

T. R. Case No. 07 of 2022
CNR No. WBHW-00-000147-2022
J.O. Code WB00910

Order No. 31 dated: 14-05-2025

Today the accused persons namely Irshad Khan, Rahul Mondal, Babar Mondal @ Raju Bhai @ Khora, Sk. Rahid,. Md. Ammer Hasan and Md. Alfas Khan are produced from JC physically.

The petition dated 22-04-2025 filed on behalf of the accused person Ameer Hossain and others is taken up for order.

Heard the contention of the Ld. Advocate of representing the accused persons.

Heard the submissions of the Ld. PP-in-Charge representing the prosecution.

The contention of the petition of the petitioner/accused dated 22-04-2025 in nutshell is that during Examination-in-Chief of P.W 8, the Ld. PP-in-Charge tendered some photographs (although which have not been supplied to the accused persons) to him and intended the same to exhibit before the Ld. Court. The procedure and the manner of exhibiting the photographs by the said P.W 8 is illegal and unauthorized in the eye of law as P.W 8 was not the competent witness to exhibit the photographs as per law. The accused persons challenge the procedure of exhibiting the photographs by P.W 8 and the accused persons respectfully submit that the Ld. PP-in-Charge is not following the rule of law and procedure of fair trial. The accused persons will suffer irreparable loss and injuries and will be prejudiced if the prosecution be allowed to exhibit the photographs by P.W 8 and accordingly, prays for adjourn the evidence.

Ld. Advocate of the petitioner/accused persons submitted before this court that the photographs which were taken in presence of the Magistrate and duly certified by the Magistrate are the primary evidence and the present witness i.e. P.W 8 is a mere seizure witness, who was neither present at the time of taking photographs nor any way connected with the proving the admissibility of the photographs taken. Ld. Advocate submitted that the present accused persons are not challenging the admissibility and its evidentiary value of those photographs as primary evidence. The present accused persons raising their voice by filing this petition only on the point of the manner and procedure adopted by the prosecution authority in proving and admitting the photographs taken in the course of the trial by the present P.W 8. Ld. Advocate further submitted that these photographs which have been certified by the Ld. Magistrate as per provision of Section 52A of N.D.P.S Act can be admitted into evidence as per provisions of law as enacted under section 294 of Cr.P.C. If this procedure is adopted by the prosecution, it will make the evidence cumbersome and irrelevant which is not desirable in the name of fair trial.

Ld. PP-in-Charge representing the prosecution heavily relied upon the case decision reported in 2025 SCC OnLine SC 110 and (2016) 3 SCC 379. Ld. PP-in-Charge submitted that the present witness is the seizure witness of the mother alammat which was searched and seized in his presence and it is required to identify the primary evidence by producing the photographs which contains the photographs of the seized, packed and sealed mother alammat of the contraband. If that is not identified by this seizure witness, the defence will get an opportunity of making the argument that the primary evidence was not produced before the seizure witness and the prosecution will be prejudiced thereby.

Heard the submissions of the both sides in full.

This is a stage of trial. The petition which has been filed on behalf of the accused persons is an anticipated petition with an assumption that the photographs authenticated and certificated by the Ld. Magistrate would be admitted into evidence by the present witness i.e. P.W 8.

P.W 8 was not present at the time when the photographs were taken and certified by Ld. Magistrate. There is no evidence adduced so far by the prosecution.

As per procedure of law of evidence, a photograph can be admitted into evidence by the person who took the photograph or by the person in whose presence and direction it was taken.

This is regarding the admissibility of getting the photograph into evidence as exhibit.

A photograph has also other function to be performed at the time of evidence. The contention of the photograph or photographs can be placed before any witness who can identify the subject the photograph.

In the presence case, the prosecution has ample scope to tender the subject or subjects of the photograph to the witness for putting question regarding the mother alamat as he was the seizure witness and the seized alamat was packed, sealed and labelled in presence of the witness i.e. P.W 8.

Needless to mention that there is very little scope of this court at the stage of trial to frustrate the hands of the prosecution restraining it to produce any evidence in the name of fair trial on the ground that the evidence would become cumbersome. Furthermore, the defence will get opportunity of cross-examine the witness i.e. P.W 8.

Having considered the above observations and stage of trial, I am of the view the petition as filed by the petitioner/accused persons will become an interference of the court in the subject matter of evidence and its appreciation which is not permissible in the eye of law resulting pre-judging a case beforehand.

Hence the petition as filed by the accused persons dated 22-04-2025 is hereby rejected on contest.

The accused persons be remanded to JC and concerned Superintendent of the Correctional Home is directed to produce the accused persons physically on the next date.

Fix 13-06-2025, 17-06-2025 and 18-06-2025 for production of the accused persons and evidence.

Issue summon upon the witness.

The dates are fixed as per convenience of Ld. Advocate PP-in-Charge and Ld. Advocate for the defence.

Dictated & Corrected by me

Special Judge,

**Judge, Special Court under
N.D.P.S Act, 3rd Court, Howrah.**