

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CRM(M) No. 352/2025

Reserved on: 14.05.2025
Pronounced on: 19.05.2025

Ravinder Kumar and others

....Petitioner(s)

Through :- Mr. Sakal Bhushan, Advocate
Mr. Rahul Sharma, Advocate

V/s

UT of J&K

....Respondent(s)

Through: Mr. R. K. Kotwal, Special PP.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioners have invoked inherent jurisdiction of this Court, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS") read with Article 227 of the Constitution of India, for setting aside order dated 15.04.2025, passed by learned Principal Sessions Judge, Jammu, ["the trial court"] in case 'UT of J&K v. Parshotam Singh and others' under Sections 120B, 447, 427, 302, 307, 506, 147 and 201 IPC, in terms whereof, their plea for deferring cross examination of six eye-witnesses, came to be declined.

2. The case set out by the petitioners is that out of PWs 1, 2, 3, 5, 7 and 8, the six eye-witnesses cited in the challan, PW2-Balbir Singh is father of deceased Avtar Singh, PW1-Jagir Singh is cousin of Balbir Singh, PW5-Tajinder Singh is son of Jagir Singh, PW7-Kamal Kour is wife of Balbir Singh and PW8-Surinder Singh is brother-in-law of Balbir Singh and they,

being closely related, are eye witnesses to the same set of facts, alleged in the challan. Examination-in-chief of first prosecution witness, PW1-Jagir Singh was concluded on 07.04.2025 and on the day following i.e. on 08.04.2025, they filed application, under Section 254(3) BNSS for deferment of cross examination of the aforesaid witnesses i.e. PWs 1, 2, 3, 5, 7 and 8 until they are examined in chief.

3. It is contention of the petitioners that when a number of witnesses are to be examined by the prosecution to prove the same set of facts, the Court, on prayer made by the defence, is obliged to defer cross examination of said witnesses until all of them are examined because their cross examination may disclose the defence strategy and other prosecution witnesses get an opportunity to fill the lacunae in the prosecution case against the accused. This course, according to the petitioners, is required to be adopted by the Court to rule out the possibility of subsequent prosecution witnesses, giving evidence on similar facts, to tailor their testimony to circumvent the defence strategy, which shall be prejudicial to the accused and hamper the prospect of a fair trial. According to the petitioners, the deferment of cross examination of the aforesaid witnesses, would not cause any prejudice to the prosecution.

4. The plea was opposed by the prosecution, on the other side, primarily, on the ground that application filed by the petitioners was premature and law does not permit wholesale deferring of cross examination of prosecution witnesses, yet to be examined in chief. It was alleged by the prosecution that petitioners accused were highly influential persons and there was possibility of undue influence and intimidation to the prosecution witnesses, if their cross examination was deferred.

5. Learned trial Court relied upon **State of Kerala v Rasheed; (2019) 13 SCC 297** and **Pardip Kundlikrao Kute v. State of Maharashtra; 2002 SCC Bom. 2294** to dismiss the application primarily on two counts: *(i) that the application was filed by the petitioners after the examination in chief of PW-1 Jagir Singh was completed, whereas it was required to be filed at the outset when calendar for examination of witnesses was drawn; and (ii) that apprehension of defence that witnesses will get a chance to improve upon their testimonies, does not hold good because Court cannot assume and presume a hypothetical situation in advance.*

6. Petitioners have questioned the impugned order, on the predominant premise that learned trial court has fallen in error of law and failed to appreciate the controversy in its correct perspective. It is contention of the petitioners that since examination-in-chief of the only prosecution witness, PW1-Jagir Singh, recorded so far, was concluded on 07.04.2025 and they immediately preferred the aforesaid application on the next day i.e. 08.04.2025, before the commencement of cross examination of witnesses, as such, there was no delay in presentation of the application for deferring cross of the eye witnesses.

7. According to the petitioners, an application under Section 254(3) BNSS, for deferring cross examination of any witness, by its very nature, is preventive and founded on possibilities and apprehensions only and, therefore, such application seeking deferral of cross examination of witness on the ground that subsequent witnesses, on same set of facts, may tailor their testimonies to circumvent the defence strategy disclosed during cross examination, can be decided on possibilities only and, if two views are

possible as to whether defence of the accused is likely to be revealed to his prejudice, he is entitled to the benefit of cross examination to be deferred. It is urged that it is the petitioners accused, who will be prejudiced by non deferral of cross examination of eye witnesses, cited by the prosecution on the same set of facts and no prejudice will be caused to the prosecution, if the above course is not adopted.

8. While, Mr. Sakal Bhushan, learned counsel, appearing for the petitioners has relied upon **State of Kerala v. Rasheed (supra), Mohitosh Biswas and ors. V. State of West Bengal; [CRR No.2298 of 2024 and Nannebabu Ramdev Gupta v. State of Maharastra; [Criminal Application No. 394 of 2023]** to reiterate the grounds urged in the memo of petition, Mr. R. K. Kotwal, learned Special PP appearing for the respondent, has relied upon **Rasheed (supra)** and **Md. Sanjoy and another v. State of West Bengal; 2000 CRI.L.J. 608** to reiterate and emphasize the grounds, on the basis of which, application preferred by petitioners came to be dismissed by the trial Court. Mr. Kotwal is of the view that Section 254(3) BNSS, does not confer a right on the accused to seek wholesale deferral of witnesses on the ground that his defence would become known to the prosecution.

9. Having heard learned counsels for the parties, I am of the considered view that impugned order is legally flawed and premised on wrong appreciation of law.

10. At the outset, the proximity of PWs 1, 2, 3, 5, 7 and 8, cited as eye witness in the challan, on the same set of facts, is not in dispute. It is also not in dispute that examination in chief of PW1-Jagir Singh was concluded on 07.04.2025 and on the very next day i.e. on 08.04.2025, the petitioners

preferred the aforesaid application in terms of Section 254(3) BNSS for deferring cross examination of said witnesses.

11. Section 254 BNSS, corresponding to Section 231 of Central Cr.P.C., for the facility of reference, reads as under:

“Section 254.

Evidence for prosecution.- (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that evidence of a witness under this sub section may be recorded by audio-video electronic means.

(2) The deposition of evidence of any public servant may be taken through audio-video electronic means.

(3) The Judge may, in his discretion, permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further consideration.”

12. Ideally, a witness is first examined in chief, followed by his cross examination, if desired by the adverse party and then re-examination, if so desired by the party calling him, as per the statutory framework and norms of Sections 135 and 138 of Evidence Act 1872, providing the sequence of production and examination of witnesses. Going by the plain language of Section 254 BNSS, which deals with Evidence for prosecution, it is evident that on the day fixed by the Judge for the prosecution evidence, he is obliged to proceed to take all such evidence, as may be produced in support of the prosecution. Learned trial Court has rightly underlined the essence of continuity of evidence under Section 346 BNSS, which provides that in every enquiry or trial, the proceedings have to proceed on day-to-day basis until all the witnesses in attendance are examined, unless the Court finds adjournment of the case beyond the following day to be necessary, for the reasons to be recorded. Sub Section 3 of Section 254 BNSS is an exception to the said general rule and sequence of evidence, in terms whereof, the Court is vested

with the jurisdiction to permit cross examination of a witness to be deferred, until any other witness or witnesses are examined or recalling the witness for further cross examination.

13. At the foremost, I concur with the opinion of Mr. Kotwal, learned Special PP that it is a discretion vested in the Court to permit cross examination of a witness to be deferred until any other witness or witnesses, are examined or recall any witness for further cross examination and parties seeking deferral, under Section 254(3) BNSS, must provide sufficient reasons to invoke discretion of the Court and deferral cannot be asserted as a matter of right. However, it is trite that judicial discretion has to be exercised judicially and in consonance with its statutory framework, having regard to foreseeable consequences.

14. The Apex Court in **Rasheed**, had an occasion to analyse the import and legislative intent of Section 231(2) Cr.P.C., corresponding to Section 254(3) BNNS, and it was clearly ruled that there cannot be a straightjacket formula providing for the grounds for exercise of judicial discretion and it depends upon case to case. Pertinently, it was observed that the guiding principle, in such cases, for a Court is to ascertain whether dismissal of application for deferral of cross examination would result in prejudice to the parties seeking deferral and delineated the following factors for consideration:

- i. possibility of undue influence on witness(es);
- ii. possibility of threats to witness(es);
- iii. **possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;**
- iv. possibility of loss of memory of the witness(es) whose examination-in-chief has been completed; and
- v. Occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) Cr.P.C.

(Emphasis supplied)

15. Having regard to the aforesaid factors, Supreme Court expounded following guidelines, to be followed by the courts in the conduct of a criminal trial:

- “24. The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, **as far as possible**:
- 24.1. A detailed case calendar must be prepared at the commencement of the trial after framing of charges;
- 24.2. The case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;
- 24.3. The case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;
- 24.4. Testimony of witnesses deposing on the same subject matter must be proximately scheduled;
- 24.5. The request for deferral under Section 231(2) of the Cr.P.C. must be **preferably** made before the preparation of the case calendar;
- 24.6. The grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross - examination of each witness, or set of witnesses;
- 24.7. While granting a request for deferral of cross examination of any witness, the trial courts must specify a proximate date for the cross examination of that witness, after the examination in chief of such witness(es) as has been prayed for;
- 24.8. The case -calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary; and
- 24.9. In cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation.”

(Highlighted to emphasize)

16. Learned trial Court considered the application preferred by the petitioners in the light of aforesaid guidelines, in particular, guideline 24.5 and rejected the application, on the ground that since the application was

preferred by the petitioners after the examination in chief of PW1-Jagir Singh was completed and not, at the very outset, when the calendar for examination of witnesses was drawn, so the application did not meet the first requirement.

17. It needs a specific mention that guidelines provided by Hon'ble Supreme Court in **Rasheed** commenced with the expression “**as far as possible**” and guideline 24.5 provides that request for deferral must “**preferably**” be made before the preparation of the case calendar. If paragraph 24 of **Rasheed** is carefully glanced over and guideline 24.5 is read in conjunction with the opening expression “**as far as possible**”, I find legal force in the argument of Mr. Sakal, learned counsel for the petitioners that it does not lay down in absolute terms that an application for deferring cross examination of a witness should necessarily be filed before the preparation of the case calendar. Learned trial Court, by overlooking the aforesaid expressions, has misdirected itself, to conclude that the application for deferment of prosecution witnesses must be preferred by the accused, at the outset, when calendar for examination of witnesses was drawn. The logical requirement is that such an application for deferring cross examination of a witness or witnesses, on the same set of facts, must be made before the commencement of the cross examination of a particular witness. In other words an application for deferment of cross examination of a witness or set of witnesses must be filed, as early as possible, but, in any case, before the commencement of cross examination of a witness, otherwise once the defence strategy is exposed, the object of deferral of cross examination pales into insignificance. The petitioners, in the present case, preferred the application for deferral of cross-examination of eye witnesses, to the same set of facts, at

the earliest available opportunity and before the defence strategy would become known to the prosecution.

18. Mr. Kotwal, learned Special PP for the respondent has argued that trial Court, in terms of sub section 3 of Section 254 BNSS, is vested with the discretion to defer cross examination of a witness only and wholesale deferment of six prosecution witnesses is not permitted in law. He has relied upon **Md. Sanjoy** (supra) to support his contention.

19. Guideline 24.6 of **Rasheed** is a complete answer to the issue raised by learned Special PP, which provides that deferral of cross examination of a witness or **set of witnesses**, shall be justified, provided it is premised on sufficient reasons. The expression “each witness or set of witnesses” in guideline 24.6 is sufficient to indicate that Court, under Sub Section 3 of Section 254 BNSS is vested with the jurisdiction to permit the deferment of cross examination, not only of a witness but a set of witnesses and it depends upon case to case justifying the deferral of cross examination. Therefore, observation of learned trial Court that *en masse* or wholesale deferment of six eye witnesses, is not permissible in law, is also not sustainable.

20. Learned trial Court is of the view that Court cannot assume and presume a hypothetical situation in advance that witness will get a chance to improve upon their testimonies. Be it noted, that one of the factors, to be kept in mind by the Courts to justify the deferral of cross examination of a witness or set of witnesses, underscored by the Apex Court in **Rasheed**, is “**possibility** that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy.” It is evident from the expression “**possibility**” in para 23(iii) of

judgment that such an application for deferral of cross examination of a witness or witnesses, on same set of facts, can be premised on a presumption or apprehension.

21. Case of the petitioner is that PWs 1, 2, 3, 5 7, and 8, are not only related but cited as eye witnesses by the prosecution, to the same set of facts alleged in the challan. In the circumstances, the apprehension of the petitioners accused that their non-deferral can enable subsequent witnesses, testifying on similar facts to circumvent the defence strategy, is well founded and the possibility of the prosecution to tailor their testimony to the prejudice of the petitioners, cannot be ruled out.

22. In a similar fact situation, Bombay High Court, followed **Rasheed**, in **Nannebabu Ramdev Gupta** (supra) to observe that if the defence is made open, during cross examination of the complainant, then there is possibility that lacunae would be filled in by the prosecution through other witnesses who are close relatives of the complainant. It was held that these circumstances justified the exercise of discretion of deferring cross examination of related witnesses and there will be no prejudice to the prosecution. Relevant excerpt of the judgment reads as:

“11..... it cannot be said that the apprehension expressed by the applicant is unfounded. If his defence is made open while cross-examining PW 1/complainant, then the lacunae would be filled in by the prosecution through the other three witnesses who are her father, mother and a close relative, interested in the version of the complainant.

12 The circumstances narrated, therefore, would justify the exercise of discretion in sub-section (2) of Section 231, which is a tool available to the defence to defer the cross-examination of the prosecution witnesses until other witnesses are examined, as it would lead to making the defence open, while the first witness of the prosecution itself is examined and the contingency which would specifically fall within one of the consideration as laid down by Apex Court in State of Kerala Vs. Rasheed (supra), for exercising the discretion under sub-section (2) of Section 231.

In any case, no prejudice would be caused to the prosecution if the cross-examination of PW 1 (complainant) is deferred till the examination-in-chief of the above mentioned three witnesses is concluded, so as to avoid the prosecution filling up the lacunae in its case, as may be disclosed by PW 1 or the subsequent witnesses related to her.”

23. High Court of Calcutta also relied upon **Rasheed** in **Mohitosh Biswas** (supra), and held that if two views are available that whether defence of the accused will be disclosed to his prejudice, he would be given the benefit and cross examination should be deferred. Relevant observation reads as below:

“In the event two views are available as to whether defence of the accused is disclosed to the prejudice of the accused should be given the benefit and cross examination should be deferred.....”

24. True it is, that prosecution witnesses are expected to testify in their chief examination on the lines of their statements recorded, during investigation, under Sections 161 or 164 Cr.P.C., and any improvement or deviation by them from said statements, may render their depositions unworthy of credence. However, it is the apprehension of improvisation by the prosecution witnesses in their cross examinations to circumvent the defence strategy which is to be taken into consideration by the Court at the time cross examination of a witness or set of witnesses is sought to be deferred and if that apprehension is well founded, it can hamper the prospects of a fair trial, a basic postulate of criminal jurisprudence. The circumstances narrated by the petitioners, in the present case, justified the exercise of discretion by the Court, in terms of sub section 3 of Section 254 BNSS.

25. If the principle of law expounded by Hon’ble Supreme Court in **Rasheed**, is carefully glanced over, it is manifest that, as far as possible, a plea for deferral under Section 254(3) BNSS, must preferably be made before the preparation of the case calendar or at the earliest available opportunity,

before the defence strategy would become known to the prosecution. A request for deferral must be premised on sufficient reasons and prejudice is the determining factor, to be borne in mind.

26. For the aforesaid reasons, the present petition is allowed and impugned order is set aside. As a consequence, the application filed by the petitioners for deferring cross examination of PWs 1, 2, 3, 5, 7 and 8 is allowed and their cross examination shall remain deferred until all of them are examined in chief.

(RAJESH SEKHRI)
JUDGE

Jammu:
19.05.2025
Paramjeet

<i>Whether the order is speaking?</i>	Yes
<i>Whether the order is reportable?</i>	Yes

