



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Writ Petition No. 1531/2026

Bhupendra Singh Alias Tammu Singh S/o Mahendra Singh, Aged About 1 Years, Through Legal Guardian Prem Kanwar W/o Bhupendra Singh Aged About 40, resident Of Barada, District Chittorgarh,raj..

-----Petitioner

Versus

State Of Rajasthan, Through The Public Prosecutor.

-----Respondent

For Petitioner(s) : Mr. Robin Singh
Mr. Vishal Sharma
For Respondent(s) : Mr. Surendra Bishnoi, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

09/04/2026

1. The present Writ Petition has been instituted assailing the order dated 10.02.2026 passed by the learned Addl. Sessions Judge No.3, Chittorgarh in Sessions Case No.165/2023, whereby the application preferred on behalf of the accused-petitioner for recalling a material prosecution witness came to be declined.
2. I have heard learned counsel for the parties and gone through the niceties of the matter.
3. At the outset, it would be apposite to delineate, in succinct yet structured form, the factual matrix giving rise to the present lis are that the petitioner is facing trial for an offence of murder, a charge of the gravest magnitude, presently pending adjudication before the learned Additional Sessions Judge No.3, Chittorgarh.



During the course of trial, prosecution witness PW-9 namely Rajesh Lal, who is stated to be an eyewitness to the alleged occurrence, was examined on 23.04.2024. It is not in dispute that an opportunity to cross-examine the said witness was formally extended to the defence. However, owing to the absence of the engaged counsel on that particular date, the petitioner being unversed in the nuances of law and the delicate art of cross-examination was constrained to confront the witness himself, resulting in a perfunctory and ineffective cross-examination.

3.1. This Court cannot remain oblivious to the foundational tenet that a criminal trial, particularly one involving an accusation punishable with death or life imprisonment, is not a mere procedural ritual but a solemn judicial inquiry wherein the liberty and, indeed, the life of an individual stands imperilled. The right of an accused to effectively cross-examine a material witness is not an ornamental formality but constitutes the very marrow of a fair trial, deeply embedded within the guarantees of natural justice and due process.

3.2. The record reveals that although an opportunity was ostensibly granted, the same, in substance, stood vitiated by circumstances beyond the control of the accused. The absence of counsel on the relevant date cannot be viewed in isolation or with pedantic rigidity, particularly when the consequence of such absence results in the deprivation of a meaningful defence. A lay accused cannot be expected to unravel inconsistencies, test veracity, or impeach the credibility of a crucial eyewitness with the same dexterity as a trained legal practitioner. To construe such a constrained exercise as a valid and complete cross-examination





would be to elevate form over substance and to reduce the concept of fair trial to a hollow incantation.

3.3. It is trite that in cases of such gravity, where the trial may culminate in the imposition of capital punishment, the Courts are enjoined to adopt a liberal and justice-oriented approach, ensuring that no prejudice, howsoever inadvertent, is caused to the accused. Denial of an effective opportunity to cross-examine a prime witness, particularly an eyewitness, would amount to a palpable infraction of the right to fair trial and would strike at the very root of the adjudicatory process. The criminal justice system cannot countenance a situation where an accused is condemned to face the severest penalty without being afforded a full, fair, and efficacious opportunity to defend himself.

3.4. Undoubtedly, recalling a witness entails certain inconvenience, and the Court must remain conscious of the attendant hardship caused to such witness. However, the scales of justice must invariably tilt in favour of ensuring a fair trial rather than preserving procedural rigidity. The inconvenience to the witness can be suitably mitigated by awarding appropriate costs, but the irreversible prejudice to the accused, if denied an opportunity of effective cross-examination, cannot be countenanced.

3.5. It is also noteworthy that the witness in question was not subjected to repeated summons, nor has there been any dilatory tactic on the part of the accused seeking to protract the trial. The request for recall appears to be bona fide and rooted in the legitimate necessity of ensuring an effective defence.





3.6. In view of the foregoing analysis and upon a holistic consideration of the facts and circumstances of the case, this Court is of the considered opinion that the impugned order suffers from an overly technical approach, thereby occasioning failure of justice.

4. Accordingly, the petition deserves to be and is hereby allowed. The order dated 10.02.2026 passed by the learned Additional Sessions Judge No.3, Chittorgarh in Sessions Case No.165/2023 is hereby quashed and set aside. Consequently, the application preferred on behalf of the accused-petitioner under Section 348 of the BNSS is allowed. The learned trial Court is directed to issue process for securing the presence of PW-9 Rajesh Lal for the limited purpose of his cross-examination on behalf of the accused.

4.1. It is further directed that on the date so fixed by the trial Court, upon appearance of the said witness, the cross-examination shall be conducted on the very same day and shall not be deferred on any pretext whatsoever. No adjournment shall be granted to the accused, and the opportunity shall stand exhausted on that very day.

4.2. The learned trial Court shall also ensure that the cross-examination remains confined to relevant and material aspects of the case. Scandalous, vexatious, irrelevant, or unnecessarily prolix questioning shall not be permitted.

4.3. As a measure to balance equities and to compensate for the inconvenience caused, the petitioner shall deposit a sum of Rs. 5,000/-, which shall be tendered to PW-9 Rajesh Lal through the Court on his appearance, prior to commencement of cross-





examination.

4.4. With the aforesaid directions, the present petition as well as stay petition and all pending applications, if any, shall stand disposed of.

(FARJAND ALI),J

203-Mamta/-

