, the present application moved by prosecution. It is duty casted on Prosecution to secure presence of witnesses well in time. If this Court denied for the reason of delay of one and half year, it would cause irreparable loss to the prosecution than accused. Hence, considering the facts and circumstances of this case, it is just and proper to consider present application with impose strict conditions, it would meet ends of justice. Accordingly, I answer **Point No.1 in the Affirmative.**

7. **Point No.2:-** In view of the findings given to Point No.1, this Court proceed to pass following:-

ORDER

The application filed by learned APP
U/sec.311 of Cr.PC is hereby allowed.

Consequently, **CW1 and CW2**/order
recalled and case opened for prosecution
evidence.

Further, prosecution is hereby directed that

witnesses shall voluntarily appear before this Court in next hearing. If prosecution failed to utilize this provided opportunity, they will loose this opportunity without further notice.

Consequently, office is hereby directed to issue summons to CW1 and CW2 through jurisdiction S.H.O., I.O., Dy .S.P. and S.P. with a direction to keep present above witnesses in next hearing voluntarily.

(Dictated to the Stenographer directly on computer, corrected, then signed and pronounced by me in open court on this the day of **15th day of June-2026**)

(R.MAHESHA)
Prl. Senior Civil Judge & JMFC.,
Pandavapura.