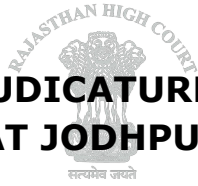


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Criminal Miscellaneous (Petition) No. 3643/2026

CNR: RJHC010434992026

URN: CRLMP / 6526U / 2026

Manoj Verma S/o Govind Verma, Aged About 45 Years, Ward No. 34, Lal Ghantaghar, Churu

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Abhishek Sihag S/o Dakshpal Singh, Aged About 46 Years, Ward No. 24, Gandhi Colony, Churu.

----Respondents

For Petitioner(s)	:	Mr. Shreekant Verma
For Respondent(s)	:	Mr. Pawan Kumar Bhati, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

08/07/2026

The present criminal misc. petition under Section 528 of the BNSS has been filed assailing the order dated 24.11.2025 passed by the learned trial Court whereby the defence evidence of the petitioner-accused was closed, as also the order dated 16.03.2026 whereby the revision petition preferred against the said order came to be dismissed.

It is submitted that the criminal case is of the year 2016 and, after recording of the prosecution evidence, the matter was fixed for defence evidence on 09.02.2023. The statement of the petitioner under the relevant provisions of law has already been recorded. However, despite making sincere efforts, the petitioner could not secure the presence of his defence witnesses on account

of reasons beyond his control. It is contended that although several opportunities had been granted, the witnesses could not appear due to genuine reasons. Since the defence of the petitioner substantially rests upon the testimony of the proposed defence witnesses, closure of the defence evidence would seriously prejudice his right to a fair trial.

Learned counsel for the petitioner has placed reliance on the decision of a co-ordinate Bench of this Court in **Dalveer Singh vs. State of Rajasthan** reported in **2013 CRL.L.J 3064**, to contend that the right to a fair trial is an integral facet of Article 21 of the Constitution of India and that a litigant should not ordinarily be made to suffer for the lapse of his counsel. It is submitted that denial of an opportunity to lead defence evidence would seriously prejudice the petitioner's right to effectively defend himself. The Court has observed as under :-

"6.The entire criminal justice system is based on Constitution of India. Article 21 of the Constitution of India guarantees the right to life and personal liberty. Both life and personal liberty can be cribbed, cabined and confined only by procedure established by law. But even the procedure has to be a reasonable one. A fair trial is a constitutional guaranteed right of an accused. Since, the accused is pitted against the colossal power of the State, the laws, ipso facto, tilt in favour of the accused. Until and unless, the accused is given an opportunity to cross-examine a witness, he would not be able to demolish the prosecution case. Therefore, the right to cross-examine a witness is a fundamental right of the accused; such a right cannot be brushed aside lightly by the trial court. Even if a prejudice is being caused to the prosecution, even then, the fundamental right cannot be ignored. Further, repeatedly it has been held both by the Apex Court and by this Court that a mistake of a counsel should not prejudice the case of a litigant.

7. In the case of P.Sanjeeva Rao, AIR 2012 SC 2242(supra), the Hon'ble Supreme Court has opined as under:- But merely because a mistake was committed, should not result in

the accused suffering a penalty totally disproportionate to the gravity of the error committed by his lawyer. Denial of an opportunity to recall the witnesses for cross-examination would amount to condemning the Appellant without giving him the opportunity to challenge the correctness of the version and the credibility of the witnesses. It is trite that the credibility of witnesses whether in a civil or criminal case can be tested only when the testimony is put through the fire of cross-examination. Denial of an opportunity to do so will result in a serious miscarriage of justice in the present case keeping in view the serious consequences that will follow any such denial. It has further held as under:- "We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the Appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.

8. Merely because the petitioner had moved his application three years after the PW-1 to PW-5 were examined as witnesses, merely because it may cause prejudice to the prosecution, even then the right of cross-examination cannot be denied to the petitioner. Therefore, the order dated 19-5-2008 is clearly untenable."

This Court has considered the submissions advanced and perused the material available on record.

It is evident that the prosecution was afforded adequate opportunity to lead its evidence. Thereafter, the statement of the accused was recorded and the matter was posted for defence

evidence. Though the petitioner was granted several opportunities to produce his witnesses, he has explained that their non-appearance was on account of circumstances beyond his control. While the learned trial Court cannot be faulted for closing the defence evidence after granting sufficient opportunities, at the same time, the valuable right of an accused to effectively defend himself cannot be defeated if, in the peculiar facts of the case, one final opportunity can subserve the cause of justice.

The order dated 24.11.2025 closing the defence evidence and the order dated 16.03.2026 passed by the revisional Court affirming the same have been challenged in the present proceedings. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met by granting the petitioner one final opportunity to lead his defence evidence, subject to stringent conditions.

Accordingly, the impugned orders are set aside. The petitioner is granted one last and final opportunity to produce all his defence witnesses before the learned trial Court on the next date fixed. In case the evidence cannot be concluded on the said date due to the number of witnesses, the learned trial Court may continue the recording of evidence on the immediately succeeding date(s), but no unnecessary adjournment shall be granted at the instance of the petitioner. This indulgence shall be subject to payment of **costs of Rs.10,000/-** before the learned trial Court on or before the date fixed for recording of defence evidence. In the event of failure to produce the defence witnesses despite this opportunity, no further extension shall be granted and the learned



trial Court shall be at liberty to proceed with the matter in accordance with law.

(BALJINDER SINGH SANDHU),J