

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

Order No. 116, dated 22.04.2026.

Accused Asraf Sk. @ Firoj and Atabur Rahaman are not physically produced from JC and a message is received from the Superintendent of Police, Murshidabad PD to that effect.

Accused Morjina Khatun on bail is present by filing hazira.

Accused Rejaul Ali @ Khokan Sk. on bail is absent by petition.

Today is fixed for order.

The record is taken up for passing necessary order.

The present application has been filed by the prosecution u/S 348 of the BNSS, 2023/ 311 Cr.P.C. seeking indulgence of this court to examine additional two witnesses, namely DSP Sri Jayanta Chatterjee, FIO [the Freezing Officer in a separate proceeding u/S 68F of NDPS Act] and the Branch Manager of Bandhan Bank, Mallickpur Branch on the ground inter-alia stated in the petition that if those additional two witnesses are not summoned by this court it will lead to failure of justice.

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Ld. Advocate for the accused persons has vehemently raised objection against the instant application moved by the prosecution when arguments were advanced by the parties. However, the Ld. Advocate for the accused persons did not prefer to file reply in the instant application despite opportunity was granted to them to file reply and therefore the case was decided after hearing the arguments of both sides.

During advancement of argument in support of the instant application Ld. Special Public Prosecutor has contended that Investigating Agency has submitted supplementary charge-sheet in the instant case and subsequent to that the present I.O., SI Mirajul Sk. was examined in full by this court. His further contention is that the prosecution wants to examine additional two witnesses, namely DSP Sri Jayanta Chatterjee, FIO [the Freezing Officer of the proceeding u/S 68F of NDPS Act] and the Branch Manager of Bandhan Bank, Mallickpur Branch since their examination is highly necessary to establish abnormal/unusual transactions of money by the accused persons in this case. He has further contended that if the above mentioned witnesses are not examined by this court, it will lead to failure of justice. In support of his contention, he has relied upon the solemn Judgment of the Hon'ble Apex Court in the matter of **Varsha Garg Vs The State of Madhya Pradesh & Ors. [2022 LiveLaw (SC) 662]**. In this background he has prayed before this court to allow the instant application in the interest of justice and just decision of this case.

Per Contra, Ld. Advocate for the accused persons has vehemently raised objection stating therein that filing an application u/S 348 of the BNSS, 2023 / u/S 311 Cr.P.C. at the fag end of the trial is clear abuse of the process of the court. He has further contended that the

present I.O. of this case submitted the supplementary charge-sheet on 13.08.2025 at the stage of final argument citing himself [the present IO] as sole witness in this case and thereafter Ld. Court examined the present I.O. at length on 03.02.2026, 04.02.2026 and 13.02.2026 in full and discharged. Thereafter the Ld. Court fixed 19.02.2026 for examination of the accused persons u/S 313 of the Cr.P.C. / u/S 351 of BNSS, 2023 in view of the oral testimony adduced by the present I.O. His further contention is that when the present I.O. was examined before this court, the prosecution has brought on record all necessary documentary evidence in terms of the supplementary charge-sheet and those documents were duly proved and exhibited before this court while examining the present I.O. So there is no necessity to adduce additional evidence or to call for those witnesses for examination before this court who have issued those documents, already proved and exhibited before this Ld. Court. His further contention is that when the present IO submitted the supplementary charge-sheet in the instant case which was accepted by this Ld. Court, the name of only one witness SI Mirajul Sk. of STF, West Bengal was mentioned therein who is the present IO of this case. His further contention is that supplementary charge-sheet has been submitted u/S 27/29 of the NDPS Act which was also the offence enumerated in the earlier charge-sheet without introducing any new list of witnesses except the present I.O. So the present application has been moved by the Investigating Agency/Prosecution with malafide intention to prejudice the accused persons / Defence and also to protract incarceration of the accused persons. In this background, Ld. Advocate for the accused persons has submitted before this court that the instant application moved by the prosecution / Investigating Agency at this belated stage is highly misconceived and may kindly be outrightly rejected in the interest of justice.

Heard the rival submissions at the Bar.

Perused the materials on record including the application u/S 348 of the BNSS, 2023 moved by the prosecution.

Before I consider the rival submissions at the Bar, let me take note of the stage of proceeding after commission of the alleged offence by the accused persons herein. I am of the considered opinion that factual analysis of the present case will help this Court to arrive at just decision of the application.

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| 1. Date of filing of this case | : 01.02.2022 |
| 2. First Charge Sheet submitted on | : 29.07.2022 |
| 3. Charge framed on | : 22.09.2023 |
| 4. Prosecution evidence commenced on | : 06.01.2024 |
| 5. Date of conclusion of prosecution evidence | : 27.03.2025 |
| 6. Date of examination of the accused persons | |

u/S 313 Cr.P.C. / 351 of the BNSS, 2023	: 25.04.2025
7. Arguments heard in full on behalf of the prosecution	: 21.07.2025
8. Further argument on behalf of Defence	: 01.08.2025
9. Supplementary Charge Sheet submitted on	: 13.08.2025
10. Petition filed for acceptance of Supplementary Charge Sheet	: 20.08.2025
11. Date of acceptance of Supplementary Charge Sheet	: 01.09.2025
12. CRR No. 4114/2025 was preferred by the accused persons before the Hon'ble Court on	: 17.09.2025
13. Communication of order of the Hon'ble Court dated 17.09.2025 in CRR No. 4114/2025 to this Court	: 22.09.2025
14. Communication regarding disposal/dismissal of CRR No. 4114/2025 by the Hon'ble Court	: 02.02.2026
15. SI Mirajul Sk. [present IO] was examined in chief in part on	: 03.02.2026
16. Further examination of SI Mirajul Sk. resumed on	: 04.02.2026
17. Cross-examination of SI Mirajul Sk. completed on	: 13.02.2026
18. Date of filing present petition u/S 348 of the BNSS on behalf of the Prosecution	: 19.02.2026
19. Date of hearing the petition u/S 348 of the BNSS on behalf of the Prosecution	: 20.02.2026
20. Ld. Court was engaged in SIR duty as per direction of the Hon'ble Apex Court	: w.e.f 23.02.2026 to 06.04.2026
21. Hearing concluded for both parties for the petition u/S 348 of the BNSS	: 08.04.2026
22. Date of passing order	: 22.04.2026

It is pertinent to mention here that the instant application has been moved by the prosecution u/S 348 of the BNSS, 2023 which is analogous to Section 311 of the Cr.P.C. The power conferred on a Court u/S 348 of the BNSS, 2023 ensures that failure of justice is not occasioned on the ground of mistake of either party in bringing valuable evidence on record and a duty is cast upon the Court that best available evidence should be produced before it. This Section ensures that the Court must have all the relevant facts before it in order to determine the truth and to arrive at just decision of the case. The question whether a witness is material or not depends on the facts and circumstances of each case and the only criteria is whether such evidence is essential to the just decision of the case. However, the provision as contained u/S 348 BNSS, 2023 also cautions the Court that the said power must be exercised judicially and not arbitrarily.

Now coming to the application filed by the prosecution, I do find that the prosecution has stated in the said application that the examination of additional two witnesses namely DSP Sri Jayanta Chatterjee, FIO and the Branch Manager of Bandhan Bank, Mallickpur Branch are necessary to establish abnormal / unusual transactions of money by the accused persons in this case and if those witnesses are not summoned by this Court, it will lead to failure of justice.

To decide the issue in hand, I have perused the case records entirely including the supplementary charge-sheet submitted by the present I.O. Based upon the factual analysis of the case as mentioned herein above, I do find that at the fag end of the trial when the instant case was fixed for final argument on behalf of the Defence, the prosecution submitted the Supplementary Charge Sheet in the instant case with prayer to examine the present I.O. as one and only witness in the instant case. Be it mentioned here that this Court accepted the Supplementary Charge Sheet submitted by the I.O. and the matter was fixed for examination of the present I.O. The issue of acceptance of Supplementary Charge Sheet in the instant case was challenged by the accused persons herein by preferring a Criminal Revision vide CRR No. 4114/2025, dt. 17.09.2025 before the Hon'ble Court which was dismissed on 02.02.2026 by the Hon'ble Court. It is pertinent to mention here that the examination of the present I.O. was deferred till the disposal of the CRR No. 4114/2025 which was pending adjudication before the Hon'ble Court. The Hon'ble Court was pleased to dismiss the CRR No. 4114/2025 on 02.02.2026 and thereafter the matter was fixed for examination of the present I.O. The present I.O. was examined in full on 13.02.2026 and he was discharged and the matter was fixed for examination of the accused persons in view of the evidence of the present I.O. recorded by this Court with consent of the prosecution and defence. In this connection, I have perused the oral testimony of the present I.O. (PW.32) and it transpires that during his deposition before this Court he has proved the following documents which were marked and exhibited as mentioned herein below :

Sl. No.	Nature of Documents	Exhibit Number
1	Written communication on behalf of Additional SP (Inv.), STF, WB dated 08.02.2025 by which PW.32 was entrusted to further investigate this case as an I/O	Ext. 40
2	The written intimation regarding illegal accord property freezed by the competent authority in connection with this case duly communicated to PW.32 by the then Dy. SP (FI), SRF, WB. Dated 12.05.2025	Ext. 41
3	The prayer of the witness dated 16.06.2025 for providing freezing order of competent authority dated 09.05.2025 addressed to the then DSP (FI), STF, WB	Ext. 42

4	The freezing order dated 09.05.2025 under Section 68F(2) of the NDPS Act, 1985 (as amended) comprising 57 pages (1-57)	Ext. 43 (Collectively)
5	The requisition letter dated 02.08.2025 addressed to the Branch Manager, Bandhan Bank, Mallickpur Branch, Lalgola, Murshidabad	Ext. 44
6	The Certificate under Section 63 BSA issued by Bandhan Bank, Mallickpur Branch for furnishing the Bank Account Statements in the name of accused Morjina Khatun, vide account Nos. a) 20100008658268 & b) 20200018012065	Ext. 45
7	The Bank Statement details issued by Bandhan Bank, Mallickpur Branch in the name of accused Morjina Khatun, vide account Nos. a) 20100008658268 & b) 20200018012065	Ext. 46 in Series (Collectively)
8	The Bank Statement details issued by Bandhan Bank, Mallickpur Branch in the name of accused Morjina Khatun, vide F/D customer ID being No. 323254248	Ext. 47 (Collectively)
9	The requisition letter dated 04.08.2025 addressed to the Branch Manager, ICICI, Berhampore Branch, Murshidabad	Ext. 48
10	The Certificate under Section 63 BSA issued by Branch Manager, ICICI, Berhampore Branch, Murshidabad for furnishing the Bank Account Statements in the name of accused Md. Asraf Ali, vide account No. 333101501523	Ext. 49
11	The Bank Statement details issued by ICICI, Berhampore Branch, Murshidabad (1-3 pages) in the name of accused Md. Asraf Ali, vide account No. 333101501523	Ext. 50 in Series (Collectively)
12	The requisition letter dated 06.08.2025 (two pages) addressed to the Branch Manager, ICICI, Berhampore Branch & Muktinagar Branch Murshidabad	Ext. 51 (Series)
13	The Certificate under Section 63 BSA issued by Branch Manager, ICICI, Berhampore Branch & Muktinagar Branch, Murshidabad for furnishing the Bank Account Statements in the name of accused Md. Asraf Ali & Morjina Khatun, vide account Nos. 214901500574, 214901500329 & 214905500043	Ext. 52
14	The Bank Statement details issued by ICICI, Berhampore Branch, Murshidabad (1-7 pages) in the name of accused Morjina Khatun, vide account No. 214901500329 & 214905500043	Ext. 53 in Series (Collectively)
15	The Bank Statement details issued by ICICI, Muktinagar Branch, Murshidabad (1-2 pages) in the name of accused Md. Asraf Ali & Morjina Khatun, vide joint account No. 214901500574	Ext. 54 (two pages) in Series (Collectively)

From the oral testimony of PW.32 [present I.O.], it further transpires that the present I.O. has already proved all those necessary documents and those documents were exhibited before this Court which was issued by DSP Sri Jayanta Chatterjee, FIO and the Branch Manager of Bandhan Bank, Mallickpur Branch and I am of the view that the documentary evidence has already been brought on record, proved and exhibited before this Court [marked as Ext.40 to Ext.54] by the present I.O.

I have also perused the solemn Judgment of the Apex Court in the matter of **Varsha Garg Vs The State of Madhya Pradesh & Ors. [Supra]** relied upon by the Ld. Special Public Prosecutor-in-Charge and I do find that factual matrix of the present case is not similar / identical. Therefore, the solemn Judgment in the case of **Varsha Garg** would not become applicable to the case of the prosecution in hand.

In this connection, decision of the Hon'ble Apex Court in the matter of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation** reported in [2019 (14) SCC 328] is very much relevant wherein the Hon'ble Apex Court has observed that :

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

I also do find apposite to refer the Judgment of the Apex Court in the case of **Zahira Habibulla Sk. Vs. State of Gujarat [2006 (3) SSC 374]** which was reiterated by the Apex Court in the matter of **Godrej Specific Tech. Ltd. Vs. Computer Joint India Ltd. [2008 (11) SCC 108]** wherein the Apex Court specifically dealt with this objection and observed that resultant filling of loopholes on account of allowing an application u/S 311 of Cr.P.C. is merely a subsidiary factor and the Court's determination of the application should only be based on test of the essentiality of the evidence. The Hon'ble Court was pleased to observe as under :

“ 28. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side.

This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. **Sometimes the examination of witnesses as directed by the court may result in what is thought to be “filling of loopholes”. That is purely a subsidiary factor and cannot be taken into account.** Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.”

While parting with, I have also noticed that as many as thirty two witnesses have been examined by the prosecution in this case. It also transpires while perusing the case record that an application u/S 348 of the BNSS, 2023 dated 24.04.2024 moved by the prosecution was allowed by this Court by issuing summons upon C/396 Moni Shankar Sarkar and C/131 Md. Ashadul Sk. as witnesses in this case and it is settled law that the Court should not encourage to allow the successive applications for recall of witness under this provision. Apart from that, it is an admitted fact that at the fag end of the trial when the matter was fixed for final argument, the present I.O. filed supplementary Charge Sheet on 13.08.2025 before this Court which revealed financial irregularities against the accused persons, namely Asraf Ali @ Firoj and Morjina Khatun wherein he preferred to cite himself as the only witness to be examined. This aspect of the matter also stands admitted by the Ld. Counsel for the State before the Hon’ble High Court in CRR No. 4114 of 2025 disposed on 02.02.2026 [vide Para No.12 of the Judgment]. The Hon’ble Court while disposing the said CRR has also directed this Court to make every endeavour to conclude the trial preferably within a period of three months from the next date of hearing.

In light of the above discussions, I find no merit in the instant application moved by the prosecution and I am inclined to hold that non-examination of the two witnesses as mentioned in the instant application moved by the prosecution would not occasion failure of justice taking into consideration the facts and circumstances of the present case. Accordingly the instant application moved by the prosecution is considered and rejected.

Fix 02.05.2026 for examination of the accused persons u/S 313 of the Cr.P.C.

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)