

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**CRIMINAL REVISION No. 1096 of 2026**

***PRATEEK @ RAHUL KUSHWAHA***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Krishna Deo Singh - Advocate for the petitioner.*

*Smt. Vineeta Sharma - Government Advocate for the State.*

*Ms. Apoorva Singh Rajpoot and Ms. Sakshi Bhardwaj - Advocates for the complainant.*

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**Reserved on            ::        25.03.2026**

**Pronounced on        ::        31.03.2026**

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**ORDER**

This criminal revision has been preferred by the petitioner/accused challenging the order dated 02.03.2026 passed by Special Judge SC/ST, Jabalpur, in case no.SC ATR/263/2025 whereby petitioner's application for deferring cross-examination of the witnesses (comes under Section 231(2) of the Criminal Procedure Code, 1973/ Section 254(3) of BNSS, 2023), has been dismissed.

2. Learned counsel for the petitioner submits that upon complaint made on 29.07.2025, a FIR at Crime No.301/2025 was registered at Police Station Kotwali, District Jabalpur, against the petitioner under Section 64(1), 103, 331(8), 115(2), 351(3) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Sections 3(1)(r), 3(1)(w)(i), 3(2)(v), 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 1989. The allegations made in the FIR pertain to alleged incident involving prosecutrix and subsequent death of her grandmother Smt. Hirabai Choudhary.

3. Learned counsel for the petitioner submits that case of the prosecution primarily is based upon statements of witnesses 1 to 4, who belong to same family and are residing in the same house situated at Damoh Naka, Jabalpur. The principal witnesses cited by the prosecution are prosecutrix herself, her younger sister, her mother and Bua. He submits that looking at the prosecution case, chief-examination of the said witnesses should be recorded at once/same day and before starting cross-examination by the defence. He submits that on the date of starting chief examination of prosecutrix, the petitioner moved an application on 02.03.2026 making specific prayer for recording chief examination of said four witnesses at once and deferment of their cross-examination till completion of chief examination and if cross-examination is not deferred, the defence of the petitioner may be disclosed prematurely, which may enable the prosecution to fill up lacunae in its case, but the Court below has committed an illegality in dismissing the application by the impugned order. Placing reliance on the decisions in the case of *State of Kerala vs. Rasheed*, (2019) 13 SCC 297; Order dated 10.03.2022 passed in CRR No.812/2022 in the case of **Vishal Jat vs. The State of Madhya Pradesh**; Order dated 07.01.2025 in CRR No.1088/2023 in the case of **Pankaj Uday vs. State of Madhya Pradesh**; and Order dated 15.12.2025 in Misc. Criminal Case no.56527/2025 in the case of **Bharat Baghel vs. The State of Madhya Pradesh and others**, learned counsel for the petitioner submits that the prayer made by the petitioner for deferring cross-examination ought to have been allowed. With these submissions, he prays for allowing the criminal revision.

4. In turn, learned counsel appearing for the respondents support the impugned order and submit that on the facts and in the circumstances of the case and further looking to the averments made in the application and stage of prayer made on behalf of the petitioner, Trial Court has not committed any illegality in dismissing the application. In support of their submissions, they placed reliance on the decisions in the case of *Vijay Kumar vs. State (Govt. of NCT of Delhi)*, 2017 Cr.L.J. 3875; *Bela Bhattacharya vs. The State of West Bengal and another*,

**(2005) 1 C.Cr.L.R. (Cal) 694**; and Rakesh and another vs. State of U.P. through Prin. Secy. Home Deptt. Lko And Another in Application U/S 482 No. 362 of 2025 dated 17.01.2025 and pray for dismissal of the criminal revision.

5. Heard learned counsel for the parties and perused the record.

6. Record made available/produced by the parties shows that trial programme/case-calendar was prepared on 26.12.2025 and firstly the case was listed for evidence of the prosecution on 16.02.2026, on which date, the prosecutrix was also present. Since no counsel had appeared on behalf of accused, therefore, the case was adjourned for 02.03.2026, on which date, chief examination of main prosecution witness i.e. the prosecutrix was recorded. As per submissions made by learned counsel for the petitioner, the application for deferral was filed on 02.03.2026 that too before commencement of chief examination, but the same does not appear to be correct from the record, because the trial Court has put a note in middle part of the statement of prosecutrix that the application was submitted after completion of chief examination.

7. The Hon'ble Supreme Court has in the case of State of Kerala vs. Rasheed **(2019) 13 SCC 297**, held as under:-

“20. The circumstances in which the High Courts have approved the exercise of discretion to defer cross-examination, so as to avoid prejudice due to disclosure of strategy are:

(i) where witnesses were related to each other, and were supposed to depose on the same subject-matter and facts ;

(ii) where witnesses were supposed to depose about the same set of facts.

However, the circumstances in which deferral has been refused are:

(i) where the ground for deferral was the mere existence of a relationship between the witnesses ;

**(ii) where specific reasons were not given in support of the claim that prejudice would be caused since the defence strategy would be disclosed ;**

(iii) where no prejudice would have been caused.

21. The Delhi High Court, in *Vijay Kumar v. State* (NCT of Delhi), laid down useful directions for the conduct of criminal trials. The directions are commendable, and relevant excerpts are reproduced hereinbelow: (SCC OnLine Del para 42)

“42. ... (vi) Since the expectation of law is that the trial, once it commences, would continue from day to day till it is concluded, it is desirable that, keeping in mind the possible time required for recording of evidence (particularly of the prosecution), a detailed schedule of the dates of hearing on which evidence would be recorded is drawn up immediately after charge is framed — this, taking into account not only the calendar of the court but also the time required by the prosecution to muster and secure the presence of its witnesses as well as the convenience of the defence counsel. Once such a schedule has been drawn up, all sides would be duty-bound to adhere to it scrupulously.

(vii) While drawing up the schedule of dates for recording of the evidence for the prosecution, as indicated above, the presiding Judge would take advice from the prosecution as to the order in which it would like to examine its witnesses, clubbing witnesses pertaining to the same facts or events together, for the same set of dates.

(viii) If the defence intends to invoke the jurisdiction of the criminal court to exercise the discretion for deferment of cross-examination of particular witness(es) in terms of Section 231(2), or Section 242(3) CrPC, **it must inform the presiding Judge at the stage of setting the schedule so that the order in which the witnesses are to be called can be appropriately determined, facilitating short deferment for cross-examination** (when necessary) so that the recording of evidence continues, from day to day, unhindered avoiding prolonged adjournments as are often seen to be misused to unduly influence or intimidate the witnesses.

(ix) It is the bounden duty of the presiding Judge of the criminal court to take appropriate measures, if the situation so demands, to insulate the witnesses from undue influence or intimidatory tactics or harassment. If the court has permitted deferment in terms of Section 231(2), or 242(3) CrPC, for cross-examination of a particular witness, it would not mean that such cross-examination is to be indefinitely postponed or scheduled for too distant a date. The court shall ensure that the deferred cross-examination is carried out in the then ongoing schedule immediately after the witness whose examination ahead of such exercise has been prayed for.”

22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. **The guiding principle for a**

**Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.**

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in 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;
- (v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC.

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) CrPC.

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) CrPC 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.

**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.

**25.** In the present case, a bald assertion was made by the counsel for the respondent-Accused 2 that the defence of the respondent-Accused 2 would be prejudiced if the cross-examination of CWs 1 to 5 is not deferred until after the examination-in-chief of CWs 2 to 5.

**26.** The impugned order is liable to be set aside since the High Court has given no reasons for reversal of the order of the Additional Sessions Judge, particularly in light of the possibility of undue influence and intimidation of witness(es) since the respondent-Accused 2 and Accused 7 are “highly influential political leaders”.

**27.** In view of the aforesaid discussion, the present criminal appeal is allowed, and the impugned order dated 9-1-2018 passed by the High Court of Kerala in Rasheed v. State of Kerala [Rasheed v. State of Kerala, 2018 SCC OnLine Ker 3899] is set aside. The order dated 20-12-2017 passed by the Additional Sessions Judge dismissing the application filed on behalf of the respondent-Accused 2 stands restored. The observations made hereinabove will, however, have no bearing on the merits of the case during the course of trial. Ordered accordingly.”

**8.** From the aforesaid guidelines (especially paragraph 24.5 of it), issued by Hon'ble Supreme Court in the case of State of Kerala (**supra**), it is clear that prayer for invoking the jurisdiction of the criminal court to exercise the discretion for deferment of cross-examination of particular witness(es) in terms of Section 231(2) of Cr.P.C. should be made preferably before the preparation of the trial programme/case-calendar.

**9.** Although nothing has been produced on record of this Court about the date of preparation of the case-calendar, but from the order sheet dated 16.02.2026, on which date prosecutrix had appeared before the Trial Court for her examination as well as from the application dated 02.03.2026 filed by the petitioner under Section 231(2) of the Cr.P.C. and the statement of prosecutrix

(PW-1), it is clear that the petitioner did not file any application in that regard prior to 02.03.2026 and it was filed after completion of chief examination of prosecutrix.

10. In the case of Vinod Kumar vs State of Punjab, (2015) 3 SCC 220 Hon'ble Supreme Court has held as under:-

“57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, “Awake! Arise!”. **There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.**”

11. Again in the case of Surender Singh vs State (NCT) of Delhi, AIR 2024 SC 3220, the Hon'ble Supreme Court has reiterated the aforesaid guidelines and held as under:

“18. The defence did not cross-examine this witness immediately after her examination-in-chief, but sought that the cross-examination be deferred, which was done and she was cross-examined only on 30-11-2004, which is more than two months after her examination-in-chief. We may just stop here for a while only to sound a note of caution. Such long adjournment as was given in this case after examination-in-chief, should never have been given. Reasons for this are many, but to our mind the main reason would be that this may affect the fairness of the trial and may even endanger, in a given case, the safety of the witness. As far as possible, the defence should be asked to cross-examine the witness the same day or the following day. **Only in very exceptional cases, and for reasons to be recorded, the cross-examination should be deferred and a short adjournment can be given after taking precautions and care, for the witness, if it is required. We are constrained to make this observation as we have noticed in case after case that cross-examinations are being adjourned routinely which can seriously prejudice a fair trial.**

20. As we have said cross-examination can be deferred in **exceptional cases and for reasons to be recorded by the court**, such as under sub-section (2) of Section 231CrPC [“231. 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. (2) 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 cross-examination.”(emphasis supplied)] but even here the adjournment is not to be given as a matter of right and ultimately it is the discretion of the court. In *State of Kerala v. Rasheed* [*State of Kerala v. Rasheed*, (2019) 13 SCC 297: (2019) 4 SCC (Cri) 552], this Court has set certain guidelines under which such an adjournment can be given. The emphasis again is on the fact that **a request for deferral must be premised on sufficient reasons, justifying the deferral of cross-examination of the witness.**”

12. In the light of aforesaid law laid down by Hon'ble Supreme Court in the cases of *Surender Singh vs State (NCT) of Delhi*, **AIR 2024 SC 3220**; *State of Kerala vs. Rasheed* **(2019) 13 SCC 297**; and *Vinod Kumar vs State of Punjab*, **(2015) 3 SCC 220**, the settled position of law emerges that jurisdiction of the criminal court to exercise the discretion under Section 231(2) of Cr.P.C./Section 254(3) of BNSS, 2023 can be invoked in the circumstances as under :

- (i) before the preparation of the case-calendar;
- (ii) when deferral is premised on sufficient reasons justifying the deferral of cross-examination of each witness;
- (iii) where specific reasons are given in support of the claim that prejudice would be caused since the defence strategy would be disclosed;
- (iv) only in very exceptional cases, and for reasons to be recorded, but not in routine manner; and
- (v) however, it is within the discretion of the criminal court.

13. As has been mentioned above, in the instant case deferment of cross-examination till completion of chief examination of said four witnesses, is sought on the premise that if cross-examination of the four witnesses is not deferred, the defence of the petitioner may be disclosed prematurely, which may enable the prosecution to fill up lacunae in its case, however, apparently no reason has been assigned in the application justifying the prayer of deferment.

**14.** In view of the aforesaid discussion, the decisions/orders in the case of Vishal Jat (**supra**); Pankaj Uday (**supra**); and Bharat Baghel (**supra**) relied upon by learned counsel for the petitioner are distinguishable on facts and do not provide any help to the instant case.

**15.** Resultantly, in absence of any infirmity, illegality or perversity, interference in the impugned order, within the revisional jurisdiction, is declined and instant criminal revision being devoid of merit, fails and is hereby **dismissed**.

**16.** Pending application(s), if any, shall stand disposed of.

**(DWARKA DHISH BANSAL)**  
**JUDGE**