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### **SC to decide on whether accused has right to recall witness**

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#### **The bench was hearing two separate petitions filed by the Uber cab rape case victim and the city police.**

The Supreme Court on Wednesday said that it will lay down a law as to whether an accused has got the right to get witnesses recalled for their re-examination in a criminal case.

“We are going to lay down the law that whether witnesses can be recalled at the behest of an accused,” a bench headed by Justice J S Khehar said.

The bench was hearing two separate petitions filed by the Uber cab rape case victim and the city police against the Delhi High Court order allowing the accused taxi driver to recall 13 prosecution witnesses, including the victim in the trial.

The bench, meanwhile, also summoned the trial court record of the case before it for next date of hearing on April 22.

It also asked the counsel for accused Shiv Kumar Yadav to furnish the documents, which are written in vernacular language, to the office of the Attorney General for their translation in English.

“You (counsel for accused) are the beneficiary of the (High Court) order and you are delaying the proceedings. It’s a matter having far reaching consequences. Since proceedings have already been stalled, we will not delay it further,” the bench said when Yadav’s lawyer sought six weeks’ time for filing his reply to the petitions filed by the victim and Delhi Police.

The bench has asked Attorney General Mukul Rohatgi and senior advocate Colin Gonsalves, counsel for the victim, to provide the list of judgements, their written submissions and said the translated copy of the records be submitted by the accused within ten days.

Earlier, on two different dates, the apex court had issued notice to the accused on the petitions of the 25-year-old victim and Delhi Police, respectively.

On March 20, the city police had filed the plea against recall of witnesses claiming that the High Court’s order to recall the victim as witness in the case would cause further harassment to her.

On the victim's plea on March 10, the apex court had stayed the high court order as well as trial court proceedings and restrained media from reporting statements of witnesses which have been recorded after the high court's order.

The victim, in her appeal, had said that the high court order amounted to re-trial of the case.

On March 4, the Delhi High Court had allowed recall of 13 prosecution witnesses, including the victim in the case, on the plea of Yadav and said their cross examination will be carried out on a day-to-day basis.

The High Court had partly allowed the plea of the accused cab driver while making it clear "not to repeat any question which has already been put to the witnesses in their cross examination by the earlier counsel".

Apart from the victim, the court had also allowed recall of investigating officers as well as some doctors who had examined the victim and the accused.

The victim was partly re-examined in the trial court in an in-camera proceeding by the counsel for Yadav.

As per the police charge sheet, the incident took place on the night of December 5 last year when the victim, who was working for a finance firm in Gurgaon, was headed back home.

She had taken the taxi from Vasant Vihar in south-west Delhi to go to her house in Inderlok and the accused, after taking another route, had raped her, police said.

Earlier, the trial court had rejected Yadav's plea for recalling the witnesses saying there was no change in circumstances except for a change of counsel, which was no ground to allow the application.

The trial in the case had commenced on January 15 and the prosecution had concluded recording its evidence in 17 days by examining 28 witnesses. The accused had not examined any witness in his defence.

The court on January 13 had framed charges against Yadav under various sections of the IPC for alleged offences of endangering a woman's life while raping her, kidnapping with an intent to compel her for marriage, criminally intimidating and causing hurt.

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