



2025:DHC:1483



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

% *Date of decision: 27.02.2025*

+ **CRL.M.C. 1278/2025**

MOHD IMRAN

.....Petitioner

Through: Mr. R. H. A. Sikander, Mr. Jatin Bhatt, Mr. Sikander Raza and Mr. Jamil Ahmad Khan, Advs.

Versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Ashish Dutta, SPP for State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 5704/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 1278/2025

3. The petitioner has preferred this writ petition seeking setting aside of the order dated 24.01.2025 [hereafter '*the impugned order*'] passed in Sessions Case No. 119/2020 by the learned Additional Sessions Judge-03, North-East District, Delhi [hereafter '*the Trial Court*'] *vide* which the cross-examination of PW-9 i.e. Head Constable Shashikant has been closed. It is prayed that the learned



Trial Court be directed to recall the said witness and the petitioner be provided with an opportunity to cross-examine him.

4. Issue notice. Mr. Ashish Dutta, the learned SPP accepts notice on behalf of the State.

5. The present case pertains to an FIR No. 60/2020, registered at Police Station Dayalpur, Delhi. The allegations against the accused persons in this case are that on 24.02.2020, at about 1 PM, a riotous mob had attacked a police team at Chand Bagh, Peer Dargah, North East Delhi. In the said incident, one DCP and one ACP had been severely injured. Several other police officials had also received injuries, and a head constable namely Ratan Lal had been killed by the rioters, who had sustained gun-shot injury. The present petitioner was, allegedly, a part of the said mob. Charges against the present petitioner were framed for offences under Sections 148/186/302/307/308/323/325/332/333/353/395/427/435 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and under Section 4 of The Prevention of Damage to Public Property Act, 1984 read with Section 149 of IPC; and under Section 188 of IPC.

6. By way of the impugned order dated 24.01.2025, the learned Trial Court was pleased to close the cross-examination of PW-9 HC Shashikant. The learned Trial Court noted that he had cross-examined on the said date by all defence counsels, except by Sh. Nadeem and Mohd. Hasan, advocates, who sought an adjournment on the ground that their senior counsels, who have to cross-examine PW-9, were



busy in another court. The relevant portion of impugned order is set out below:

“ PW Mohd. Adil was present. He has been examined as PW-8, cross examined and discharged. 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.

Ld. counsels are duty bound to make respective arrangements for the purpose of this case as well. In the back drop of such situation, aforesaid request for adjournment of the case was found to be made without any bonafide reason and, therefore, such request was declined. Opportunity to cross examine PW-9 was accordingly closed.”

7. The learned counsel appearing for the petitioner contends that the learned Trial Court has committed a grave error in closing the



cross-examination of PW-9, thereby violating the petitioner's right to a fair trial. It is argued that PW-9, a police witness, had never identified the petitioner or attributed any role to him during the investigation or in the chargesheet. However, during his deposition in the court on 24.01.2205, he unexpectedly identified the petitioner for the first time, which amounted to a significant and unfair surprise for the defense counsels. It is further contended that given the sudden shift in the testimony of PW-9, it was not possible for the petitioner's counsels to conduct an effective cross-examination immediately. Therefore, the petitioner's counsels had sought a short adjournment to allow their senior counsels to cross-examine the witness, as the unexpected nature of his identification had serious implications for the petitioner. However, the learned Trial Court has erroneously refused the adjournment and closed the cross-examination, and has thus deprived the petitioner of an opportunity to challenge the material improvements made by PW-9 in his testimony. The learned counsel for the petitioner emphasizes that PW-9's statement in court was significantly different from his earlier recorded statements, as he had not identified the petitioner at any stage during the nearly five years of investigation. Therefore, it is prayed that in the interest of justice, the petitioner should be granted an opportunity to recall PW-9 for cross-examination.

8. On the other hand, the learned SPP for the State argues that an adjournment could not have been granted by the learned Trial Court



for cross-examination of the witness, PW-9, since there is a very large number of prosecution witnesses before the Court in the present case, and trial in the matter would get delayed. It is further contended that non-availability of a senior lawyer on behalf of an accused person is no ground for seeking an adjournment. Therefore, it is prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed by the learned counsel appearing for the petitioner as well as the learned APP for the State, and has perused the material placed on record.

10. In the present case, this Court notes that the testimony of PW-9 was recorded before the learned Trial Court on 24.01.2025. On the said day, the counsels for all accused persons were present, including the present petitioner. However, it transpired during the examination-in-chief of the PW-9, that the said witness identified the present petitioner as one of the persons who was involved in damaging and setting ablaze his official car. This Court's attention has been drawn to the fact that in his statement recorded on 01.06.2020 under Section of 161 of Cr.P.C. in relation to the alleged incident, PW-9 had nowhere mentioned about the presence of petitioner; and yet in the course of his examination-in-chief on 24.01.2025, i.e., almost 05 years later, PW-9 identified the petitioner in court. Clearly, this development would have been an unexpected and significant setback for the petitioner. Even if the senior counsel had been present before the trial court that day, it is likely that he or she would have required



time to discuss the same with the petitioner before conducting a thorough cross-examination. This would have been particularly necessary to properly confront the witness with his previous statement recorded under Section 161 of Cr.P.C.

11. While it is true that unnecessary adjournments should not be granted by a trial court, particularly during the deposition of witnesses, the fundamental objective however of any trial court is to ensure a fair trial. The purpose of expeditious trial proceedings is to uphold justice, but not to compromise the accused's right to a proper defense. Thus, denying a reasonable opportunity for cross-examination, especially on a crucial issue such as the one in the present case, will not serve the ends of justice. As also observed by the Coordinate Bench, in order dated 13.02.2025 passed in W.P.(CRL) 486/2025 i.e. petition filed by co-accused Mohd. Danish on similar grounds seeking similar relief, when there is a genuine reason, granting a short adjournment of a day or two for effective cross-examination cannot be considered improper. The Coordinate Bench had also observed as under:

“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.

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.”

12. In view thereof, this Court is inclined to allow the present petition. The impugned order dated 24.01.2025 is set aside, to the extent it closes the opportunity of the petitioner 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 fixed by the learned Trial Court, at its earliest convenience. It is also made clear that only one opportunity shall be granted to the petitioner for cross-examining PW-9 HC Shashikant, and no adjournment shall be granted to either side by the learned Trial Court.

13. The petition stands disposed of in the above terms.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J
FEBRUARY 27, 2025/A