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

Case No. : Crl.Pet./1386/2026

SRI ACHARJYA BHATTACHARYA
S/O-LATE MUNINDRABHATTACHARYA.R/O- VILLAGE NO. 2,
BORPATHAR,P.S- JAMUGURI, P.O. NAHARBARI IN THE DISTRICT OF
SONITPUR, ASSAM.PIN-785603

VERSUS

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

2:SRI SEKHAR PATHAK
S/O -LATE DEBANANDA PATHAKR/O- TUPIA
P.S -JAMUGURI
DISTRICT- SONITPUR
ASSAM.PIN-78418

Advocate for the Petitioner : MR P KATAKI, SR. ADV., MRS R BEGUM,MS N KASHYAP,MS. A LALA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.10.2026

Heard Mr. P. Kataki, learned senior counsel, assisted by Ms. R. Begum, learned counsel for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor for the State.

2. In this petition, under Section 528 of the BNSS, the petitioner has challenged

the legality, propriety and correctness of the order dated 24.08.2026, passed by the learned Special Judge (POCSO), Sonitpur at Tezpur (trial court hereinafter), in Special POCSO Case No. 136/2023.

3. Mr. Kataki, learned counsel for the petitioner, submits that the petitioner is an accused in Special POCSO Case No. 136/2023, which is pending before the court of learned trial court, at the sage of trial.

3.1. Mr. Kataki submits that after examination of some witnesses, the learned trial court, vide impugned order dated 24.08.2026, had altered the charge from Section 8 of the POCSO Act to Section 10 of the POCSO Act and added Section 354A(2) of the IPC and allowed to re-cross-examine the witnesses, but restricted it only to the point of the alleged age of the victim and to the fact that the accused is a school teacher of the victim.

3.2. Mr. Kataki also submits that unless the petitioner is allowed to cross-examine, in respect of the altered charge and the newly added charge, the petitioner will suffer serious prejudice and therefore, it is contended to allow the petitioner to cross-examine the witnesses in respect of altered charge and newly added charge, instead of alleged age of the victim and to the fact that the accused is a school teacher of the victim.

4. Per-contra, Mr. Borthakur, learned Additional Public Prosecutor, submits that the petitioner may be allowed to re-cross-examine the witnesses, but he cannot be allowed to re-open the entire matter.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 24.08.2026, passed by the learned trial court.

6. It is to be noted here that in the case of **Madhusudan and Others vs. State of Madhya Pradesh**, reported in **2024 SCC OnLine 908,** Hon'ble Supreme Court has treated the right under Section 217 of the CrPC as mandatory, while the

examination remains tied to the altered charge.

7. But, it appears from the impugned order that the learned trial court has limited the scope of cross-examination of the witnesses by the petitioner to the alleged age of the victim and to the fact that the accused is a school teacher of the victim.

8. Accordingly, taking note of the submissions of learned counsel for both the parties and also considering the decisions of Hon'ble Supreme Court in the case of **Madhusudan (supra)**, this Court is inclined to allow this petition by directing the learned trial court to allow the petitioner to re-cross-examine the witnesses in respect of the altered charge and newly added charge.

9. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant