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

+ **W.P.(CRL) 486/2025**

MOHD. DANISH

.....Petitioner

Through: Mr. Bilal Anwar Khan, Mr. Varun Bhati and Ms. Anshu Kapoor, Advocates.

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Ashish Dutta, SPP with Mr. Mayank, Advocate. Inspector Gurmeet Singh.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

13.02.2025

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By way of the present petition filed under Articles 226/227 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks a direction to the learned trial court to recall PW-9 Head Constable (HC) Shashikant for purposes of cross-examination in SC No.119/2020 pending before the learned Sessions Court.

2. Notice on this petition was issued yesterday *i.e.*, on 12.02.2025; pursuant to which Mr. Ashish Dutta, learned SPP appearing on behalf of the State had sought time to take instructions.
3. The court has heard Mr. Bilal Anwar Khan, learned counsel appearing on behalf of the petitioner; as well as learned SPP at considerable length.



4. Mr. Khan submits, that in relation to a rioting incident of 24.02.2020, HC Shashikant had *not* named or identified the present petitioner in his statement dated 01.06.2020 recorded under section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '); but in the course of his court deposition recorded on 24.01.2025, he has purported to identify the petitioner.
5. Learned counsel submits however, that since the petitioner had not been identified in the witness's statement recorded under section 161 Cr.P.C., the senior lawyer representing the petitioner was not present before the learned Court on 24.01.2025; and therefore, HC Shashikant was not cross-examined on behalf of the petitioner on that date.
6. It is pointed-out that the incident for which the petitioner is being tried relates to alleged rioting by a mob on 24.02.2020; and it is important to cross-examine the witness to elicit the fact that the witness could possibly not have suddenly identified the petitioner during his deposition on 24.01.2025 from an incident of 24.02.2020, when he had not even referred to him in the statement recorded under section 161 Cr.P.C. on 01.06.2020. Mr. Khan also points-out that the petitioner was never put through a Test Identification Parade either.
7. Mr. Khan has drawn attention to the fact, that since a surprise was sprung-upon the petitioner during the examination-in-chief of HC Shashikant on 24.01.2025, Mr. Nadeem who was the junior counsel representing the petitioner before the learned trial court, prayed to the court that they would want to cross-examine the witness but the senior lawyer who was appearing for the petitioner - Mr. Abdul Gaffar - was not present on that date since he was pre-occupied before the High



Court; but notwithstanding the request made, the learned trial court declined to give even a day's time to the petitioner to cross-examine the witness and proceeded to close the petitioner's opportunity to do so; and has subsequently also discharged the said witness.

8. Mr. Khan draws attention to following portion of order dated 24.01.2025:

“... PW HC Shashikant was also present. He has been examined as PW-9, cross examined by all the defence counsels, except by Sh. Nadeem and Mohd. Hasan, advocates. Sh. Nadeem, Mohd. Hasan and Sh. Jatin Bhat, advocates refused to put any question to PW-9 on the grounds that their senior counsels wanted to cross examine this witness and they sought adjournment, stating that senior counsels were busy in other court. In this case on 09.12.2024, this court had observed and directed for day to day trial from 15.01.2025 onwards, on the grounds of huge list of witnesses. There are around 270 witnesses cited in this case. The court had already informed all the accused persons that it was their responsibility to come prepared with their respective counsels of their choice on every date of hearing. Thereafter, keeping in view the request made by defence counsels, time of 2 p.m. for every date was fixed, so that counsels could manage their other cases. It shall not possible to conduct desired speedy trial in the case unless defence counsels also act professionally.”

(emphasis supplied)

9. On the other hand, Mr. Dutta, learned SPP submits that an adjournment could not have been granted by the learned trial court for cross-examination of the witness since there is a very large number of prosecution witnesses before the court and trial in the matter would get delayed. He further submits that non-availability of a senior lawyer on behalf of an accused person is no ground for seeking an adjournment.



10. Though there is no gainsaying that unnecessary adjournments should never be granted, especially at the stage when witnesses are being deposed, one also cannot lose sight of the fact that eventually the purpose of the exercise is to conduct a *fair trial*, and recording depositions expeditiously is intended to subserve that purpose. We must not delude ourselves into believing that the purpose of expeditious trial would be served by denying to an accused a fair and reasonable opportunity to cross-examine a prosecution witness on a critical issue. That is not to suggest that long and unnecessary adjournments should be granted for the asking, especially when a witness is under cross- examination, but to roll-over a case for cross-examination by a day-or-two, when there is good reason for it, cannot possibly be faulted.
11. In the present case, it is not that the petitioner had acted carelessly and had gone completely unrepresented on 24.01.2025. Junior counsel was present for the petitioner. But the record shows that in his statement recorded on 01.06.2020 under section 161 Cr.P.C. in relation to an incident of 24.02.2020, PW-9 had nowhere mentioned the petitioner; and yet in the course of his examination-in-chief on 24.01.2025, *i.e.*, almost 05 years later, the witness identified the petitioner in court. There can hardly be any doubt that this would have come as a rude shock to the petitioner; and this court would venture to think that *even if* the senior lawyer representing the petitioner was present before the learned trial court on that day, he would have taken time to consult the petitioner so as to cross-examine the witness



thoroughly, apart from confronting him with the statement recorded under section 161 Cr.P.C.

12. While this court does not fault the learned trial court for attempting to proceed with the trial expeditiously, in the opinion of this court, denying to the petitioner the right to cross-examine PW-9 on an issue which is critical to the petitioner's defence - namely to his very presence and identity at the time of the occurrence - appears to have been a disproportionate sense of expedition. Nothing prevented the learned trial court from rolling-over the cross-examination of PW-9 to the next date or to an early date thereafter, so as to afford to the petitioner a fair opportunity to cross-examine that witness; and to also obviate any subsequent challenge that the petitioner was not given a fair opportunity to cross-examine the witness.
13. This court is of the view that adjourning the matter to the next day or to any day soon thereafter, would have been the balanced and appropriate course of action. Speedy trial is in fact more in the interest of an accused who claims innocence; but expedition in trial cannot be at the cost of fairness of trial, since that would be against all canons of justice.
14. As a sequitur to the above discussion, this court is persuaded to allow the present petition, thereby setting-aside order dated 24.01.2025 *limited only to the extent that it closes the opportunity of the petitioner – Mohd. Danish – to cross-examine PW-9 HC Shashikant. It is directed that the petitioner shall have a limited and time-bound opportunity to cross-examine PW-9 HC Shashikant on such date and*



time as may be appointed by the learned trial court, at its earliest convenience.

15. It is made abundantly clear that *one* and *only one* opportunity shall be granted to the petitioner for cross-examining PW-9 HC Shashikant, without any further leeway being given to him in his behalf.
16. The petition stands disposed-of, in the above terms.
17. Pending applications, if any, also stand disposed-of.
18. Let a copy of this order be communicated to the learned trial court through the concerned Principal District and Sessions Judge *forthwith*.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 13, 2025

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