

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

**Crl R 10/2024**

**Mohammad Sultan Najar**

...Appellant(s)/Petitioner(s)

Through: Mr. Ruaani Ahmad Baba, Advocate

**Vs.**

**Union Territory through Police Station  
Parimpora**

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with  
Ms. Nadiya, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**29.04.2024**

1. The instant revision petition order dated 28th February, 2024 (for short the impugned order) is under challenge passed by the FastTrack Court for POCSO Cases Srinagar (for short trial court) in a case titled "*U/T through Police Station Parimpora Vs. Mohammad Sultan Najar*".
2. Facts giving rise to the filing of the instant petition reveal that the accused petitioner herein is facing trial in case titled as "*U/T through Police Station Parimpora Vs. Mohammad Sultan Najar*" for commission of offences under Section 363, 376 of IPC read with sections 3/5(1) of the POCSO Act 2012, before the trial court, wherein the prosecution led its evidence in support of the case set up by it against the accused petitioner herein, whereafter an application came to be filed by the accused petitioner herein on 22nd February, 2024 seeking leave of the court to enter upon defense in terms of Section 233 of the Code of Criminal Procedure, in that, the accused was not

acquitted by the trial court in terms of Section 232 of the Code of Criminal Procedure. The said application, however, came to be rejected by the trial court in terms of order dated 28th February, 2024 holding that the application does not mention purpose for which the witnesses are required to be summoned by the Court, however, permitted the counsel for the accused petitioner herein to produce all defense witnesses he wishes to produce on his own.

**Heard learned counsel for the parties and perused on record.**

3. Learned counsel for the petitioner while making his submissions would contend that the trial court passed the impugned order in breach and violation of Section 233 of Cr.P.C and in the process denied an opportunity of the fair trial to the accused petitioner, whereas on the contrary counsel for the respondents would submit that the impugned order has been passed rightly and legally by the trial court.
4. Before proceeding to deal with the rival submissions of the appearing counsel for the parties, a reference to Section 233 Cr.P.C becomes necessary hereunder:

Section 233

*“(1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defense and adduce any evidence he may have in support thereof.*

*(2) If the accused puts in any written statement, the Judge shall file it with the record.*

*(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”*

The ambit and scope of Section 233 has been dealt with by the Apex Court in a series of judgments including in case titled as “*Satbir Singh & Anr. Vs State of Haryana & Ors*” reported in AIR 2021 SC 2627 as also in case titled as “*Natasha Singh Vs. CBI (State)*” reported in 2013 (5) SCC 741, wherein it has been held that once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232 Cr.P.C, it must move on and fix hearing specifically for the defense evidence calling upon the accused to present his defense as per the procedure provided under Section 233 Cr.P.C, which is an in valuable right provided to the accused and that existence of such procedural right cohesively sits with rebuttable presumption as provided under Section 113-B of the Evidence Act. It has been further held by the Apex Court in the judgment supra that fair trial is the main object of criminal procedure and that it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner and that fair trail entails the interest of the accused, victim and of the society and, therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional as well as a human right and thus under no circumstances, can a person’s right to fair trial be jeopardized and that **adducing evidence in support of the defense is valuable right and denial of such right would amount to the denial of a fair trial and thus it is essential that the rules of procedure that have been designed to ensure justice must be scrupulously followed, and that the court must be zealous in ensuring that there is no breach of the same.**

5. Having regard to the aforesaid principles laid down by the Apex Court in the judgments supra and reverting back to the case in hand, the perusal of the application filed by the accused/petitioner herein, whereunder impugned order has been passed by the trial court manifestly tends to show that the accused has spelt out the details of the witnesses he intended to enter upon by way of defense against the case set up by the prosecution and had in that regard sought assistance of the Court for summoning of the said witnesses. The trial court, however, seemingly has not considered the said application of the accused-petitioner is correct perspective inasmuch as has overlooked the provisions of law referred in the preceding paras.
6. The impugned order in view of above, thus is found to be legally not sustainable. Accordingly, petition is allowed and impugned order is set aside, as a consequence whereof the application filed by the accused petitioner herein is allowed with a direction to the trial court to proceed further in the matter in accordance with law.

**7. Disposed of.**

**(JAVED IQBAL WANI)  
JUDGE**

**SRINAGAR**

**29.04.2024**

*ARIF*

*Whether the order is reportable?*

*Yes/No*

*Whether the order is speaking?*

*Yes/No*