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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010779582025

+ **W.P.(CRL) 3344/2025**

ABDUL WAHID

.....Petitioner

Through: **Mr. Kartik Murukutla, Advocate**

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: **Mr. Gautam Narayan, Sr. Advocate
with Ms. Asmita Singh, Advocate.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **14.08.2026**

CRL.M.A. 30513/2025

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner seeks to challenge the impugned order dated 07.07.2025 ("**Impugned Order**") whereby the Special Court has rejected the request of the petitioner to recall PW-2.
4. The Special Court has considered the prayer made by the petitioner and has noted that the petitioner was granted sufficient opportunities to cross examine the witness. Importantly, in para. 10 of the decision, the Special Court has held that no observations are required *qua* the statement of PW-2



& PW-5 in view of the fact that the evidentiary value of the testimony *qua* giving different versions will have to be evaluated at the end of the trial.

5. Insofar as the argument of prejudice is concerned, where the learned counsel for the petitioner contends that owing to the fault of the previous counsel for the petitioner a material question was not put to the witness, the Court deems it appropriate to only observe that the petitioner himself will have to be blamed for any alleged prejudice. The trial, importantly, has to take place strictly in accordance with law. The Court also finds that merely on the change of the counsel, the witnesses cannot be allowed to be recalled.

6. In this connection reliance may be placed on ***State (NCT of Delhi) vs. Shiv Kumar Yadav and Anr.***,¹ the relevant paragraphs are extracted as under:

“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination.

26. In spite of the High Court not having found any fault in the conduct of the proceedings, it held that “although recalling of all the prosecution witnesses is not necessary” recall of certain witnesses was necessary for the reasons given in Paras 15(a) to (xx) of the application of the accused. It was observed that the

¹ (2016) 2 SCC 402.



accused was in custody and if he adopted delaying tactics it is only he who would suffer.

27. It is difficult to approve the view taken by the High Court. Undoubtedly, fair trial is the objective and it is the duty of the court to ensure such fairness. Width of power under Section 311 CrPC is beyond any doubt. Not a single specific reason has been assigned by the High Court as to how in the present case recall of as many as 13 witnesses was necessary as directed in the impugned order. No fault has been found with the reasoning of the order of the trial court. The High Court rejected on merits the only two reasons pressed before it that the trial was hurried and the counsel was not competent. In the face of rejecting these grounds, without considering the hardship to the witnesses, undue delay in the trial, and without any other cogent reason, allowing recall merely on the observation that it is only the accused who will suffer by the delay as he was in custody could, in the circumstances, be hardly accepted as valid or serving the ends of justice. It is not only matter of delay but also of harassment for the witnesses to be recalled which could not be justified on the ground that the accused was in custody and that he would only suffer by prolonging of the proceedings. Certainly recall could be permitted if essential for the just decision but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.

29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

- (i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;*
- (ii) No finding could be recorded that the counsel appointed by the*



*accused were incompetent particularly at the back of such counsel;
(iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice”*

7. Further, in **Govind Mandal vs. State of NCT of Delhi**,² this Court observed as under:

“15. Moreover, the power under Section 311 of the CrPC cannot be exercised at such a belated stage merely on account of change in counsel. Different opinion of a subsequent counsel on how the case is to be prosecuted cannot be a legal ground for recalling a witness. If such arguments are allowed, the trial would be a never-ending endeavour since after every few months, a new lawyer with a different strategy would be engaged, who would like to cross examine the witnesses again.

16. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order. The petition is, therefore, dismissed. Pending application also stands disposed of.”

8. This Court in **Sushil Ansal vs. State of NCT of Delhi**,³ held as under:

“11. Needless to say, the power under Section 311 Cr PC is to be exercised for strong and valid reasons. One cannot claim any parity in deciding of an application under Section 311 Cr PC, hence order dated 16.03.2021 of this court in Crl.M.C.865/2021 is of no use to the petitioner herein. Even otherwise Crl.M.C.865/2021 notes the said application under Section 311 Cr PC. was moved when the prosecution evidence was still going on and it was admittedly prior to closure of prosecution evidence, but, whereas the present application is filed when final arguments had started. It was at this stage, a new counsel was appointed in the matter and he thought of cross-examining the Investigating Officer PW38 by putting him certain suggestions, hence prayer to recall him.

14. In State of Haryana vs Ram Mehar (2016) 8 SCC 136 the Court has held:-

“40. In the case at hand, the prosecution had examined all the witnesses. The statements of all the accused persons, that is 148 in number, had been recorded under Section 313 CrPC. The defence had examined 15 witnesses. The

² CRL.M.C. 6451/2025 decided on 11.09.2025.

³ CRL.M.C. 2107/2021 decided on 15.09.2021.



foundation for recall, as is evincible from the applications filed, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The singular ground which prominently comes to surface is that the earlier counsel who was engaged by the defence had not put some questions and failed to put some questions and give certain suggestions. It has come on record that number of lawyers were engaged by the defence. The accused persons had engaged counsel of their choice. In such a situation recalling of witnesses indubitably cannot form the foundation. If it is accepted as a ground, there would be possibility of a retrial. There may be an occasion when such a ground may weigh with the court, but definitely the instant case does not arouse the judicial conscience within the established norms of Section 311 CrPC for exercise of such jurisdiction.

42. At this juncture, we think it apt to state that the exercise of power under Section 311 CrPC can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck. xxx Hence, we reiterate the necessity of doctrine of balance.

15. In *Girish vs State of UP* 2020 SCC OnLine All 1063 and in *Veerendradas Bairagi vs Shreekant Bairagi* 2019 SCC OnLine MP 7006 the Court held the subsequently engaged counsel cannot seek one more opportunity as a matter of right to further delay the matters. Rather the court held :-

“9. In the present case, it appears from the application filed under section 311, Cr.P.C. that request for re-examination has been made solely on the ground that Senior Counsel has been engaged in place of a Junior Counsel as the Junior Counsel, according to the petitioner, has not conducted the cross-examination of witnesses in an effective manner. However, in the light of the legal position, as discussed



above, it is certainly not within the scope of section 311 Cr.P.C. to countenance such a prayer. No illegality or perversity has been committed by the trial Court in passing the impugned order.”

16. Thus the consistent view of this Court is a mere change of counsel would not suffice to recall witness to put certain suggestions in the manner, the new counsel desires. The petitioner had engaged earlier counsel of his choice. He made a decision not to cross-examine, not one but 18 witnesses, probably, because the petitioner is facing charge of conspiracy only, and hence such decision viz not to cross-examine 18 witnesses cannot be said to an inadvertent act but may be a part of his strategy. Since considerable delay has taken place, the plight of victim, also cannot be ignored. The petition being devoid of merits is thus dismissed. Pending application, if any, also stands disposed of.”

9. Further, a brief reference may also be made to the object and purpose behind the enactment of the National Investigation Agency Act, 2008, which is noted in the decision of the Division Bench of this Court in **Shahid Yousuf v. National Investigation Agency**,⁴ in the following manner:

“15. A bare perusal of the same shows that to avoid multiplicity of jurisdiction in investigation and trial, for the first time with regard to specified offences, a separate National Investigation Agency has been created to investigate Scheduled offences and to prosecute the same. The very purpose of creating such Special Agency at the Central level is to expeditiously investigate and try these serious crimes. Under Section 11 of NIA Act, the Special Courts are designated for the trial of such offences, Section 11(8) provides that once a trial has commenced, even the superannuation of the Special Judge would not come in way and he would continue till the conclusion of trial or till a specified date. Under Section 16, the Special Courts are empowered to take cognizance of any offence, even without the accused being committed to it for trial, only upon receiving of complaint or a police report that constitutes such an offence. Section 19 provides that the trial of offences by the Special Court shall be held on day to day basis on all working days and have precedence over the trial of any other case against the accused in any other Court not being a Special Court and accordingly the trial of such other case shall, if necessary, remain in abeyance. Similarly, Section 21(3) bars filing of any revision under the Special Act and only appeal “from any judgment, sentence or order, not

⁴ 2025:DHC:11786-DB.



being an interlocutory order, of a Special Court to the High Court both on facts and on law” can be filed. Only exception of appeal against an interlocutory order is by Sub-Section (4) which provides an appeal against an order of bail.”

10. Accordingly, considering the facts and circumstances of the present case, the Impugned Order does not deserve to be interdicted.
11. The petition fails and is hereby dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 14, 2026

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