

JO Code No. WB00885
T. R Case No. 64 of 2021

Order No. 10 dated: 20-07-2023.

Today is fixed for production of the accused persons as well as for evidence on behalf of the prosecution.

All six accused persons on Court bail, namely Indrajit Sarkar, Sanu Jha, Chandan Barman, Swapan Sarit Das, Lakshi Dhar Nayak and Alok Bihari Shaw are produced from Howrah District Correctional Home.

An application u/s 311 Cr.P.C is filed on behalf of the prosecution for recall of P.W 1 Mir Jabbar Ali.

Copy served and objected to.

Perused the impugned application as well as other materials on record.

Heard the Ld. Counsel for the prosecution, as well as the Ld. Counsel for the defence.

The Ld. Counsel for the prosecution agitated before the court that the offending vehicle is a vital piece of evidence in this case and the P.W 1 is required to be recalled for identification of the bus in question. The Ld. Counsel for the defence raises strong objection against the petition u/s 311 on the ground that the same is intended to delay the case, at a time when, the accused persons are in custody.

Section 311 of the Cr.P.C relates to power of the court to examine any person present, if it deemed necessary for just decision of the case. The law mandates that the court may, at any stage of inquiry, trial or other proceedings, summon any person as a witness or examine any person already in attendance though not summoned as a witness. The Hon'ble Apex Court has in the course of plethora of decision, expounded that an application u/s 311 Cr.P.C cannot be dismissed merely on the ground that it will lead to filling in loopholes in the prosecution case or even if it is filed at a delay, if the court otherwise comes to the conclusion that such evidence is essential for just decision of the case. This court is fortified in this regard by a recent decision of the Hon'ble Apex Court in Varsha Garg VS. State of Madhya Pradesh and others, 2022 SCC OnLine SC 986.

In the instant case, charge was framed against the six accused persons on 09-09-2022 u/s 22 of the N.D.P.S Act. The P.W 1 was examined and cross-examined in full the discharged between 07-01-2023 and 16-05-2023. During the course of evidence of the P.W 1, who happens to be the seizing officer in this case, several documents as well as alams were marked as exhibits. On 16-05-2023, a schedule of five dates being 17-07-2023 to 21-07-2023 was fixed for evidence of five other witnesses. No witness was examined on behalf of the prosecution from 17-07-2023 to 19-07-2023, primarily on the ground

that the seized vehicle, being a bus, intermediate custody of which had been granted to the registered owner, was not available. The application U/s 311 Cr.P.C is to enable the seizing officer to identify the said vehicle, which has finally been produced by the zimma holder. While, this court is not indifferent towards the fact that multiple witnesses could have been examined in the three dates that had come and gone, the reasons cited by the prosecution for not being able to proceed further with the trial, seems justifiable. Accordingly, the petition u/s 311 Cr.P.C for recall of the P.W 1 is considered and allowed.

Subsequently, the P.W 1 is examined and cross-examined on recall. During the course of his examination-in-Chief on recall, the P.W 1 identified the seized vehicle and the same was marked Mat Exhibit – 5. However, no label was found pasted on the said bus.

Thereafter, an independent witness namely Sankar Mallick was examined and cross-examined in full as P.W 2 on behalf of the prosecution, and discharged. During the course of his examination-in-Chief, his signature appearing on the seizure list, inventory list and the notices were marked as Exhibits. The P.W 2 also identified the seized vehicle.

Subsequently, the Ld. Counsel for the prosecution filed an application for cancellation of the schedule of the evidence, fixed on 21-07-2023 on the ground stated therein.

Perused the same as well as other materials on record.

Heard the Ld. Counsel for the prosecution and the Ld. Counsel for the defence.

Prayer for cancellation of the schedule of evidence fixed on 21-07-2023 is thus cancelled.

Fix 21-09-2023, 22-09-2023, 25-09-2023, 26-09-2023 and 27-09-2023 for further evidence on behalf of the prosecution.

To date for production of the accused persons.

Dictated & Corrected by me

Special Judge,

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

Later

A bail petition is filed on behalf of the accused Indrajit Sarkar and Chandan Barman, on the ground stated therein.

Perused the bail application as well as other materials on record.

Copy of bail application is served upon the Ld. Counsel for the Prosecution.

Perused the bail prayer as well as other materials on record.

Heard the Ld. Counsel for the accused person as well as Ld. Counsel for the prosecution.

The Ld. Defence Counsel submits before the court that the accused persons are in custody since 03-12-2021. It is also said that the accused persons are innocent and have been falsely implicated. It is further contended that the prosecution has not proceeded with the trial in an expeditious manner, due to which the accused persons are languishing in custody.

The Ld. Counsel for the prosecution has opposed the prayer for bail contending inter alia that huge quantity of contraband of 71 kgs ganja was recovered from the possession of the said accused persons.

Contraband of commercial quantity was purportedly recovered from the possession of the accused person. Accordingly, this case comes within the ambit of section 37 of the NDPS Act, which casts an embargo upon the court to grant bail. Charge has already been framed. Two witnesses have also been examined and cross-examined in full. A schedule of five dates have also been fixed for further evidence on behalf of the prosecution. Therefore, considering the incriminating materials in the CD, coupled with the implication of section 37 of the NDPS Act, the prayer for bail of accused Chandan Barman and Indrajit Sarkar is considered and rejected.

Dictated & Corrected by me

Special Judge,

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