

GAHC010271432024



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

Case No. : Crl.Pet./1558/2024

SAMIR DEBNATH
S/O LATE PRAN HARI DEBNATH
R/O MISSIONPARA, TINSUKIA,P.S. AND DIST. TINSUKIA, ASSAM
PIN-786125

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SMT. KHUSBOO DEBNATH
W/O SRI SAMIR DEBNATH
PRESENTLY RESIDING AT BALUGADA SABJIBARI
TINSUKIA
P.O.
P.S. AND DIST. TINSUKIA

Advocate for the Petitioner : MR. A K GUPTA, MR. R K MAHANTA,MR. R S MISHRA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

Date : 19.12.2024

- 1.** Heard Mr. A. K. Gupta, learned counsel for the petitioner. Also heard Mr. D. P. Goswami, learned Additional Public prosecutor for the State of Assam.
- 2.** This is an application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, challenging the order dated 04.12.2024 passed by learned Additional Sessions Judge cum Special Judge (POCSO), Tinsukia in POCSO Case No.55/2024.
- 3.** The present petitioner is facing the Trial before the Court below, he is in jail and he was earlier represented by a Legal Aid Counsel. Witnesses were examined and the petitioner attempted the trial by Video conferencing.
- 4.** The learned Trial Court agreed with the respondent No.2 and allowed her prayer.
- 5.** Three prosecution witnesses were examined, after that the petitioner engaged the personal lawyer, the new lawyer discovered that many relevant questions were not put to the witnesses therefore he filed an application under Section 311 of the Code of Criminal Procedure praying to recall those witnesses for further cross-examination by the new counsel.
- 6.** The Trial Court rejected the said prayer. .
- 7.** I have gone through the impugned order.
- 8.** The reason in which the said application was rejected need not to be mentioned in the said order.
- 9.** I have considered the submissions made by the learned counsel for both the sides.
- 10.** This Court is of the opinion that the learned Trial Court did not exercise a judicial

mind, while rejecting the prayer of the petitioner.

11. This court is satisfied that many important questions were not put to the three witnesses, who are already discharged after cross-examination.

12. It is a matter of administration of justice therefore the petitioner be given fair opportunity to defend himself. For this reason the impugned order is set aside.

13. The Trial Court is directed to recall the PW-1, PW-2 and PW-3 for cross-examination by the newly engaged counsel.

14. With the aforesaid direction, the Criminal petition stands disposed of.

JUDGE

Comparing Assistant