

SPL(POCSO)12/2021
Present: SUTIRTHA BANERJEE[J.O. Code WB-00980]
Judge(Special Court)POCSO Act,
Basirhat, North 24 Pgns

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Order no 92 dated 25/6/2025

Today is fixed for hearing with respect to the application dated 4/4/2025 filed by the accused person by which he has prayed for recalling the de-facto complainant for cross-examination.

Ld. Advocate for accused and Ld. Special Public Prosecutor are present.
Heard both sides.

Ld. Special Public Prosecutor by filing a petition drew attention of the Court to the fact that accused, who is on bail in this case, had been arrested by police of Haroa P.S. on basis of written complaint of one Kartick Mondol in connection with Haroa P.S. case number 269/2025 dated 16/5/2025 under section 329(4)/118(2)/109 BNS as he allegedly attempted to commit murder of one Smt. Maya Mondal (a witness) in this case and prays for passing necessary order. A photocopy of F.I.R. and forwarding report was annexed with the petition. That accused is in custody with referred case has also been intimated to this Court by Ld. Advocate for accused by a separate petition.

Fix **25/06/2025** for passing order with respect to petition dated 4/4/2025 and also in respect of petition filed by Ld. Special Public Prosecutor.

Dictated and corrected by me :

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Order no 93 dated 25/6/2025

Today is fixed for passing order with respect to the application dated 4/4/2025 filed by the accused person by which he has prayed for recalling the de-facto complainant for cross-examination.

I've heard learned advocate for accused person on the previous date and also Ld. Special Public Prosecutor.

Ld. Special Public Prosecutor raised vehement objection submitting that application was bereft of any merit and was filed with the sole aim of

prolonging instant proceedings. Ld. Special Public Prosecutor drew my attention to the fact that Hon'ble High Court had been pleased to direct time bound disposal of this case but the accused person since after getting bail was delaying the case. It was also submitted that an application along similar lines had been rejected by this Court vide order dated 11/9/2024.

I've heard both sides at length and I have perused the record and the application under consideration.

There is direction upon this Court to dispose this case in time bound manner and such time has already lapsed.

Recall of the de-facto complainant for cross examination has been prayed for on three counts-

1. That during examination of another witness, some contradictions had arisen regarding timeline of events of which clarification was required;
2. That certain medical reports were not available with Ld. Advocate for accused at time of cross examination of P.W. 1 and now that the reports had been obtained it was necessary to confront P.W. 1 with the findings thereof;
3. Further clarification was required to clarify specific details of alleged incident in light of certain ambiguities in P.W. 1's testimony.

Perusal of the record reveals that till date 11 witnesses have been examined. De-facto complainant was examined in chief on 1/9/2022 and 1/12/2023 and cross examined on 1/12/2023 and 13/12/2023.

Section 311 CrPC no doubt allows the court to recall a witness if it is essential for a just decision of the case, but it has been held in a plethora of decisions that such power must be exercised judiciously and with caution and recalling a witness should be justified by strong and valid reasons and not merely for convenience or to fill in gaps in the evidence. **[Raja Ram Prasad v. State of Bihar, (2013) 14 SCC 461 and State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402]**. Also it is settled law that mere change of counsel is no ground for recalling witness.

As for the first point on which recall of P.W. 1 has been prayed for, it appears that such plea is frivolous as scheme of the Code only contemplates contradicting a witness by his/her previous statements only and not statements of other witnesses- if there are contradictions in versions of different witnesses that may be referred to at the time of argument but recalling a witness for this purpose is not at all tenable and moreover this will most certainly lead to an unending process.

Coming to the second point, it appears that copies were supplied to the accused long back. Record does not suggest that any medical report was supplied to the accused after cross examination of P.W. 1, so the plea of recalling P.W. 1 for cross examination to confront P.W. 1 with findings of such medical reports also does not appear to be tenable also.

As for the third contention viz clarification was required to clarify specific details of alleged incident in light of certain ambiguities in P.W. 1's testimony, it appears that such contention also is bereft of particulars and is rather vague and ambiguities if any can be agitated at the time of argument.

All in all, the Court fails to find any strong and valid reason to allow the application filed by the accused for recall of P.W. 1 and application hence stands rejected.

On the previous date, Ld. Special Public Prosecutor drew attention of the Court to the fact that accused, who is on bail in this case, had been arrested by police of Haroa P.S. on basis of written complaint of one Kartick Mondol in connection with Haroa P.S. case number 269/2025 dated 16/5/2025 under section 329(4)/118(2)/109 BNS as he allegedly attempted to commit murder of one Smt. Maya Mondal (a witness) in this case. A photocopy of F.I.R. and forwarding report was annexed with the petition. That accused is in custody with referred case has also been intimated to this Court by Ld. Advocate for accused on previous date by a separate petition by Ld. Advocate for accused person.

Meticulous perusal of the record suggests that Hon'ble High Court while granting bail to accused in CRM(DB) 4386/2024 vide order dated 26/2/2025 been pleased to impose conditions that included the accused shall not intimidate witnesses and further gave liberty to this Court to cancel bail granted to accused without further reference to Hon'ble High Court in case of violation of condition/s imposed.

Accused to hence show cause why bail granted to accused by Hon'ble High Court in CRM(DB) 4386/2024 vide order dated 26/2/2025 shall not stand cancelled.

Fix.....for show cause by accused person and evidence.

Issue production warrant against the accused directing him to be produced before this Court on next date.

In the meantime Ld. Special Public Prosecutor to arrange production of case diary of Haroa P.S. case number 269/2025 dated 16/5/2025 under section 329(4)/118(2)/109 BNS, in connection with which accused is presently in custody, on next date.

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