



2026:DHC:6170



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 31.07.2026*# **CNR No. DLHC010342522026**+ **CRL.M.C. 5451/2026, CRL.M.A. 22792/2026 & CRL.M.A. 22793/2026**

SANJAY KUMAR PUNDEER

.....Petitioner

Through: Mr. Dhruv Gupta and Mr. Anubhav
Garg, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with Inspector Shiv Ram**CORAM: JUSTICE GIRISH KATHPALIA****ORDER (ORAL)**

1. Petitioner has assailed order dated 21.05.2026 of the learned trial court, whereby the objection raised by the defence counsel in the course of re-examination of PW3 was rejected.

2. On the face of it, the present petition appears to be not maintainable for the reason that such an order as impugned in the present case being an interlocutory order, it is not amenable to revisional scrutiny in view of Section 438(2) BNSS and it is trite that what is explicitly prohibited by law, cannot be allowed a backdoor entry by invoking inherent powers unless a case of gross injustice is brought before the High Court. I have also tested as



to whether the present case is a case of gross injustice.

3. The circumstances relevant for present purposes are as follows. The prosecution witness PW3 in his chief-examination supported the prosecution case, but turned hostile to prosecution in cross-examination. That apparently was because despite numerous directions from the Hon'ble Supreme Court and even this Court, the chief-examination and cross-examination of PW3 was not conducted on the same day. In the course of re-examination of PW3, the brother of the deceased delivered to the learned prosecutor an audio recording which would demolish the hostile statement in cross examination of PW3. The present petitioner objected to the said audio recording being used by prosecution to confront PW3 and that objection was rejected by the trial court by way of order impugned in the present case.

4. Going by the above circumstances, I am unable to find it a case of gross injustice because it is the duty of every criminal court to arrive at the truth and where the witness supports the prosecution in chief-examination but turns turtle in cross-examination carried out after a gap of time, the decision of the trial court to permit confronting the witness with such evidence may not be a case of gross injustice. However, I must add a cautious rider that whether or not the said confronting with the audio recording was lawful has to be considered by the trial court at the final stage of conviction or acquittal. Any observation of this court, at this stage, may cause prejudice to the petitioner facing trial, which also is a reason for this Court to be reluctant in entertaining this petition.



5. In view of the above discussion, learned counsel for petitioner seeks permission to withdraw this petition but expresses apprehension that this may be an endless process. Learned counsel for petitioner explains that earlier, bail application of the petitioner was allowed by this Court to be withdrawn with liberty to file afresh before the trial court after recording of testimony of eyewitnesses. It is submitted by learned counsel that subsequent to the impugned order, brother of the deceased further tried to import as many as 23 similar audio and video recordings, so that trial gets extended further inordinately and as a consequence, the petitioner shall not be able to file a fresh bail application.

6. Considering the above circumstances, the petition is dismissed as withdrawn with the directions to the learned trial court to entertain fresh bail application of the accused/applicant, as and when the same is filed and also to ensure expeditious disposal of the trial preferably within six months from today. The learned trial court shall ensure that each witness of prosecution is chief examined and cross examined on the same day.

7. Copy of this order be sent to the learned trial court for compliance.

8. It is reiterated that nothing observed in this order shall be read to the prejudice of the petitioner at the stage of final decision of the trial.

**GIRISH KATHPALIA
(JUDGE)**

JULY 31, 2026_{ry}