

District & Additional Sessions Judge 2nd, Jamui.

S.Tr. 55/2021

CIS No. 55/2021

04.12.2025

Police Station – Laxmipur 114 of 2020

Under Section- 302/120(B)/34 I.P.C & 27 Arms Act

Pawan Kumar Mandal & Ors. V. State

ORDER

The record is today fixed for order on petition dated 26.03.2025 filed on behalf of prosecution, the rejoinder to which has been filed on 08.08.2025

The ld. Addl. P.P. for the State has submitted that in the instant case, prosecution evidence has been closed followed by closure of defence evidence and the record is fixed for statement u/s 313 Cr.P.C. It is further submitted that in the said case motorcycle of accused Pawan Mandal bearing no. BR-46-9050 was used in the murder of Munna Mandal and the same has been recovered by the police and kept at Giddhor P.S. It's S.D No. 412/20 dated 15.04.2020. In that case accused persons Umesh Kumar and Siyaram Yadav were arrested and during search arms and cartridge was recovered by which murder of Munna Mandal in this case was committed. Both accused had confessed to the murder. The FIR was registered as Barhat PS case no. 49/2020 regarding the seizure of arms. In addition there is available on record seizure list, mobile CDR which are necessary to be exhibited in the interest of justice. The ld. Prosecutor in such view prayed to allow the petition filed u/s 311 of the Cr.P.C. and to issue summons to the I.O of Barhat PS case no. 49/2020 to produce the seized firearm and the motorcycle before this Court.

Sh. S.K. Mandal, the ld. Counsel for the accused vide rejoinder dated 08.08.2025 has submitted that the petition filed by the prosecution is not maintainable either on facts or in law. The defence has filed the petition with a view to linger the case. The ld. Prosecutor has prayed to issue summons to witnesses for exhibiting the seized materials are not related with this case. As per ld. Counsel u/s 311 of the Cr.P.C such witnesses can be issued summons for further cross-examination whose chief examination have already been completed before the court. It is further submitted that the ld. Prosecutor has prayed to summons the witness for exhibiting seized motorcycle and the firearm in Barhat P.S, whose seizure list is not

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available on record in this case. It is therefore, not justified to issue summons for exhibiting such materials. In such view the ld. counsel prayed to reject the petition dated 26.03.2025.

Heard both the parties.

Section 311 of the Cr.P.C. reads as, "Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case". From the letter and the spirit of this provision, it is clear that the power under this section is very wide and calls for no limitation. The Honourable Supreme Court in the case of **Zahira Habibula Sheikh Versus the State of Gujrat** has held that the provision under section 311 Cr.P.C. can be invoked by any Court at any stage, provided it is for the just decision of the case. In **Mohan Lal Versus Union of India 1991 (Supp(1) SCC 271)** the Court has observed while considering the scope and ambit of section 311, that the very usage of the words such as, "any Court" "at any stage" or "any inquiry or trial or other proceeding" "any person" and "any such person" clearly spells out that the section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of Justice require and exercise judicially with circumspection and consistently with the provisions of the Code. Object of this section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. Disposal of a case does not mean disposal for a statistical purpose but effective and real disposal to achieve the object of any trial.

The Hon'ble Patna High Court while deciding **Criminal Miscellaneous No. 331 of 2008 in Kamleshwari Yadav V. the State of Bihar & Anr. on 23rd June 2010** has made it amply clear that the Court has got sufficient

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power to even call for the document which is material evidence and essential for just decision of the case. In **Rajendra Prasad V. Narcotic Cell, Delhi AIR 1999**, the Hon'ble Apex Court has explicitly held that the lacuna in the prosecution case must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties.

In the case of **Zahira Habibula Sheikh V. State of Gujrat** as also in the case of **Iddar V. Aabida**, the Honourable Supreme Court has held that section 311 of the Cr.P.C. is not limited only for the benefit of the accused and exercise of power by the Court under this section shall not be improper merely on the ground that the evidence support the case of the prosecution and not that of the accused. The power under this section is very wide and calls for no limitation. However the Honourable Apex Court has cautioned that wider the power the greater is the necessity for application of the judicial mind.

In view of the facts and circumstances of this case I find the seized motorcycle and the firearm said to be used in committing the murder of Munna Mandal are very relevant material which requires to be brought in evidence for the just decision of the case. This Court in exercise of its power conferred under Section 311 of the Cr.P.C. allows the petition dated 26.03.2025 filed by prosecution, for just decision of the case. The learned prosecutor is directed to get the relevant seized materials exhibited as per provisions under the law.

The record to be fixed for prosecution evidence on **17.12.2025**

D.A.S.J II
Jamui
04.12.2025