

IN THE COURT OF DISTRICT JUDGE - 6 & ASJ, NAGPUR

Sessions Case No.637 of 2022.

Crime No. 429 of 2022, P. S. Butibori, Nagpur.

State of Maharashtra
Through P. S.O. P.S. Butibori, Nagpur.
..V/s...
Rahul and Ors.

Order Below Exh.312

(Date: 2nd February 2026)

1. The prosecution filed an application under Section 311 of the Code of Criminal Procedure to call the panch at the time of seizure of the vehicle and blood stains clothes as witness and also the carrier of the seized vehicle who deposited the vehicle to the office of Chemical Analyzer. As per Learned APP the suggestion were given that the evidence was tampered and no clothes were seized. Investigating officer proved the seizure panchnama but independent witnesses are required to be examined. She prayed that the witnesses mentioned in the application are required to be examined in order to prove the case of prosecution.
2. Learned Counsel for the accused strongly opposed the application stating that earlier witnesses were called under Section 311 of the Code of Criminal Procedure. In that application there was no whisper about these witnesses. Accused are under trial and in order to prolong the trial such applications are filed. He prayed for rejection of the application.
3. Learned APP argued that the C. A. report is exhibited. The witnesses of chemical analyzer are examined but accused challenged the fact that vehicle did not reach the chemical analyzer without tampering. In such circumstances carrier of the

vehicle and panch witnesses are necessary witnesses. Earlier some witnesses were called under Section 311 of the Code of Criminal Procedure but at that time this fact was missed by her. She relied upon the authority of Hon'ble Supreme Court in case of *U. T. of Dadra & Nagar Haveli and Another..vs..Fatehsingh Mohansingh Chauhan, (2006) 7 Supreme Court Cases 529*. In this authority Hon'ble Supreme Court held that power of Court to summon material witness can be exercised only with the object of finding out the truth or obtaining proper proof of facts which may lead to a just and correct decision. These power cannot be used to fill up the lacuna in the case of prosecution. In the case before Hon'ble Supreme Court respondent accused raised the plea of alibi and in support of his claim defence examined two witnesses, but Collector was not examined. So prosecutor moved application under Section 311. The Trial Court allowed the application in the interest of justice and fair decision. The Hon'ble Supreme Court held that it will not cause any prejudice to the accused and maintained the order of Trial Court.

4. In this authority application was made for second time and it was allowed by Hon'ble Supreme Court. No prejudice would be caused to the accused and it is in the interest of just to examine the witnesses for just decision of the Trial Court. She submitted that if the Court permits she is ready to examine the witnesses on one day in short time.
5. Learned Counsel for accused submitted that Learned Prosecutor is using try and error method in this case. He submitted that all opportunities given to the prosecution and at the time of argument such application is filed. Accused are behind bars and

the question is of personal liberty of the accused. He prayed for rejection of the application.

6. If the authority of Hon'ble Supreme Court referred above is perused the Court can use power of under Section 311 of the Code of Criminal Procedure at any time before pronouncing the Judgment. At the time of argument Learned APP found that panch witness and carrier of the vehicle is not examined. Accused specifically challenged the fact of seizure and alleged that vehicle was tampered. The prosecution has to prove its case beyond reasonable doubt. If these witnesses are not examined there will remain serious lacuna in the evidence of prosecution. In such circumstances the application is to be allowed but to see that they should not be prolonged. The prosecution is directed to examine the witnesses as early as possible and bring all witnesses on one day. So I proceed to pass the following order.

Order

1. The application is hereby allowed.
2. The prosecution is allowed to examine witnesses mentioned in the application with direction that prosecution shall produce witnesses on next date and examine all witnesses on same day.
3. Issue summons to the witnesses.

Date: 02/02/2026.

(M. S. Ganorkar)
District Judge-6 & ASJ,
Nagpur.