

CRM-M-57310 of 2024 (O&M)

2025:PHHC:028390



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

CRM-M-57310 of 2024 (O&M)

Date of decision: 27.02.2025

Mukesh

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Balraj Gujjar, Advocate,  
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. B.S. Tewatia, Advocate,  
for the complainant.

**NAMIT KUMAR, J.**

1. Instant second petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case arising from FIR No.139 dated 29.03.2022 registered under Sections 498-A/406/506/304-B/307/34 IPC at Police Station Gadpuri, District Palwal.

2. Briefly, the prosecution case is that on 28.03.2022 information was received at Police Post from Police Control Room, Palwal that Kusum wife of Mukesh (present petitioner), resident of village Janoli is admitted in Government Hospital, Palwal, on account of burn injuries. On receiving information, police party went to the

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hospital and received the *rukka*. The injured had been referred to Safdarjung Hospital, Delhi. On 29.03.2022, complainant Durga met the Incharge Police Post Baghola and moved his complaint. He submitted that his younger daughter Kusum was married to petitioner-Mukesh for the last 8 years. The petitioner used to harass her from the time of marriage and demanded money. He was addicted to alcohol. The complainant also tried to counsel the accused several times, but to no effect. On 28.03.2022, petitioner demanded money from Kusum for purchasing liquor. When she did not give the same, the petitioner took out petrol from his motorcycle and set on fire Kusum. Apart from petitioner, his father Shyam and brother Krishna are also involved in the offence. Earlier also, they had threatened to kill Kusum. On the basis of aforesaid complaint, present FIR was registered.

3. Learned counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated in the present case on account of unnatural death of his wife after eight years of marriage. He further contended that there were no allegations of any demand of dowry soon before the death of wife of the petitioner. He further contended that complainant i.e. father of the deceased and mother of the deceased, while appearing as PW1 and PW3, respectively have not supported the case of the prosecution and have been declared hostile. He further contended that the alleged incident took place on 28.03.2022 and wife of the petitioner died on 24.04.2022 in hospital. Learned counsel while relying upon the FSL report contended that

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hydrocarbons of petroleum were not detected on exhibits sent for examination, therefore, prosecution has failed to prove its case that petitioner poured petrol on the deceased and later set her on fire. He further contended that the petitioner is in custody since 23.04.2022; the trial is going at snail's pace, therefore, it will take a considerable time to conclude; no purpose would be served by keeping the petitioner behind bars during trial, therefore, he may be granted the concession of regular bail. In support of his contentions, learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra and another, 2024(3) RCR(Criminal) 494.***

4. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, opposed the prayer for grant of regular bail to the petitioner. She contended that there are serious allegations against the petitioner of pouring petrol on her wife and setting her on fire and the said incident was witnessed by his minor daughter and she has supported the prosecution version. Therefore, in this heinous crime of pouring petrol on her wife and setting her on fire, petitioner is not entitled for grant of regular bail.

5. I have heard learned counsel for the parties and perused the record.

6. The allegation against the petitioner is that he poured petrol on his wife and set her on fire as a result of which she died in hospital on 24.04.2022. On 02.04.2022, deceased-Kusum suffered a



statement before the police to the effect that petitioner poured petrol and set her on fire. The said statement reads as under: -

*“Statement of Kusum wife of Mukesh, resident of Janoli, P.S. Gadpuri, District Palwal, aged 27 years, education-12<sup>th</sup> pass.*

*I stated that I am a resident of the above-mentioned address, and on 28.03.2022 at about 05.30 p.m. I was at home with my daughter namely Divyanshi. My husband Mukesh came from somewhere outside and started demanding money from me to buy alcohol. Despite my repeated refusals, he did not listen. I kept telling him that I did not have any money. My husband Mukesh then physically assaulted both me and my daughter. He took petrol from a motorcycle standing there, poured it on me, and set me on fire. I tried my best to save myself and extinguish the fire, but I was unable to do so. At that time, only my husband, my daughter, and I were present at home – there was no one else. It was my husband who deliberately set me on fire. He frequently beats me and repeatedly tells me to bring money from my parental home. I have given my statement, which has been recorded, read, and found to be accurate.”*

7. Furthermore, the said incident was witnessed by minor daughter of the deceased and the trial Court after recording its satisfaction that she was competent to depose in Court, recorded her statement, wherein she has corroborated the statement of deceased. Satisfaction of the trial Court with regard to recording the statement of minor reads as under: -

“Court finding: -

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*I have satisfied myself after raising various questions to the witness. I have, after interrogating the witness recorded my finding that she is competent to answer in a simple way and to depose in a simple way in the Court with very simple and uncomplicated questions. I also satisfied myself that she is not under pressure of anyone and competent to depose in the Court without any hesitation. I have also not visualized any kind of consternation upon her countenance. I am satisfied that the witness is capable of understanding questions and is also capable of giving rational answers. She is competent witness. Let her deposition is recorded.*

*(Dr. Tayyab Hussain)  
ASJ, Palwal. 22.11.2024  
UID No.HR-0239”*

Statement of daughter of the petitioner reads as under: -

*“Stated that my mother had been died as she was burnt to death by my father by pouring petrol in my presence. My father took out the petrol in glass from the motor cycle. My father was drunker and he used to drink habitually. Police came and took my father along with them. My mother was admitted in a hospital. My mother was severely burnt. I have seen my father present in the Court today and I identify him.*

*XXX by Sh. K.K. Gupta, Advocate for accused.*

*Police inquired from me after the occurrence. I do not remember whether police recorded the facts narrated by me. Since, the death of my mother, I am residing with my maternal uncle. It is correct that the relations between my maternal uncle and my father were not cordial prior to the occurrence and even thereafter. I had stated before the police that my mother had been died as she was burnt*

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*to death by my father by pouring petrol in my presence. My father took out petrol in glass from the motor cycle. Police came and took my father along with them.*

*(Confronted with Ex.D1, wherein it is not so recorded). It is incorrect to suggest that no such occurrence ever took place in my presence, or that I am deposing in the Court as per the teaching and influence of my maternal uncle with whom I have come in the Court, or that I am deposing falsely under the influence of my maternal uncle.”*

8. The Hon’ble Supreme Court in ***The State of Madhya Pradesh v. Balveer Singh, 2025 INSC 261: Law Finder Doc Id # 2698082*** has discussed as to how the testimony of a child witness should be looked into and appreciated. The Hon’ble Supreme Court has held as under: -

**“i. Evidence of Child Witness and Test for parsing Tutored Testimony.**

*25. The High Court, while setting aside the conviction, found the testimony of the child witness, Rani (PW6), to be unreliable and tutored. Before we proceed to undertake the analysis of PW6, Rani's oral evidence it is essential to understand how the testimony of a child witness should be looked into and appreciated.*

*26. The Indian Evidence Act, 1872 (in short, the "Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any*

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*other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.*

*27. In **Dattu Ramrao Sakhare v. State of Maharashtra reported in (1997) 5 SCC 341** this Court held that as long as a child witness is found to be competent to depose i.e., capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence in terms of Section 118 of the Evidence Act, irrespective of their tender age or absence of any oath. The only additional factor to be considered is that the witness must be found to be reliable, exhibiting the demeanour of any other competent witness, with no likelihood of having been tutored. It further clarified that there is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered, and rather the insistence of any corroboration is only a rule of prudence that would depend upon the peculiar facts and circumstances of each case. The relevant observation reads as under: -*

*"5. [...] A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness*

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must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record."

*(Emphasis supplied)*

28. Similarly in **Pradeep v. State of Haryana reported in 2023 SCC OnLine SC 777** this Court emphasized on the importance of preliminary examination of a child witness. It held that although oath cannot be administered to a child witness under 12-years of age yet, as per Section 118 of the Evidence Act it is the duty of a Trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the Trial Court. The relevant observations read as under: -

"8. Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as

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*required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.*

*9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.*

*10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him*

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and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

*(Emphasis supplied)*

29. In ***Ratansinh Dalsukhbhai Nayak v. State of Gujarat reported in (2004) 1 SCC 64***, this Court explained that although child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded yet it is an accepted norm that if after careful scrutiny their testimony is found to inspire confidence and truthful, then there is no obstacle in accepting the evidence of such child witness. The relevant observation reads as under: -

"7. [...] The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is

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*preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of makebelieve. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."*

**30. In *Panchhi v. State of U.P. reported in (1998) 7 SCC 177*, this Court held that the evidence of a child witness should not be outrightly rejected but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and an easy prey to tutoring. The relevant observations read as under: -**

*"11. Shri R.K. Jain, learned Senior Counsel, contended that it is very risky to place reliance on the evidence of PW 1, he being a child witness. According to the learned counsel, the evidence of a child witness is generally unworthy of credence. But we do not subscribe to the view that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is*

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*susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.*

*12. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law."*

*31. This Court in **Suryanarayana v. State of Karnataka reported in (2001) 9 SCC 129** held that the evidence of a child witness who has withstood the test of cross-examination should not be rejected per se if his testimony is found to be free from any infirmity. It reiterated that corroboration to the testimony of a child witness is not a rule but a measure of caution and prudence. The Court further held that while assessing the evidence of a child witness, courts must rule out the possibility of tutoring. However, in the absence of any allegation of tutoring or an attempt to use the child witness for ulterior purposes by the prosecution, the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. The relevant observation reads as under: -*

*"5. [...] The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of*

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cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not."

(Emphasis supplied)

xx                      xx                      xx                      xx

34. This **Court in State of M.P. v. Ramesh reported in (2011) 4 SCC 786** summarized the principles pertaining to the appreciation of evidence of a child witness as under: -

(i) First, it held that that a child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of a child witness must reveal that he was able to discern between right and wrong, and the court may ascertain his

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*suitability as a witness through either cross-examination or by putting questions to the child in terms of Section 165 of the Evidence Act or by determining the same from the evidence or testimony of the child itself. The relevant observation reads as under: -*

*"11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide **Himmat Sukhadeo Wahurwagh v. State of Maharashtra (2009) 6 SCC 712.**)"*

*(Emphasis supplied)*

*(ii) Secondly, if the evidence of the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The relevant observation reads as under: -*

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*"12. In **State of U.P. v. Krishna Master (2010) 12 SCC 324** this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature."*

*(Emphasis supplied)*

*(iii) Thirdly, even if the courts find that the child witness had been tutored, even then the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. In such cases, the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the*

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*case of a hostile witness. The relevant observation reads as under: -*

*"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide **Gagan Kanojia v. State of Punjab (2006) 13 SCC 516.**)"*

*(Emphasis supplied)*

*(iv) Lastly, it held that an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition. If the deposition of a child witness inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully and look for corroboration. The relevant observation reads as under: -*

*"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is*

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evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

*(Emphasis supplied)*

35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.

36. In **Ratansinh Dalsukhbhai Nayak** (*supra*) this Court observed that merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is

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*found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. It added that a child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness. The relevant observation reads as under: -*

*"8. The learned trial Judge has elaborately analysed the evidence of the eyewitness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond the shadow of a doubt. Further, the trial court on careful examination was satisfied about the child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW 11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not*

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otherwise what she actually saw. The learned counsel for the accused-appellant has taken pains to point out certain discrepancies which are of very minor and trifle nature and in no way affect the credibility of the prosecution version."

*(Emphasis supplied)*

37. Similarly in **State of M.P. v. Ramesh reported in (2011) 4 SCC 786** it was held that even if the statement of a child witness is found to be tutored it can be relied upon, if the same is found to be believable or inspire confidence after separating the tutored part from the untutored portion. The relevant observation reads as under: -

*"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness."*

9. Although, complainant i.e. father of the deceased and her mother have turned hostile, however, there is statement of the deceased before the police to the effect that petitioner had poured petrol on her and set her on fire. The statement of the deceased has been corroborated by her daughter, who is an eyewitness to the incident. From the perusal of record it transpires that wife of the petitioner has died unnatural death due to burn injuries received by her at the hands of petitioner. Keeping in view the seriousness of allegations and gravity of offence, petitioner does not deserve the concession of regular bail.

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10. The facts and circumstances of *Javed Gulam Nabi Shaikh's* case (supra) relied upon by learned counsel for the petitioner, are not applicable to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

11. In view of the above, the present petition is dismissed.

12. However, nothing stated hereinabove shall be construed as a final expression of opinion on the merits of the case.

13. Pending application(s), if any, stand(s) disposed of.

27.02.2025  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No