



2026:UHC:3281

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.665 of 2026 <u>Hon'ble Alok Mahra, J.</u></p> <p>Mr. Pankaj Kumar, Advocate for the applicant.</p> <p>Mrs. Manisha Rana Singh, Deputy Advocate General for the State of Uttarakhand.</p> <p>2. Respondent no.2 lodged the 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 18.09.2024 and remained in judicial custody thereafter. It is submitted that although statements of prosecution witnesses, namely P.W.1, P.W.2, P.W.3 and P.W.4, were recorded on 29.03.2025, 22.04.2025, 14.05.2025 and 02.06.2025 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.</p> <p>3. Learned counsel for the applicant submits that the right to cross-examine prosecution 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, immediately upon being granted bail by the Coordinate Bench on 20.05.2025, the applicant, on coming to know that material prosecution witnesses had remained untested in cross-</p>



examination, moved an application under Section 348 of the B.N.S.S. seeking recall of P.W.1 to P.W.4 for cross-examination. However, the learned trial Court, without properly appreciating the circumstances and the settled principles of law, rejected the said application vide order dated 17.07.2025.

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 was in judicial custody during the recording of statements of the material prosecution witnesses and, therefore, 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 17.07.2025 passed by the learned trial Court is hereby set aside. The application filed by the applicant under Section 348 of B.N.S.S. stands allowed. The learned trial Court is directed to recall P.W.1, P.W.2, P.W.3 and P.W.4 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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