

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.946 of 2025

Arising Out of PS. Case No.-265 Year-2021 Thana- VIJAYEPUR District- Gopalganj

=====
Jitendra Paswan S/o- Ram Dhani Paswan Village- Chhitauna Ps- Vijaipur
Dist- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nagendra Pandey S/o- Late Shubhnarayan Pandey Village- Koreya Ps-
Vijaipur Dist- Gopalganj.

... .. Respondent/s

=====
Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Amarjeet Kumar Singh, Adv.
For the Respondent/s	:	Md. Shakir Ahmad, A.P.P. Mr. Satyendra Rai, Adv. for O.P. No.-2

=====
CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 21-11-2025

The instant revision application is directed against the order dated 07.08.2025 passed by learned Additional Sessions Judge-XII, Gopalganj in Sessions Trial No. 116 of 2024, arising out of Vijaipur P.S. Case No. 265 of 2021, whereby and whereunder the petition filed by the defense/accused petitioner under Section 233 of the Code of Criminal Procedure (hereinafter ‘the Code’) has been rejected.

02. Facts of the case as it emerges from the record are that the opposite party no. 2 gave a written complaint to the police on 03.12.2021 alleging therein, that on 02.12.2021 at 04:30 P.M. he received information about petitioner Jitendra Paswan along with his men, forcibly ploughing his parental land. The informant along with his men who were present with him at that time, reached the spot and found the petitioner and



other 18 co-accused persons making an unlawful assembly forcibly ploughing the land and they were variously armed. When the informant queried from the petitioner why they had been ploughing his land, at the instigation of the petitioner, the co-accused persons assaulted the persons accompanying the informant and a number of persons were stabbed. The nephew of the informant died on the spot and a number of persons received serious injuries. On the basis of the aforesaid written report, Vijaipur P.S. Case No. 265 of 2021 dated 03.12.2021 was registered for the offences under Sections 147, 148, 149, 341, 323, 324, 326, 307, 302 of the Indian Penal Code. It transpires five sessions trials proceeded out of Vijaipur P.S. Case No. 265 of 2021. Sessions Trial No. 307 of 2022 and Sessions Trial No. 415 of 2022 concluded resulting in conviction of the accused persons. Three Sessions Trial No. 293 of 2023, Sessions Trial No. 585 of 2023 and Sessions Trial No. 116 of 2024 have been pending and the petitioner is accused in Sessions Trial No. 116 of 2024 which is pending at the stage of defense evidence. when the Sessions Trial No. 116 of 2024 reached the stage of defense evidence, the petitioner filed an application dated 04.08.2025 under Section 233 of the Cr.P.C. for calling two convicts namely Prem Kharwar and Raj Kumar Kharwar of Sessions Trial No.



307 of 2022 as defense witnesses. The learned trial court after hearing both the sides rejected the application dated 04.08.2025. This order is under challenge before this Court.

03. Mr. Ramakant Sharma, learned senior counsel appearing on behalf of the petitioner vehemently contended that the order passed by learned trial court is not sustainable in the eyes of law and on facts. The learned trial court passed the order in a mechanical manner and the order is cryptic in nature. From bare perusal of the impugned order it is apparent that the application of the petitioner has been rejected merely on the ground that the same did not disclose how the convicts were acquainted with the facts of the case but this finding is erroneous as the learned trial court did not consider the fact that the person sought to be called as witnesses were present during the occurrence and they were convicted in separate sessions trial. They are the eye witnesses, and for the aforesaid reason, are competent witnesses to be examined on behalf of defense. Learned senior counsel further submitted that Section 233 (3) of the Code provides that if the accused applies for the issuance 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. But in the present case, no such finding has been recorded to refuse the issuance of process. If the petitioner is not allowed to put up his defense, right to fair trial would be defeated. The learned senior counsel further submitted that right to fair trial and access to justice is a fundamental right under Article 21 of the Constitution of India and denial of opportunity to present his witness would amount to violation of the fundamental right of the petitioner. Learned senior counsel further referred to the case of *Maneka Gandhi Vs. Union of India*, reported in AIR 1978 SC 597, to stress that procedure established by law must be fair, just and reasonable and it flows from Article 21 of the Constitution of India. Learned senior counsel further submitted that the learned trial court has not considered the another aspect of the matter that Section 311 of the Code gives it power to summon material witness or examine any person as a witness if his evidence appears it to be essential to the just decision of the case. Learned senior counsel thus submitted that these facets of law have not been taken into consideration while passing the impugned order and hence the same order is erroneous and could not be sustained. Learned



senior counsel further submitted that the aforementioned convicts have also filed an application under Section 315 read with Section 311 of the Cr.P.C. on 18.09.2025 expressing their willingness to be examined as witnesses in Sessions Trial No. 116 of 2024 and the said application is still pending.

04. Mr. Satyendra Rai, learned counsel appearing on behalf of the opposite party no. 2, vehemently contended that there is no infirmity in the impugned order and the application dated 04.08.2025 has been filed on behalf of the petitioner only to delay the trial before the learned Sessions Court. The learned counsel submitted that Section 233 does not provide for calling a person who was a co-accused and subsequently a convict in separate trial to be examined as witness on behalf of the defense. Learned counsel further submitted that the accused persons of Vijaipur P.S. Case No. 265 of 2021, in a ploy to defeat the cause of justice, allowed different sessions trial to run and when some of the co-accused persons got convicted, now the petitioner wants them to be examined as defense witnesses so as to get a favourable order since the co-accused persons have already been convicted. These persons are highly interested witnesses and being co-accused, notwithstanding the separation of trial, they should be treated as accused of same



trial and cannot be allowed to appear as witness under Section 233(3) of the Code. Similarly, filing of an application under Section 315 read with Section 311 of the Code by the convicts could not have any bearing on the merits of the present case. The petitioner has been continuously filing these applications so as to delay the trial and save himself from certain conviction. Moreover, there is no illegality or infirmity in the impugned order and the petitioner has failed to bring out any material to assail the impugned order and hence the impugned order does not need any interference by this Court.

05. I have given my thoughtful consideration to the rival submission of the parties.

06. The impugned order has been passed on an petition filed under Section 233 of the Code. It is a very brief petition and is extracted for reference:

.....“ The humble petition on behalf of defense to call two convicts confined in Motihari and Gopalganj jail for the purpose of evidence under section 233 Cr.P.C. is as followed:

That two convicts namely Prem Kharwar and Rajkumar Kharwar have been lodged in Motihari and Gopalganj jail respectively in connection with session trial 307/2022 in which they have been convicted and sentence for life imprisonment and their evidence is essential for just decision of the case.

It is therefore, prayed that they may kindly be called for adducing evidence on behalf of defense.

And for this the petitioner shall ever



pray.”.....

From bare perusal of the petition it is apparent that except for mentioning that the evidence of these two persons is necessary for just decision of the case, no reasons or grounds have been mentioned. Now taking note of this fact, the learned trial court rejected the application holding that it did not disclose how the convicts were acquainted with the facts of the case. On this point, the order appears not to be suffering from any infirmity as it has taken note of the factual situation. Apart from that there are other factors which need consideration in the matter as certain legal issues are involved in the present revision petition.

07. The impugned order has been passed on an application filed under Section 233 of the Code and the provision reads as under :-

“233. Entering upon defence.

(1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence 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 provision makes it clear that when the accused is called upon to enter his defense and applies for issuance of any process for attendance of any witness, process could be issued by the Court unless for the reasons to be recorded, the Court refuses the prayer on the ground that it is made for purpose of vexation or delay or for defeating the ends of justice. Now, this provision has been made so that the accused could put up a proper defense. But the facts of the case are peculiar. Admittedly, there were altogether nineteen accused persons in Vijaipur P.S. Case No. 265 of 2021. Thereafter five sessions trial arose out of this case and in two sessions trial, the co-accused persons were convicted. Now, the petitioner wants these convicts to depose in his case as defense witnesses. In their own trial these persons/convicts did not offer themselves to be put on dock as witnesses. If the petitioner now wants them to be examined as defense witnesses in his case, their position would not be different from a person who has been facing trial with the petitioner. Section 233 has not been enacted for examination of such persons in defence. If such persons are allowed to appear



as defense witnesses under Sections 233 of the Code/Section 256 of BNSS, after their conviction in separate trial, the same would defeat the ends of justice. However, a convict in a case arising out of same police station case number may offer himself as a witness in separate trial of a co-accused arising out of the same police station case number under Section 315 of the Code/Section 353 of BNSS. Furthermore, it transpires that the convicts have already filed an application under Section 315 read with Section 311 of the Code before the learned trial court and the same is pending consideration.

08. In the light of aforesaid discussion, I am of the considered opinion that the application dated 04.08.2025 filed by the petitioner is completely devoid of any merit and has been rightly rejected by the learned trial court. Though the reason given by the learned trial court does not appear to be attractive at first blush, still, considering the position of law, the ultimate result would be the same. Therefore, I have no hesitation in holding that there is no illegality, infirmity or irregularity in the impugned order and hence the same is affirmed. At the same time, learned trial court is directed to take up the application filed under Section 315 r/w Section 311 of the Code for consideration and dispose it of at the earliest, strictly in



accordance with law.

09. Accordingly, the present revision petition stands
dismissed.

(Arun Kumar Jha, J)

Anuradha/-
Ashish/-

AFR/NAFR	AFR
CAV DATE	10.11.2025
Uploading Date	21.11.2025
Transmission Date	21.11.2025

