

ST No. 75 of 2021
(CNR No:WBHW01-003667-2021)

Present : Smt. Asmita Samajder (J.O. Code:WB00956)
Additional Sessions Judge,
4th Court, Howrah.

Order No.98 dated 22-04-2026

Today is fixed for physical production, and further cross-examination of PW10, and hearing of recall petition dated 20-04-2026 filed by the prosecution.

Out of seven accused persons, six accused persons namely Md. Saddam, Md. Hussain Umar Ansari, Md Ali @ Pachu, Chandan Kr. Chowdhury, Vikash Singh @ Viki, and Surojit Bardhan @ Barka @ Sagar Bardhan, in J/C, are not physically produced today from the Howrah District Correctional Home, but are produced through VC. A report is received from the Superintendent of Howrah District Correctional Home in respect of their non-production. Let the same be kept with the record.

Another accused Devendra Mishra, also in J/C, is though not produced physically, but produced through VC from Presidency Correctional Home. A report is also received from the Superintendent of Presidency Correctional Home. Let it be kept with the record.

Witness, namely Sudipta Mukherjee (PW10) is present today.

Ld. P.P-in-charge and Ld. Advocates for the accused persons are present.

Accordingly, the said witness PW10 is further cross-examined by the Ld. Advocate on behalf of the accused persons namely Md. Saddam and Md. Ali @ Panchu, in full and upon conclusion of his cross-examination, the said witness is discharged.

At this stage, Ld. P.P-in-charge prays for hearing of the recall petition dated 20-04-2026. Hence, the said petition is heard at length.

By filing the instant petition, the prosecution has submitted that during examination of the PW10, instead of two containers which were seized in this case, by mistake one container was shown to the witness, and hence the said witness is required to be recalled for showing such containers which were seized in his presence in connection with this case. Ld. Advocate for the prosecution, while addressing the instant petition, submits that the PW10 is thus required to be recalled for bringing out the actual truth involved in this case. He then prays for passing necessary order.

Per contra, Ld. Advocates appearing on behalf of all the accused persons, unanimously oppose the said prayer. They advert that the PW10 has already been exhaustively examined and cross-examined in the present case, and that in his statement recorded under Section 161 of the Cr.P.C., there is mention of only one container. It is further argued that the material objects, namely the bullets, were duly identified by the said witness during his examination-in-chief and were thereafter marked as exhibits, and that once such marking has been effected, it is impermissible for the prosecution to introduce or create fresh evidence under the guise of recall.

The Ld. Defence Counsels also submit in unison that the present issue has already been put to test during cross-examination, and that the instant petition is nothing but an attempt on the part of the prosecution to fill up lacunae left in its case during the examination-in-chief of PW10. They further contend that it is not anybody's case that the concerned witness has failed to identify the seized bullets altogether; rather, he had clearly deposed that the bullets shown to him were of the same type as those recovered, and such materials have already been admitted in evidence and marked as exhibits. On these grounds, the Ld. Advocates pray for rejection of the instant petition seeking recall of PW10.

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Perused the entire testimony of PW10. It transpires therefrom that the said witness had identified the bullets and the fired bullet jackets taken out from a single plastic container, and had mentioned that those were similar types of bullets which were recovered. Such materials were marked as exhibits in this case, after objection. In his cross-examination (at serial no.20), this witness had mentioned that the two fired bullet jackets and the bullets shown to him were taken out from a single container, which do not have his signature or stamp. Further, in his cross-examination (at serial nos.38 and 39), PW10 mentioned that he does not remember whether he told the police that there was one plastic container, and he also could not remember the specific things he told the police.

Now, in the seizure list dated 21-04-2021, there is mention of two sealed plastic containers containing two fired bullet heads (one bullet in each container). Upon a careful consideration of the materials on record, it is manifest that two fired bullet jackets, along with two bullets, have already been duly marked as material exhibits in the present case. In such circumstances, this court finds no justifiable necessity to recall the PW10, particularly when such recall appears to be sought with a view to remedying the loophole that had arisen during the course of his examination-in-chief. It is further seen that the instant petition for recall, as filed by the prosecution, is conspicuously bereft of material particulars and lacks the requisite specificity expected of such an application. The petition, in its present form, appears to have been filed in a perfunctory manner, without disclosing any cogent grounds warranting the exercise of the court's discretion in favour of recall of the concerned witness, i.e., the PW10.

Moreover, in view of the fact that two bullets and two fired bullet jackets have already been exhibited in this case as MO-2/PW10 (collectively) and MO-3/PW10 (collectively), both with objection, the proposed recall of PW10 would serve no meaningful purpose. Rather, it would tantamount to a futile exercise.

In light of the above discussions, the recall petition dated 20-04-2026 filed by the prosecution stands rejected on contest.

Fixing **28-04-2026** for further evidence and production of the accused persons.

Prosecution must ensure that witness is present on the date fixed.

Accused persons, in J/C, be produced physically on the date fixed.

Dictated & corrected by me;

Sd/-
ASJ

Sd/-
Additional Sessions Judge,
4th Court, Howrah