

Sessions Case No.235 of 2023
CNR No. WBUD05-001939-2023

Present : Sri Amar Kishore Mahato (J.O.Code-WB 00922)
Addl. Sessions Judge,
2nd Court, Islampur, U/Dinajpur.

Order No.18; dated-10.07.2024

Today is fixed for evidence and hearing the petition dated 09.07.2024 filed the prosecution.

Accused Md. Sahil is produced from J/C.

Ld. Addl. P.P files hazira.

No witness is present.

The petition filed by the prosecution on 09.07.2024 contending that the prosecution is not willing to examine the CSW No.4 and 6, namely, Tapan Kumar Saha and Nupur Saha who are the parents of the deceased. It is stated that those two witnesses are bed ridden and not in a position to appear before this Court for adducing their evidence and hence, prayed for exemption to examine the aforesaid two witnesses.

Copy of the said petition has been served upon the Ld. Advocate for the defence.

No objection is raised by the Ld. Advocate for the defence.

At the time of hearing, Ld. Addl. P.P unable to produce any document regarding illness of the parents of the deceased, namely, Tapan Kumar Saha and Nupur Saha. In the petition the age of the aforesaid two witnesses is also not mentioned.

Therefore, this Court is under quite dark regarding the age of the aforesaid two witnesses. Since, no document is available before this Court regarding the illness of the aforesaid two witnesses, it can be concluded that the alleged ground for non examination of the aforesaid two witnesses is not substantiate by producing the relevant document.

Furthermore, after going through the entire petition filed by the prosecution, I find that there is no mention that these witnesses are not material witnesses or their evidence are not relevant for the purpose of this case. Besides that, at the time of opening the case of the prosecution u/s. 226 Cr.P.C, the prosecution did not submit any list of the witnesses and hence, at this stage, the petition for claiming exemption of examining the CSW Nos. 4 and 6 is not appeared to be bona fide.

I have already mentioned that the prosecution has absolutely failed to make out any ground for non examination of the aforesaid two witnesses and also failed to state whether the evidence of aforesaid two witnesses are material or not. For any reason, whatsoever, if the witnesses are not to be produced before this Court, the examination of the witnesses can be done with the aid of section 284 of Cr.P.C. The prosecution also did not state any reason why the provision of section 284 of Cr.P.C is not applicable in this regard.

Considering all these aspects, the petition filed by the prosecution on 09.07.2024 for exemption of examining of CSW Nos. 4 and 6 is rejected.

Since, the custody trial is going on, it is the duty of the Court to examine the witnesses at the earliest and the schedule to be made for speedy trial of the case. It appears from the case record that till date the prosecution has examined six witnesses:-Aiub Momin(CSW-1), Samsad (CSW-2), Ratan Saha (CSW-9), Bablu Dutta (CSW-7 and CSW-10), Biplab Das (CSW-14) and Abdul Gaffar(CSW-3).

Therefore, it prima facie appears that the prosecution is producing the witnesses as per their own whims and most unfortunate part of this Court, I also failed to exercise the due diligence in this regard.

As the Sessions Court, my duty to dispose of the case after proceeding in terms of section 309 Cr.P.C. Accordingly, the following schedule is made for the trial:-

Fix. 30.07.2024 for evidence of Md. Munna CSW-4.

Fix. 31.07.2024 for evidence of CSW-5 and 6.

Fix. 01.08.2024 for evidence of CSW-8 and 11.

Fix. 02.08.2024 for evidence of CSW-12, 13, 15 and 16.

Fix. 03.08.2024 for evidence of CSW-17 and 20.

Fix. 05.08.2024 for evidence of CSW-18 and 19.

Fix. 06.08.2024 for evidence of CSW-21 and 22.

Prosecution to take steps accordingly.

Accused Md. Sahil be remanded to J.C and be produced on the dates fixed.

D/C by

Addl. Sessions Judge,

Additional Sessions Judge,
2nd Court, Islampur, Uttar Dinajpur.