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Today is for production of the Sk Mohammad Ali and order.

Sk Ali Mohammad is produced fro J.C and taken into custody and remanded to J.C till 04.04.2024

The record is taken for passing order.

Learned defence Counsel for submitted that the accused should not be produced before the court at the time of the trial of the case. Ld Counsel further pointed out that at the time of the TIP accused had stated before the Ld Magistrate that he has been shown to the victim by I.O during the police custody. Section 54-A of CrPC which provides for mandatory recording of videographed the entire TIP in case of mentally or physically disabled. The said TIP has not been recorded in Video graphed. The accused if be produced to this court can easily be identified by the victim and all the other witnesses of this case. Ld Counsel has further submitted that mere identification accused or identification of accused can be the sole ground of conviction. No videographed has been done at the time of TIP and the time of test identification parade by the Ld Judicial Magistrate. Accused be highly prejudiced if every produce the time of recording of the evidence of the witnesses and pray for necessary order. Ld Counsel has also relied the decision reported in the article published in the title test identification parade purpose and effect within evidentiary value under the law.

Learned counsel for the prosecution strongly objected the petition filed by the accused and submitted that test identification parade is a corroborative piece of evidence. Accused has already pleaded not guilty at the time of framing charge and did not raise any question. The victim of the case is deaf and dumb. The petition of the accused is with sole intention to delay the trial of the case. He referred a decision reported as **Harikrishna Singh versus State of Bihar** and pray for rejection of the petition. Hard both sides at length and considered

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On careful perusal of the materials on record and the petition filed by Ld Advocate for accused dated 9th March 2024, it transpires that that accused is in the custody with allegation of committing rape of victim who is deaf and dumb while taking bath in the village.

This court has already framed the charge against the accused on 20th December 2023 and fixed the case for recording of evidence of the witnesses on 9th January 2024 but the evidence of the witness/complaint could not be recorded due to non-availability of the witness. After that the accused has filed the petition for supply of the copy of the statement under section 164 CrPC and copy of the test identification parade. This court has supplied the above copies to the accused and fix the date of recording of evidence of CSW 1 complainant. The evidence of the CSW1 could not be recorded again as Ld Counsel filed a petition for not producing the accused at the recording of evidence of the witnesses on the ground that the accused can easily identified in this case who will standing alone in the dock then such identification will prejudice for the accused. Ld Counsel further contended that the accused had submitted before the Magistrate at the time of holding test identification parade at correctional home and stated that he was shown by IO to the victim girl while he was in the police custody. He referred the decision of the Supreme Court in Dana kumar, where the Apex court observed that the TIP in the course of investigation got no value in law until unless that accused was identified by the witness in the courtroom. Section 9 of the Indian Evidence Act also speaks that the identification of the accused in the courtroom is fact in issue and if it is proved through identification it is admissible in eye of law. He referred the decision of The Supreme Court reported in Suresh Kumar and others versus State of Haryana the same observation has been made in the case Rajesh and another versus State of Hararyana

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that regarding identification the TIP parade of the accused by the witness is nothing but give a aids to the investigation to ascertain the right direction of the investigation and if the witness and find that use the courtroom than it is nothing but a corroboration and the same is admissible in evidence. Therefore it is crystal clear that identification of the accused has important role and relevant if it is identified on dock. So the identification on dock is very much important can be the basis of conviction.

The contentions of the Ld defence counsel has not based on the principles of of criminal trial where it is mandatory for the accused to hear the oral testimony of the victim and other witnesses at the time of recording of evidence of the prosecution case. The the contentions of the Ld defence counsel has not been any basis under which provision the court should exempt the accused from his production at the time of recording of evidence in the case of any in case of offence related rape. The decision relied by the defence counsel are relating to the admissibility of evidence of TIP unless it has testified by the other side through the cross-examination of the witnesses. The relevancy and admissibility of the Test Identification Parade will be adjudicated at the appropriate stage of trial. This Court did not agree with the submission of the Ld defence counsel that identification in the accused in the courtroom be the sole ground of conviction of the without taking the other evidence. There is nothing in the petition how the court will proceed further at the examination of the accused under 313 CR.P.C. which is mandatory provision in criminal trial. The defence has not agitated any point at the time of framing of charge.

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However, this court is of view that the instant petition has only with sole intention to delay the trial. The petition of the accused is misconceived and no merit.

In view of the aforesaid discussion, the court is inclined to reject the petition dated 09.03.2024 filed by the accused.

Prosecution has to take necessary step upon witness /CSW1. Inform all concern.

Fix 05.04.2024 for production of the accused and evidence.

Additional District and Sessions Judge
Fast track Court Dubrajpur Birbhum

Sri Binay Kumar Nonia
Additional District and Sessions Judge
Fast track Court Dubrajpur Birbhum