



2026:UHC:3299

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p>C528 No.336 of 2026 <u>Hon'ble Alok Mahra, J.</u></p> <p>Ms. Sadaf, Advocate for the applicant. Mr. Rakesh Negi, Brief Holder for the State of Uttarakhand.</p> <p>2. Complainant lodged an F.I.R. against the applicant. Upon completion of investigation, the police submitted charge-sheet, whereafter the learned Magistrate took cognizance and summoned the applicant to face trial. The applicant was arrested on 01.05.2005 and he is in judicial custody since then. It is submitted that although statements of prosecution witnesses, namely P.W.1, P.W.2, P.W.3, were recorded on 26.08.2025, statements of P.W.4 were recorded on 02.09.2025 and statement of P.W.5 were recorded on 09.09.2025 respectively, the applicant was, at the relevant time, in custody and was not in a position to effectively instruct his counsel for the purpose of cross-examination. When applicant got the information that his counsel is not appearing for cross-examination of the aforesaid witnesses, he immediately changed his counsel and moved an application under Section 311 Cr.P.C. on 16.09.2025. Learned Additional Sessions Judge/F.T.S.C. (POCSO), Roorkee, District Haridwar dismissed the said application on the very same day i.e. on 16.09.2025. Hence, this criminal misc. application.</p> <p>3. Learned counsel for the applicant submits that P.W.6 and P.W.7 have since been examined and duly cross-examined on behalf of the applicant, and that the trial is still at the stage of recording prosecution evidence. Learned counsel submits that the right to cross-examine prosecution</p>



witnesses is a valuable and substantive right, forming an integral part of fair trial, and denial thereof has caused serious prejudice to the defence of the applicant. It is further submitted that applicant is still in judicial custody and when applicant got the information that his counsel is not appearing for cross-examination of the aforesaid witnesses, he immediately changed his counsel and moved an application under Section 311 Cr.P.C. However, the learned trial Court, without properly appreciating the circumstances and the settled principles of law, rejected the said application vide order dated 16.09.2025.

4. Per contra, learned State Counsel opposed the application but could not dispute that the cross-examination of material prosecution witnesses had not been conducted on behalf of the applicant.

5. Having considered the submissions and perused the record, this Court finds that the right of an accused to cross-examine prosecution witnesses is not a mere procedural formality but a fundamental facet of the principles of natural justice and fair trial. Hon'ble Supreme Court in *Zahira Habibullah H. Sheikh and another Vs. State of Gujarat & others*, reported in (2004) 4 SCC 158, has emphasized that denial of fair opportunity to cross-examine witnesses would amount to denial of fair trial.

6. Similarly, in the case of *Natasha Singh Vs. Central Bureau of Investigation*, reported in (2013) 5 SCC 741, it has been held that recall of witnesses should be permitted if it is essential for a just decision of the case and if no serious prejudice is caused to the other side.

7. In the present case, it is evident that the applicant is still in judicial custody and during the recording of statements of the material prosecution witnesses, he could not effectively instruct his counsel. The absence



of cross-examination of these witnesses goes to the root of the matter and has the potential to cause serious prejudice to the defence. No irreparable prejudice would be caused to the prosecution if the witnesses are recalled, whereas refusal to permit cross-examination would result in miscarriage of justice.

8. Accordingly, in the interest of justice and to ensure a fair opportunity to the applicant, the present criminal miscellaneous application deserves to be allowed.

9. Accordingly, the criminal misc. application is allowed and the impugned order dated 16.09.2025 passed by the learned trial Court is hereby set aside. The application filed by the applicant under Section 311 Cr.P.C. stands allowed. The learned trial Court is directed to recall P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 for the purpose of cross-examination. It is further directed that on the date fixed for their appearance, the applicant shall not seek any adjournment and the cross-examination of the said witnesses shall be concluded expeditiously.

(Alok Mahra, J.)

30.04.2026

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