

In the Court of Judge, Special Court & 2nd Addl. Sessions Judge, Alipore
Special ST No.01(01)2024
Special Case -146/2023
CNR-WBSP01-007598-2023

Present : Rimpa Roy (JO Code - WB00822)
Judge, Special Court & 2nd A.S.J.,
Alipore, South 24-Parganas.

Order No.26
Dt.07.01.2026

Accused Samir Kumar and Samrat Kar are produced from J/C through VCS.

Accused Soma Pramanik on C/B is present by filing hazira.

Record is taken up for passing order over the Recall petitions filed by the accused Samir Kar and Samrat Kar dated 15.05.2025 and 06.08.2025.

Accused Samir Kar and Samrat Kar filed petition on 15.05.2025 and 06.08.2025 for recalling the evidence of the Victim Girl (PW1 / CSW 3) for the further cross-examination. The accused / petitioners stated in the petition that victim girl was examined, cross-examined and discharged by this Court on 06.05.2024. It is stated that accused Soma Pramanik preferred an application u/Sec.439 Cr.P.C. before the Ld. District Judge where the victim girl raised no objection and stated that nothing was committed against her will. It is further stated that certain areas, issues and points are remained untouched at the time of cross-examination by the previous Advocate. The VG / P.W. 1 is required to be cross-examined on the point of Seizure List, Rescue Memo which were not placed at the time of cross-examination. It is stated that from the evidence of P.W. 1 it would be evident that while causing raid by the police she was sitting and having conversation with a person allegedly planted by the present petitioner but no such person was taken into custody in course of such raid and no such person was cited as witness by the prosecution. It is stated that the VG / P.W. 1 is required

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to be cross-examined further on the areas and points those remained untouched. Ld. Advocate for the accused / petitioners stated that recall and re-examination of the VG / P.W. 1 is the imperative necessity for arrival into the just decision of the case. Accordingly, he has prayed before this Court to invoking the jurisdiction laid down u/Sec.311 Cr.P.C. for recalling P.W. 1 / VG 1 for cross-examination in the light of above aspects.

Record is taken up for hearing the petitions.

In course of hearing Ld. Advocate for the accused has prayed for allowing the petition and permitting him to cross-examine the VG1/PW1 on recall. He referred the following decisions in respect of his contention;

- 1.Criminal Revision 3102/ 2023 in the case of Shiv Mohan and anr vs State of U.P.
2. 2013 (5) SCC 741 in the case of Natasha Singh vs CBI

Ld. Special P.P. for the Prosecution raised vehement objection against the prayer for recall and submitted that the Hon'ble Apex Court has held that the Victim girl cannot be called to adduce evidence on recall. She has prayed for rejection of the petition.

Section 311 of the Cr.P.C corresponding to sec 348 BNSS empowers the Court to summon material witness or any person present at any stage of any enquiry and trial for the just decision of the case.

I have carefully gone through the petition , evidence of VG1/PW1 culled on record and decisions referred by the Ld. Advocate for the accused persons.

It is the settled position of Law that POCSO Act mandates time bound completion of trial to protect the interest of child victims from prolonged legal trauma. At the

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same time Fair trial is the main object of Criminal procedure and it is the bounden duty of the Court to ensure fair trial.

On careful perusal of the petition and evidence of the VG , I am opinion that the accused has shown reasonable grounds for allowing the petition for recall . Thus , having regards to the goal of protecting the child victim from further victimization and also considering fundamental right of the accused for fair trial , I am inclined to allow the prayer to unearth the truth and to render a just decision.

Accordingly, the application for recalling VG1/PW1 for cross examination is allowed.

Thus, keeping in mind the observation made by the Hon'ble High Court in the case of Shiv Mohan and anr vs State of U.P in connection with Criminal Revision 3102/ 2023 , I am inclined to give one opportunity to the accused petitioners to cross examine the VG1/PW1 subject to payment of cost of Rs.5000/- to the PW1. It is further directed that defense shall conclude the cross examination on the same day and no further adjournment shall be granted.

To **09.02.2026** for payment of cost and cross-examination of VG1/PW1.

I.O is directed to produce the VG for cross examination on recall.

D/c by me.
Sd/-

Judge, Special Court &
2nd A.S.J., Alipore

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