

N.D.P.S. Case No. 41/2022

Order No. 76, dated 11.02.2025.

Total accused persons = 4.

Accused Asraf Ali @ Firoj, Atabur Rahaman and Rejaul Ali @ Khokan Sk. are produced from J.C.

Accused Morjina Khatun, on CB, is present by filing hazira.

Ld. Special Public Prosecutor in-charge is present.

Four witnesses, namely Hiron Sk., Koushik Marjit, C/131 Md. Asadul Sk. and C/396 Monisankar Sarkar are present.

Witness C/131 Md. Asadul Sk. (PW.22) is examined in part.

At this stage, Ld. Advocate for the Defence has filed an application u/S. 148 of BSA, 2023/ Section 145 of the Evidence Act praying for exemption from recording evidence of prosecution witnesses including the present witness (PW. 22 Md. Asadul Sk.) who did neither sign the seizure list nor were present at the place of seizure and who were neither examined by the investigating officer nor had there any statement recorded u/S. 161 of Cr.P.C. for proper adjudication of this case.

Copy served.

Objection raised.

Heard the Ld. Advocate for the Defence on the issue raised.

In support of his contention, Ld. Advocate for the Defence has submitted that recording of evidence of certain witnesses including the present witness (PW. 22 Md. Asadul Sk.) who has been examined in part today, may not be allowed for proper adjudication of this case. He further has contended that the present witness was not examined by the investigating officer of this case, so the defence will not get an opportunity to cross-examine him as to his previous statement made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him or being proved for the purpose of contradiction. In support of his contention Ld. Advocate for the Defence has relied upon the Judgment of the Hon'ble Apex Court in the matter of **Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. & Anr.** (reported in **(2003) 3 SCC 175**) and has contended that a witness not stating a particular fact to the police in the course of investigation and if the prosecution seeks to prove the said fact through that witness, evidence of that witness or recording of said witness held to be of no significance. In this background, Ld. Advocate for the Defence has prayed before this court to allow the instant application.

Per Contra, Ld. Special Public Prosecutor-in-Charge has vehemently opposed the instant application, moved by the Ld. Advocate for the Defence stating therein that the present application moved by the Ld. Advocate for the Defence is

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nothing but a dilatory approach of the Defence in not allowing the prosecution to examine its witnesses. He has further stated that the present witnesses (PW. 22 C/131 Md. Asadul Sk.) and C/396 Monisankar Sarkar have been summoned today as prosecution witnesses to be examined in this case for proper adjudication of the instant case. Ld. Special Public Prosecutor in-charge has also informed this court that C/396 Monisankar Sarkar and C/131 Md. Asadul Sk. (who has been partly examined in chief today as PW.22) were allowed as prosecution witnesses to be examined in this case in terms of **Order No. 51, dated 24.04.2024**, passed by this court and in compliance thereof summons were issued to those two prosecution witnesses, namely C/131 Md. Asadul Sk. and C/396 Monisankar Sarkar. He has further contended that the said order dated 24.04.24 passed by this court attained finality since the said order was not challenged by the accused persons.

Heard the rival submissions at the Bar.

Perused the case record including the order dated 24.04.24 passed by this court.

I also perused the solemn Judgement of the Hon'ble Apex Court relied upon by the Ld. Advocate for the Defence.

I have also taken into consideration the order of the Hon'ble Supreme Court passed in **SLP (Criminal) No. 47342/2023** validating therein the order of the Hon'ble High Court to conclude the trial of this case by April, 2025.

On perusal of the order dated 24.04.24, I do find that the prosecution had moved an application u/S. 348 of BNSS, 2023 / u/S. 311 of the Cr.P.C. praying for issuing summons upon C/131 Md. Asadul Sk. and C/396 Monisankar Sarkar as witnesses and examined them for proper adjudication of the instant case which was allowed and in compliance thereof the prosecution has summoned the present witness C/131 Md. Asadul Sk. and C/396 Monisankar Sarkar for examination today.

I have also perused the solemn Judgment of the Hon'ble Apex Court reported in **(2003) 3 SCC 175** relied by the Ld. Advocate for the Defence and I do find that the ratio of the said Judgment is not applicable for the decision of the instant application and I am of the opinion that there is no such bar in examination of the present witnesses.

I am also conscious of the order dt. October, 18, 2023, of the Hon'ble High Court, passed in **CRM (NDPS) 1712 of 2023** wherein the Hon'ble Court

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was pleased to observe that “The Trial Court to conduct trial expeditiously by fixing schedules for examination of witnesses at quick intervals and to conclude the same at an early date preferably within 18 months from the next date fixed for recording evidence without granting unnecessary adjournments to either of the parties.” It is pertinent to mention here that the said period of 18 months granted by the Hon’ble Court will be over in April, 2025 or thereafter.

In this regard, I have also given my thoughtful consideration to the provisions as contained under Section 346 of BNSS, 2023/ Section 309 of Cr.P.C. and I would like to quote the relevant portion of the said Section as follows :-

“Section 346. Power to postpone or adjourn proceedings – (1) In every inquiry or trial the proceedings shall be continued from day-to-day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded :

.....

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :

.....

Provided also that -

- (a) xxxxxx
- (b) xxxxxx
- (c) xxxxxx

(d) where a witness is present in Court but a party or his advocate is not present or the party or his advocate though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination – in – Chief or cross-examination of the witness, as the case may be.

Explanation 1. - xxxxx

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

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In light of the above discussion, I do find no merits in the application made by the Ld. Advocate for the accused persons. Accordingly, the instant application is dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand only) imposed upon the accused persons. The accused persons shall deposit the payment of cost to DLSA, Murshidabad within a period of **ten** day from the date of this order.

The Ld. Secretary DLSA, Murshidabad shall keep the cost so deposited under Miscellaneous Head to be utilized for ‘ **The Witness Protection Fund**’ as and when created by this Judgeship.

The instant application is disposed of in above terms.

To date (i.e. 12.02.25) for production, appearance and further examination in chief of P.W.- 22.

Let a copy of this order be sent to the Ld. Secretary, DLSA, Murshidabad for information and taking necessary action.

Dictated & corrected
by me,

Judge.
(J.O. Code WB 01303)

ADJ, 2nd Court, Cum,
Judge, Special Court, Under N.D.P.S. Act,
Berhampore, Murshidabad.
(J.O. Code WB 01303)