

S.T 30(05)2023
S.C 207/2022
CNR no.WBHG01-004745-2022

Order no.44 dated 06.02.2025

Instant case record is placed before me for passing necessary order in pursuance of two separate petition filed by the accused side on 05.02.2025.

Heard learned Advocate present for the accused persons and the learned Special P.P. Considered the rival submissions.

Learned Advocate present for the accused persons submitted that C.S.W-4 Sanjoy Halder @ Bispai being alleged eyewitness of the alleged incident should be adduced in this case as the next witness. Reason being according to the prosecution he is the eyewitness of the self same incident. Therefore, evidence of P.W-11/Totan Biswas be deferred until completion of examination-in-chief of CSW-4 else the prosecution will certainly try to fill up the lacuna if any, from PW-11 on dock as also the defence might get disclosed. In the event, the petition is refused, the accused side will get highly prejudiced.

Learned Special P.P, Hooghly in his turn contrarily argued that such petition should not be allowed because it is for the prosecution to decide whom it will call next to dock and whom not. However, if CSW-4 is pressed into service as the next witness, if at all, it will not cause any prejudice to the accused side owing to the fact that all the police papers including the statement of CSW-4 u/s 161 Cr.P.C is long before supplied u/s 207 Cr.P.C. to the defence. The petition on hand is therefore not maintainable and so, to be rejected exfacie.

Now, another petition seeking physical production of the accused persons is moved.

The learned Advocate for the accused persons commonly prayed for physical production of the accused persons now suffering judicial custody in District Correctional Homes Purulia, Birbhum and Purba Burdwan, on the next very date to complete the other forthcoming evidences including the cross-examination of P.W-11/Totan Biswas. They urged on for seeking such order for consulting their accused clients in the open court else their clients may get prejudiced. The provision laid down u/s 273 Cr.P.C. is adverted to.

The learned Special P.P contrarily argued that it is not mandatory to record evidence in presence of the accused persons. My attention is drawn to the case decision of State of Maharashtra Vs. Dr. Praful B. Desai, AIR 2003 SC 2053. It is further contended that the DCP (HQ), Chandannagar PC filed a prayer before this learned court to record the evidence of Totan Biswas in the presence of the accused persons through V.C mode because any untoward incident might occur in the court premises. The life and limb of the two rival groups including the learned Advocates and other litigants could be at risk. This learned court has been pleased to complete the examination in chief of P.W-11/Totan Biswas on dock with the attendance of the accused persons in V.C mode. To supplement, he also argued that the victim party and the accused party are rival groups of the area. The physical presence of P.W-11/Totan Biswas on the next date and CSW-4, if any will be very risky in all respect. So, the petition filed by the accused side should be rejected outright.

Let me first consider and decide about the petition for deferring the cross-examination of P.W-11 as prayed for. It is well settled principles of law that the discretion lies with the prosecution which witness they will tender on dock and which not, to prove its case. Upon understanding the legislative intent behind sections 231 & 311 of the Cr.P.C. and at the same time sections 114 & 134 of the Evidence Act, the prosecution need not examine all the witnesses listed or cited in the chargesheet. In course of hearing I am told by the Special P.P that after evidence of P.W-11 is over, he will examine only the I.O of the case. If that be so, question of deferring P.W-11 does not arise. This has been agitated from the accused side that the prosecution is compelled to furnish the list of witnesses to be examined. There is no compelling law in the Code of Cr.P.C or in the present BNSS to compel the prosecution to furnish any such list. Doing so, is as if, the prosecution has relinquished its right to call for any witnesses from the chargesheet or any other witnesses on recall u/s 311 Cr.P.C. whose names are not in the chargesheet.

Therefore, I conclude with the observation that the prosecution is free to examine CSW-4/Sanjoy Halder @ Bispai or not. Unless that situation arises, deferral of cross-examination of P.W-11 can come into play subject to decision thereupon by this Court.

The aforesaid petition in this context is disposed of accordingly.

Now, let me take up the petition for physical production of the accused persons who are lying in different District Correctional Homes of the State.

Taking into consideration the judgement cited in Dr. Praful case as also it is relied by the subsequent judgement of the Hon'ble Apex Court in Manju Devi Vs. State of Rajasthan, AIR 2019 SC 1976 as also considering the provisions laid down u/s 308 BNSS (old section 273 Cr.P.C.) read with section 530 of BNSS as also considering the aspect of amount of delay in the physical production of the accused persons and the expenses along with inconvenience in bringing them to the Court, it is reasonable to record the evidence of P.W-11 on dock with the V.C mode attendance of the accused persons to complete the same. Such V.C mode attendance is appreciated by the Hon'ble Supreme Court as well as by our own parent High Court in befetting situation. Such utility of electronic mode will not affect fair trial of the case or in any event cause prejudiced to the accused side.

Accordingly, the prayer for physical attendance of the accused persons on the next date fixed for evidence is considered and turned down.

To date i.e. 18.02.2025.

Dictated & corrected by me

Sd/-
Additional Sessions Judge,
1st Court, Chinsurah
J.O Code no.WB00753

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Additional Sessions Judge,
1st Court, Chinsurah.
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