

GAHC010096762023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./167/2024

RAKESH KUMAR PAUL
S/O LATE RANJIT KUMAR PAUL

R/O HOUSE NO. 47
SAKTIGARH PATH

P.S. BHANGAGARH
DIST. KAMRUP (M)
ASSAM
PIN-781005

VERSUS

THE STATE OF ASSAM
THROUGH PP
ASSAM

Advocates for the petitioner : Mr. M. K. Choudhury, Sr. Adv.
Mr. S. Das, Adv.

Advocates for the respondents : Mr. M. Phukan. P. P. Assam
Mr. P. P. Dutta, Spl. P.P., APSC

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 01.03.202

Date of Judgment & Order : 03.05.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. K. Choudhury, learned Senior Counsel assisted by Mr. S. Das, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor assisted by Mr. P. P. Dutta, learned Special Public Prosecutor, APSC.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 *read with* Article 227 of the Constitution of India for setting aside and quashing the impugned Orders dated 24.01.2024, 03.02.2024, 05.02.2024 & 07.02.2024, passed by the learned Special Judge, Assam in Special Case No. 05/2021, and also further prayed to allow the Petition No. 1961/2023 directing the prosecution to disclose the name of the persons who appeared in the Office of the APSC on behalf of the Prosecution and also to disclose the names and particulars of the Officials of APSC with whom the Prosecution established contact and further prayed to allow the petitioner to inspect the office files/records lying in the Office of the APSC and allow him to submit the list of Defence Witnesses and Documents in terms of the prayer made in the Petition No. 1916/2023.

3. It is submitted by Mr. M. K. Choudhury, learned Senior Counsel for the

petitioner, that in pursuant to the registration of the F.I.R., being Dibrugarh P.S. Case No. 936/2016, the petitioner was arrested on 04.11.2016, which is also pending for trial before the Court of learned Special Judge, Assam as Special Case No. 02/2017. Thereafter, Bhangaghar P.S. Case No. 159/2017 was also registered against the present petitioner and after a long period of incarceration, the petitioner was granted with the bail. The investigation of this case was carried out over a period of 3 years, 1 month and 23 days till the submission of the 6th Supplementary Charge-Sheet on 09.10.2020 and thus, the instant Special Case No. 05/2021 was registered only on 21.01.2021, i.e. after a lapse of 3 years 3 months and 13 days from the date of filing of the Charge-Sheet on 09.10.2017. The charges were finally framed against the present petitioner under Sections 120(B)/420/468/409 of the Indian Penal Code *read with* Sections 7/13(1)/(a)(b)(d)/13(2) of the Prevention of Corruption Act, 1988 vide Order dated 18.12.2021. The first witness of the present case was examined only on 06.04.2022, i.e. after the delay in trial for about 4 years 5 months and 29 days, and till date, there is no instances of stay of the proceeding of the Court. However, one transfer petition, Tr. Pet. (Crl) No. 16/2023, under Section 243(2) of the Cr.P.C., was filed, but the same was dismissed by this Court vide Order dated 18.01.2024.

4. The learned Senior Counsel for the petitioner further submitted that the statement of the defence of the present petitioner was completed on 16.06.2023, at around 1.00 p.m., and thereafter the learned Court below directed the petitioner to submit the list of defence witnesses and documents immediately on the same day, i.e. on 16.06.2023. However, one prayer was made to grant some more time for filing the list of defence witnesses, but the

said prayer was rejected and only 3 hours was allowed to submit the defence witnesses and accordingly, finding no alternative, the list of defence witnesses was submitted before the learned Court below on 16.06.2023 itself. On 17.06.2023, the petitioner submitted a list of defence documents by filing a petition under Section 243 (2) Cr.P.C. before the learned Court below vide Petition No. 1916/2023, wherein a prayer was made for inspection of the documents which are lying in the Office of the APSC and also to inspect the office files of the ADO Examination held in the year 2015. Thereafter, the learned Special Judge granted 2 days time to the Prosecution to submit their Written Objection and the next date for hearing was fixed on 20.06.2023. However, on that day, the Prosecution again took an adjournment and accordingly the hearing was deferred to 21.06.2023. On 21.06.2023, the Prosecution filed their Written Objection and thereafter the next date for hearing was fixed on 22.06.2023 and the prosecution took a proactive role and had wrongly and illegally contacted an Independent Witness (APSC) and discussed the merits of the documents sought by the petitioner in support of his defence behind the back of the petitioner. Thus, it cannot be reasonably disbelieved that the State not only tampered with the documents which was prayed for inspection, but also influenced the ASPC in a manner prejudicial and detrimental to the petitioner's defence.

5. On 22.06.2023, the petitioner filed another application, being Petition No. 1961/2023, praying for a direction to the Prosecution to furnish the name of the person who had contacted the APSC Office and names of the APSC Officials who were being contacted by the Prosecution. But, vide order dated 22.06.2023, the learned Court below had treated the said Petition No. 1961/2023 as a simple

adjournment petition and fixed 23.06.2023 for passing order in respect of Petition No. 1916/2023 even without hearing the petitioner. The petitioner had challenged the said Order dated 22.06.2023 by way of filing the Criminal Petition under Section 482 Cr.P.C. before this Court, which was numbered as Crl. Pet. 71/2024, and the said criminal petition was allowed by this Court and the Orders dated 22.06.2023 and 22.01.2024 were interfered with and directed the learned Court below to rehear the said 2 (two) petitions, being Petition No. 1916/2023 and 1961/2023, in accordance with law.

6. On 22.01.2024, the learned Court below was apprised about the pendency of the said Crl. Pet. No. 71/2024 and it was recorded that in the event of failure to produce any stay order from this Court, necessary order will be passed in Petition Nos. 1916/2023 1961/2023 and accordingly, the next date was fixed on 24.01.2024 for passing orders in respect of the said Petitions. On 24.01.2024, the petitioner produce the certified copy of the aforesaid order dated 23.01.2024, passed by this Court in Crl. Pet. No. 71/2024, and to the utter surprise of the petitioner, the learned Court below did not take up the hearing of both the Petitions and the oral prayer for adjournment of the petitioner was also rejected by the learned Court below.

7. The Petition No. 1916/2023 was decided on the basis of instructions obtained by the Prosecution from the Office of the APSC and in their Written Statement, the prosecution had deliberately mislead the learned Trial Court with regard to the non-existence of certain documents. Finally on 24.01.2024, the learned Court below had rejected the prayer of the petitioner for disclosing the names of the APSC Officials who had contacted the Prosecution and accordingly

the petition was decided only on the basis of the instructions received by the Prosecution from the Office of the APSC.

8. The learned Senior Counsel further submitted that with regard to documents mentioned in Sl. No. (vii), (x) & (xi) in Petition No. 1916/2023, it was the stand of the Prosecution that the said documents are not in existence and such stand was taken entirely on the basis of the instructions obtained by the Prosecution from the Office of the APSC. In case of documents mentioned in Sl. No. (vii), (x) & (xi) in Petition No. 1916/2023, the same are very much in existence in the APSC Office, but the Prosecution had deliberately mislead the learned Court below stating that those documents are not in existence in the Office. It was submitted by the prosecution that the documents mentioned in Sl. No. (vii), which are the answer scripts, are not maintained in the Office as it was a case of direct recruitment and all the candidates for ADO examination had undergone a screening test conducted by APSC by means of OMR Sheets. In case of documents in Sl. No. (x), (xii) & (xiii), it was the stand of the prosecution that no invigilators were appointed since it was a case of direct recruitment where select list was prepared as per the marks obtained in the interview. It is further submitted that the examinations (screening test), as conducted by the APSC in the year 2015 through objective type questions on OMR Sheets, were held in presence of invigilators as appointed by APSC. Therefore, if the documents mentioned in Sl. No. (vii) is found to be in existence, as a necessary corollary, the documents mentioned in Sl. No. (x), (xii) & (xiii) shall also exist and thus, it was imperative for the petitioner to know the names of the APSC Officials who had instructed the Prosecution and it is the right of the petitioner to ascertain the nexus between the APSC Officials and the

Prosecution who had deliberately mislead the learned Trial Court. It is further submitted that the very fact that the Prosecution had established contact and communication with APSC Officials had caused serious prejudice to the petitioner as such communication had been made with *mala fide* intention and with an ulterior motive not only to tamper the evidence of the petitioner, but also tutored the APSC Officials, being the petitioner's witness. More so, the petitioner has been denied a reasonable opportunity to deal with the allegations made by the Prosecution in the said objection petition. Such denial is in gross violation of principles of natural justice and hence, the same is wrong, illegal and unconstitutional. Unless the opportunity of hearing is given to the petitioner in respect of Petition No. 1916/2023, the petitioner shall suffer from irreparable loss, injury and prejudice and same shall result in multiplicity of proceedings.

9. The learned Trial Court was *inter alia* pleased to allow the production of documents mentioned in Sl. No. (viii) on the basis of submission made by the Prosecution after obtaining instructions from APSC Office. But the learned Trial Court again recalled the said order vide its order dated 03.02.2024 and rejected the prayer of the petitioner to direct the APSC to produce the said documents under reference. However, vide order dated 24.01.2024, the learned Court below requested the Chairman, APSC to direct the Secretary or any other competent Officer to produce the documents/files mentioned in Sl. No. (i), (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii), but while inspecting the Office Files on 03.02.2024, the petitioner came to know that out of all the documents which were allowed by the learned Trial Court for inspection, the documents mentioned in Sl. No. (viii) & (xvii) were missing or not produced by the APSC. As such, the matter was brought before the learned Court below by filing Petition

No. 285/2024 with a prayer to direct the APSC to produce the same. But the said prayer of the petitioner was rejected by the learned Court below accepting the submission made by the Prosecution.

10. With regard to documents mentioned in Sl. No. (xv) is concerned, the petitioner sought for all the correspondence made by the I.O. of the instant case with the APSC Office. However, vide order dated 24.01.2024, the learned Court below rejected the said prayer. Though the learned Court below had allowed to inspect the documents lying in the Trial Court, but did not give any reasonable opportunity to the petitioner to complete the inspection of the documents on 05.02.2024. However, vide order dated 03.02.2024, the learned Court below was pleased to fix the next date for further proceeding on 07.02.2024, but due to his high blood sugar and some medical emergency, the petitioner could not appear before the Court on 07.02.2024 and accordingly the engaged counsel filed a petition seeking adjournment for the medical emergency of the present petitioner and it is also brought to the notice of the Court that the inspection could not be completed on 05.02.2024. But, vide order dated 07.02.2024, the learned Trial Court had rejected the prayer of the petitioner and accordingly closed the hearing of the witnesses of both the parties and the matter was fixed for argument on 20.02.2024.

11. It is further submitted by the learned Senior Counsel for the petitioner that the question of infringement of the right to have a reasonable opportunity to defend the trial is one of fairness in the administration of criminal justice even 'acting fairly' is the essence of principles of natural justice and 'fair and reasonable procedure' is what is contemplated by the expression 'procedure

established by law' under Article 21 of the Constitution of India.

12. Accordingly, it is submitted that on being aggrieved and dissatisfied with the Orders dated 24.01.2024, 03.02.2024, 05.02.2024 & 07.02.2024, passed by the learned Special Judge, Assam in Special Case No. 05/2021, the present criminal petition has been filed praying for a direction to the learned Court below to give a reasonable opportunity to the petitioner and to get a fair trial as guaranteed under Article 21 of the Constitution of India.

13. In regards to Section 243(2) Cr.P.C., the learned Senior Counsel for the petitioner further relied on following decisions:-

- (i) **Selvi J Jayalalitha Vs. State by Deputy Supdt. Of Police, Chennai**, reported in **(2000) 9 SCC 754**;
- (ii) **Kalyani Bhaskar Vs. M. S. Sampooram**, reported in **(2007) 2 SCC 258**;
- (iii) **T Nagappa Vs. Y R Muralidhar**, reported in **(2008) 5 SCC 633**;
- (iv) **Central Bureau of Investigation Vs. Tuncay Alankus**, reported in **(2013) 9 SCC 611**; and
- (v) **Dip Bora Vs. State of Assam**, reported in **(2018) 3 GLR 433**.

14. The learned Senior Counsel further submitted that in case of **Dip Bora (Supra)**, this Court, considering all relevant judgments on Section 243(2)

Cr.P.C., has *inter alia* held that “no doubt, the anxiety of the learned trial court to cut short the delay may be commendable, but at the same time, court cannot lost its sight of the basis tenets of the fair trial. If the accused, in a criminal trial proceedings are not given the opportunity to adduce evidence in support of his defence, only for the sake of expeditious trial, that would amount to denial of fair trial, affecting the right of the accused granted by the Constitution to defend his case properly.”

15. He further submitted that in case of **Selvi J Jayalalitha (Supra)** also, the Hon’ble Supreme Court has expressed the view that adequate/more opportunity should be given to an accused for examining his defence witness. But, in the instant case, neither the Court had given any adequate opportunity to the accused/petitioner for adducing his evidence nor his prayer for inspection of the document was allowed and to the prayer to provide the list of the persons who made contact with the APSC Office is also rejected. Even after the order of this Court passed in Crl. Pet. No. 71/2024, whereby the learned Special Court was directed to rehear the Petition No. 1916/2023 and 1961/2023, the learned Court below did not consider the entire facts and circumstances of this case and did not give any opportunity to the present petitioner neither to inspect the document nor for production of the defence witnesses.

16. In this context, Mr. M. Phukan, learned Public Prosecutor assisted by Mr. P. P. Dutta, learned Special Public Prosecutor, APSC, has submitted that the documents mentioned in the Petition in Sl. No. (i), (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii) are already produced by the APSC Office and the same are lying in the Office of the learned Special Judge, Assam which has already been

inspected by the present petitioner on 03.02.2024 through his engaged counsel. Further it is submitted that it is clearly reflected in the Order of the learned Special Judge, dated 03.02.2024, that the documents mentioned in Sl. No. (viii) has already been submitted by the APSC and the same has been accepted and marked as P59/PW42 and so far the documents mentioned in Sl. No. (xvii) is concerned, the APSC Office has already furnished the list of employees attached to the Office of the Chairman, APSC during the year 2015. The learned Public Prosecutor further submitted that from the order of the learned Court below, it also reveals that the petitioner has already been permitted to inspect the documents mentioned in Sl. No. (iv), (v), (vi) & (ix) on 05.02.2024 in the Court hours in presence of the Sheristadar. It is further submitted that after the Order passed by this Court in Crl. Pet. No. 71/2024, the learned Special Judge reheard the Petition Nos. 1916/2023 & 1961/2023 and passed a detail order on 24.01.2024 and permitted the petitioner to inspect the documents/files during the office hours in presence of the Sheristadar in respect of the documents mentioned in Sl. Nos. (i), (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii), which are available in the Office of the APSC and accordingly the APSC was also directed to produce all the documents for inspection by the present petitioner through his engaged counsel. He further submitted that the Chairman of the APSC was also requested to direct the Secretary or any competent Officer to produce the documents mentioned in Sl. Nos. (i), (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii) on or before 29.01.2024. However, considering the submission made by the Prosecution, the documents mentioned in Sl. No. (x), (xi) & (xii) could not be allowed as the invigilators were not appointed for examination of ADO conducted in the year 2015 as it was a direct recruitment and conducted through viva voce examination and therefore, there was no question of

preparing any sort of documents as mentioned in Sl. Nos. (vii) (x), (xi) & (xiii). Thus, it is seen that the learned Court below had considered the Petition Nos. 1916/2023 & 1961/2023 and passed a detail order in that regard and even requested the Chairman of APSC to produce the relevant documents through the Secretary or any officials of the APSC. The learned Public Prosecutor further submitted that the case of Dip Bora (Supra), which is relied by the petitioner, is also not applicable in this case wherein the prayer for defence witness was filed at the time of the prosecution witnesses.

17. However, it is submitted by the learned Public Prosecutor that the State has no objection if the petitioner is allowed to examine the D.Ws. Further, it is submitted that the case is already delayed and hence, a direction may be issued to produce the D.W's, if any, within a very short period so that the matter can be heard and disposed of at the earliest.

18. I have considered the submissions made by the learned counsels for both sides and it is seen that the points raised in the present petition is that the learned Court below did not consider the Petition Nos. 1916/2023 & 1961/2023, and even after the direction of this Court passed in Crl. Pet. No. 71/2024, the learned Court below did not give any reasonable opportunity of hearing to the petitioner in those petitions and passed the order accordingly on 24.01.2024. The another issue raised in this petition is that all the documents mentioned in Petition No. 1916/2023 are not being allowed by the learned Court below to inspect by the petitioner which are necessary to take his proper defence. Further, the issue raised in this petition is that the prosecution contacted the defence witnesses in absence of the petitioner and that the prayer for perusal of

the copies of all correspondence made between the I.O. and APSC was also not allowed by the learned Court below as well as the prayer for inspection of all the official files and records lying in the APSC Office in addition to list already submitted was also not allowed by the learned Court below. It is further the contention of the petitioner that no reasonable opportunity was provided to the petitioner to complete the inspection of the documents by the learned Court below on 05.02.2024. The order was passed at 4.30 p.m. on 05.02.2024 allowing the defence counsel to inspect the document and hence, the inspection of the document could not be completed by the petitioner, but the same was not considered by the learned Court below.

19. On the other hand, it is the case of the State/respondent that the learned Court below gave the opportunity to the petitioner to inspect all the documents which were lying in the Office of the APSC and accordingly the direction was also made to the Chairman, APSC to produce all the documents mentioned in the petition from Sl. Nos. (i), (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii) through the Secretary or any other Officials of the APSC. Further it is the plea of the respondent that all the documents were also inspected by the petitioner through his engaged counsel in the Office of the Sheristadar of the learned Court below and the Petition Nos. 1916/2023 & 1961/2023 were also considered by the learned Court below and accordingly the inspection of those documents were allowed. The prayer for adducing the defence witness was also allowed by the learned Court below. But, on the date fixed, the present petitioner could not produce the witnesses. However, it is submitted by the learned Public Prosecutor that the State has no objection if the petitioner wants to adduce any defence witness to substantiate his defence plea.

21. After considering the points raised by the learned Senior Counsel for the petitioner as well as the State respondent, I have also perused the entire case record, annexures and the orders passed by the learned Court below.

21. It is seen that after the order passed by this Court in Crl. Pet. 71/2024 with a direction for rehearing of Petition Nos. 1916/2023 & 1961/2023, the learned Special Judge heard both the parties and accordingly, after hearing the submissions made by the learned counsels for the parties, the Order dated 24.01.2024 was passed whereby the learned Court below directed the Office of the APSC to produce the documents mentioned in Sl. Nos. (i) (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii) before the Court on 29.01.2024 and from the subsequent Orders dated 03.02.2024 & 05.02.2024, it is seen that after the production of the documents by the Office of the APSC, the prayer for inspection of the documents of the petitioner was allowed and accordingly the documents mentioned in Sl. Nos. (i) (ii), (iii), (viii), (xii), (xiv), (xvi) & (xvii) were also inspected by the petitioner through his engaged counsel in the Office of the Sheristadar of the learned Court below. Thus, it is seen that the Petition Nos. 1916/2023 & 1961/2023 were considered by the learned Special Judge and the order for inspection or production of the documents by the Office of the APSC was passed accordingly only after hearing both the parties on the said petitions. Further it is seen that vide Order dated 03.02.2024, the petitioner was also permitted to inspect the documents mentioned in Sl. Nos. (iv), (v), (vi) & (ix) on 05.02.2024 in the Court hour in presence of the Sheristadar, which were lying in the Office of the Sheristadar. As per the report of the Sheristadar, the accused/petitioner had inspected all the documents as directed by the Court

through his engaged counsel which is reflected in the Order dated 05.02.2024 and the Vakalatnama of the newly engaged counsel was also accordingly accepted by the Court vide Order dated 05.02.2024. But there was no separate prayer made on 05.02.2024 to inspect the other documents or for further inspection of the document which was already inspected in the Office of the Sheristadar by the petitioner. However, one prayer was made for obtaining the certified copies of the documents and the Court observed that the specific provision is there to apply for certified copy of the documents and accordingly no order can be passed on the prayer for obtaining of certified copy of the documents. More so, the accused/petitioner was also given the opportunity to summon the D.Ws. as per direction given vide order dated 03.02.2024.

22. Coming to the document No. (xv), it is seen that those are all the correspondence made by the Investigating Officer of the instant case with the APSC from 17.08.2017 till 09.10.2020 and the said prayer was rejected by the learned Court holding that the correspondence made by the I.O. with the APSC Office during the said period are the privileged communication made by the I.O. for the purpose of investigation and the same are the part of the Case Diary and thus, the accused persons are not entitled to get the same. The said observation is rightly made by the learned Special Judge as all the correspondence, which was made by the I.O. with the office of the APSC, cannot be disclosed as it was a part of investigation and hence, the prayer for inspection of those correspondence made by the I.O during the investigation is rightly rejected by the learned Court below.

23. The document mentioned in Sl. No. (vii) is the Answer Scripts of successful

candidates who have not been made as an accused in respect of ADO examination held in the year 2015 and the document No. (x) is the Attendance Register of the invigilator present during ADO examination held in the year 2015. Document mentioned in Sl. No. (xi) is the duty allocation sheet of invigilator present during ADO examination of the year 2015 and the Sl. No. (xiii) is the list of examiners who were allotted with the distinct Answer Sheets in respect of ADO Examination. While considering the prayer for inspection of above referred documents, it has been held that in the ADO Examination of 2015, no invigilators were appointed as it was a direct recruitment conducted through viva voce examination and therefore there was no question of preparing any sort of documents like those mentioned in Sl. Nos. (vii), (x), (xi) & (xiii). In respect of document mentioned in Sl. No. (vii), which are the Answer Script of the successful candidates in ADO Examination, it has been held that there was no such Answer Scripts and it was a direct recruitment conducted through viva voce examination. Further, from the Order dated 05.02.2024 also, it is seen that no further prayer was made for inspection of the document mentioned in Sl. Nos. (vii), (x), (xi) & (xiii), though the prayer for obtaining certified copy of the documents was made before the learned Court below on 05.02.2024.

24. So, from the entire discussions made above, it is seen that the learned Court below committed no error or mistake while dealing with the Petition Nos. 1916/2023 & 1961/2023 and passed a detail order on 24.01.2024 by discussing all relevant points and thereafter allowed the prayer for inspection of all the documents except the documents mentioned in Sl. Nos. (vii), (x), (xi) & (xiii), which were not in existence in the Office of the APSC. Further it is the stand of the State respondent that those documents were not available or in existence of

the Office of the APSC as the ADO examination of 2015 was a direct recruitment and the candidates were selected only through viva voce examination. Further it is seen that the prayer for obtaining the certified copy of those documents were also not rejected by the learned Court below and it was only a direction of the Court to apply for the certified copy through specified procedure. Thus, the petitioner was at liberty to apply for the certified copy of the documents which were already been inspected through his engaged counsel in the Office of the Sheristadar.

25. Coming to the production of the witnesses, it is seen that vide Order dated 03.02.2024, the accused/petitioner was directed to take steps on the D.Ws. on 05.02.2024, but on the said date, it is observed by the Court that the petitioner has not taken any steps for summoning the D.Ws. as directed by the Court on 03.02.2024 till 4.30 p.m. However, the accused was granted the liberty to take steps for summoning the witnesses on 05.02.2024 before 5.00 p.m. and/or 10.00 a.m. to 10.30 a.m. of 06.02.2024. But, on 07.02.2024, a petition was filed by his engaged counsel that due to his medical emergency, the petitioner had to be admitted in the Nemcare Hospital and as such, he could not attend the proceeding and prayed for an adjournment till the accused/petitioner is released from the hospital. However, vide order dated 07.02.2024, the said petition was rejected with an observation that he did not file any petition under Section 315 Cr.P.C., which is mandatory in nature and as per Section 22 of the P.C. Act, 1988, the accused should give in writing a list of persons to whom he proposes to examine. But, he did not file any petition under Section 315 Cr.P.C. More so, the learned Court below has observed that the petitioner tried to drag the proceeding of the Court despite specific direction of this Court to dispose the

case expeditiously and with that observation, the petition for adjournment filed on 07.02.2024 on the health ground of the accused/petitioner was rejected by the learned Court. In this context, as discussed earlier, Mr. Phukan, learned Public Prosecutor assisted by Mr. P. P. Dutta, learned Special Public Prosecutor, APSC, has raised no objection if the accused/petitioner examined the D.Ws.

26. Further, it is seen that on 07.02.2024, adjournment petition was filed by the accused/petitioner on the ground that he had to be hospitalized immediately in the previous night due to his deteriorated health condition. But, considering the entire submissions made by the learned Public Prosecutor as well as the learned Special Public Prosecutor, APSC and other aspects of the case, the learned Court below had rejected the prayer for adducing evidence. However, from the order it is seen that the accused/petitioner has already examined 4 (four) witnesses in his favour and also filed an application under Section 311 Cr.P.C. to examine the Office-In-Charge of Bhangagarh Police Station, Shri Bipin Medhi, and the said prayer was allowed by the learned Court below and the said Bipin Medhi was also examined as defence witness. Thus, reasonably opportunities were given to the present petitioner not only to inspect the documents but also to adduce his defence evidences to take his proper defence. However, considering the entire facts and circumstances of this case, viz-a-viz the health ground of the accused/petitioner taken on 07.02.2024 by his engaged counsel, I find that one opportunity may be given to the petitioner to adduce his evidence to substantiate his defence plea.

27. In view of the discussion made above, the present petition is partly allowed allowing the accused/petitioner to adduce evidence and the learned

Court below is hereby directed to give one more opportunity to the accused/petitioner to adduce evidence. Accordingly, the learned Court below shall fix a date for D.W. within 15 (fifteen) days from the date of passing of this order and on the fixed date, the accused/petitioner will produce his defence witnesses and after completion of the defence witnesses, the learned Court below will make an endeavor to dispose of the matter as expeditiously as possible.

28. The criminal petition stands disposed of in terms of above.

JUDGE

Comparing Assistant