

**NDPS 62 of 2024 (R-62/24)**  
**Present :Sri Chinmoy Chattopadhyay**  
**JO Code-WB 00676**  
**WBND010038302024**

**Order No. 56 dated 06-02-2026**

Accused persons namely Rajib Biswas, Bapon Halder, Ravi Kumar, Ratnesh Kumar, Sona Dhara and Lakshman Ghosh are produced from Correctional Home as per direction and are represented by their ld.advocates. Accused Sushil Kumar on CB is found present on call and is represented by his ld.advocate.

Ld. Spl. PP is present.

Today is fixed for passing order in respect of the application submitted by accused Rajib Biswas on 05.02.2026 and the record is taken up for that.

The moot question for submitting that petition relates to the prayer on the basis of the provision of law laid down u/s.231of Cr.PC corresponding to section 254 of BNSS. It was the submission for the accused that the statement of the witnesses like CSW-1, CSW-2, CSW-3,CSW-4, CSW-7, CSW-31 and CSW-32 was recorded u/s.180 of BNSS and all the aforesaid witnesses are working under the same department and they have nexus with each other as they all remained present at the time of seizure. It was the submission that if the cross-examination of those witnesses are conducted one by one, then there is every possibility of disclosure of defence version and there is also possibility of improvement of testimony of other witnesses. It was the submission that the petitioner accused Rajib Biswas would be highly prejudiced unless and until the cross-examination of the witnesses in the schedule be deferred till examination-in-chief of those witnesses.

At the time of hearing ld.counsel for the accused Rajib Biswas submitted within the core of the petition. He submitted that as per the provision of law laid down u/s.231 of Cr.PC corresponding to section 254 of BNSS, this Court has got the power to direct the prosecuting agency for examination of the witnesses as per the schedule one by one and then the other witnesses and thereafter the cross-examination of the witnesses would be conducted. In order to support his contention ld.counsel showed his reliance of the order of **Hon'ble High Court, Calcutta as reported in 2024 SCC online Cal 990 and 2025 SCC online J & K 465 of Hon'ble High Court of Jammu & Kashmir and Ladakh.**

Ld.prosecutor, on the other hand, at the time of hearing raised objection against the prayer and submitted that the witnesses as noted in the petition are all departmental witnesses and there is no possibility to be swayed of any witness by the other. He submitted that no exceptional choice was raised by the accused persons for deferring the cross-examination of those witnesses excepting the ground that they are the seizure witnesses. He submitted that the law in regard to NDPS Act is very strict in nature and he submitted that there is a specific direction of Hon'ble High Court to conclude the evidence of seizure list witnesses within a period of 60 days and thus, he submitted to dismiss the petition and to support his contention ld.counsel showed his reliance of the observation of **Hon'ble Apex Court as passed in Crl.Appeal No.1321 of 2018 (State of Kerala -V. -Rasheed) and of Hon'ble Karnataka High Court as passed in Crl.Petition No.3055 of 2008.**

Now, the question remains how far the prayer as made on behalf of accused Rajib Biswas is tenable at this stage.

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**Decision with Reasons**

At the very outset, it is to be kept in mind that section 231 of the Cr.PC indicates that the Judge is given the discretion to defer cross-examination of a witness, until any other witness or witnesses have been examined.

Section 231 of Cr.PC is set out herein below:-

“Section 231 – Evidence for prosecution

1. On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.
2. The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

It is admitted position that the trial has already commenced and schedule for examination of prosecution witnesses has also been fixed keeping in mind the observation and direction of Hon’ble High Court as passed in **CRM (NDPS)1646 of 2025**.

On going through the direction of Hon’ble High Court it appears crystal clear that Hon’ble Court has been pleased to direct this Court being the trial Court to examine the seizure list witnesses within a period of 60 days and for which the schedule was prepared on the other date for examination of the witnesses. Examination of a witness includes examination-in-chief as well as cross-examination and re-examination, if there is any prayer on either side.

The contention of the accused Rajib Biswas was that to defer the cross-examination of the witnesses, if noted down in the petition, being afraid of the fact that they are/were the seizure witnesses as well as working in the same department having nexus with each other.

There is no doubt that the witnesses as noted in the petition by the accused Rajib Biswas are the seizure witnesses and it is expected that they will speak about the process of seizure invariably to justify the fact and process of seizure. From the petition no iota of clarification is found what prejudice will be caused to the accused if the seizure witnesses are examined and cross-examined according to the schedule for their examination. There is no scope to deny that the aforesaid witnesses are of the same department and they all remained present at the process of search and seizure as per the allegation of the prosecution. Those witnesses are supposed to depose on the basis of the record of seizure and the accused has already gathered the knowledge of their status and stand on getting the copies from the prosecution as relied upon and supplied.

**Hon’ble Apex Court in Crl.Appeal No.1321 of 2018 (State of Kerala -V. Rasheed)** was pleased to hold that :- “ There cannot be a straightjacket formula providing for the grounds on which judicial discretion under section 231(2) of the Cr.PC can be exercised. The exercise of discretion has to take place on a case to case basis. The guiding principle for a Judge under section 231(2) of the Cr.PC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.”

It has also been observed by Hon’ble Apex Court that :- “ While deciding an Application under Section 231(2) of the Cr.P.C., a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence.

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The following factors must be kept in consideration:

- possibility of undue influence on witness(es):
- possibility of threats to witness(es);
- possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy:
- possibility of loss of memory of the witness(es) whose examination-in-chief has been completed:
- occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) of the Cr.P.C.

It has further been observed by Hon'ble Apex Court that :- “ The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

- i a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;
- ii the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;
- iii the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible:
- iv testimony of witnesses deposing on the same subject-matter must be proximately scheduled:
- v. the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case-calendar;
- vi the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses:
- vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for:
- viii. the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary:

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ix. in cases where trial courts have granted a request for deferral. necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation.

On plain circumspection of the direction of Hon'ble Apex Court directing the guidelines to be followed by the trial Court in conduct of a criminal trial and on going through the prayer of Rajib Biswas, nothing has been transpired how he will be prejudiced if the evidence of seizure list witnesses, being the men of the department, is recorded as per provision of law. More over, it is to be also kept in mind the direction of Hon'ble High Court as passed in **CRM (NDPS)1646 of 2025** for examination of the seizure list witnesses within a span of 60 days.

On going through the factual aspect and keeping in mind the observation of Hon'ble Apex Court as passed **in Crl.Appeal No.1321 of 2018 (State of Kerala -V. Rasheed)**, I find no justified reason to entertain the application submitted by accused Rajib Biswas and accordingly the same is considered and rejected on contest.

However, as the schedule is already fixed, so the record be kept for evidence of the witness as per the schedule.

Accused persons namely Rajib Biswas, Bapon Halder, Ravi Kumar, Ratnesh Kumar, Sona Dhara and Lakshman Ghosh are remanded to JC with a direction of production and accused Sushil Kumar on CB is as before.

Dictated & Corrected by me.

**Sd/- C. Chattopadyay.**  
**Judge, Special Court, N.D.P.S. Act,**  
Nadia at Krishnagar

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