IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 346 of 2025

Mohsim Sheikh @ Mohsin Sheikh @ Moshim Sheikh, aged about 32 years, son of Naeem Sheikh, resident of village Bahadurpur, PO – Bahadurpur, PS – Pathrol District – Deoghar (Jharkhand). **… … …Petitioner**

Versus

The State of Jharkhand **... ... ... Opposite Party**

For the Petitioner : Mr. Anjani Kr. Singh, Advocate
For the State : Mr. Shiv Kr. Shankar, Addl. P.P.

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, with the prayer to quash the order dated 19.09.2024 passed by the learned Additional Sessions Judge – I, Madhupur, Deoghar whereby and whereunder the learned Additional Sessions Judge – I, Madhupur at Deoghar has allowed the petition under Section 348 of the BNSS, 2023, which corresponds to Section 311 of the Cr.P.C. and permitted the prosecution to produce the certificate under Section 65B of the BNSS in respect of the call details of three different mobile phones; as mentioned in the said order.

3. It is submitted by the learned counsel for the petitioner that the petition under Section 348 of the BNSS was filed on 28.08.2024 i.e., the date to which the case was fixed for judgment. It is next submitted that under Section 348 of the BNSS, the Court can examine a witness or any person in attendance or recall

and re-examine any person already examined, but a document cannot be allowed to be produced in exercise of power under Section 348 of the BNSS. Hence, the impugned order is illegal. It is next submitted that it has not been mentioned in the impugned order as who is the witness who will prove the said certificate under Section 65B of the Evidence Act nor the name of such person has been mentioned in Annexure – 2 of this Cr.M.P., which is the copy of the petition filed under Section 348 of the BNSS by the prosecution on 28.08.2024. Hence, it is submitted that the prayer as prayed for in this Cr.M.P., be allowed.

4. Learned Addl. P.P. on the other hand vehemently opposed the prayer of the petitioner and submitted that the undisputed fact remains that the certificate required to be furnished under Section 65B of the Evidence Act in respect of the call details report of the three mobile phones which has been mentioned in the impugned order, is required for the just decision of the case. Of course, neither in the petition which was filed under Section 348 of the BNSS nor in the impugned order it has been mentioned as to who is the person who has proved the said certificate for the same being marked exhibit. But since such evidence was required for the just decision of the case, hence, this Cr.M.P., being without any merit, be dismissed.

5. Having heard the submissions made at the bar and after going through the materials on record, it is pertinent to mention here that Section 348 of the BNSS has two parts, the first part is discretionary and the second part is mandatory. Because of this mandatory nature of second part, it compels the Court to take any step provided in Section 348 of the BNSS if the new evidence appears to it essential to the just decision of the case. The undisputed fact remains that the certificate as required under Section 65B of the Evidence Act, in respect of the

call details report of the three mobile phones, the details of which has been mentioned in the impugned order is required for the just decision of the case. But it was expected from the learned Additional Sessions Judge – I, Madhupur, at Deoghar, to mention in the order after making necessary enquiry from the Public Prosecutor when it allowed the petition; as to who is the person who is going to adduce evidence to prove the said certificate under Section 65B of the Evidence Act. Having not done so, this Court is of the considered view that there are chances that the petitioner may be taken by surprise, if a person comes for deposing in Court about whom the petitioner is not aware before. Under such circumstances in light of the discussions made above, the impugned order dated 19.09.2024 is quashed and set aside.

6. Learned Additional Sessions Judge – I, Madhupur at Deoghar is directed to pass a fresh order in accordance with law mentioning therein the name of the persons who is to be examined on behalf of the prosecution to prove the certificate under Section 65B of the Evidence Act in respect of the call details report of the three mobile phones which has been mentioned in the impugned order.

7. Accordingly, this Cr. M.P. is ***allowed*** to the aforesaid extent.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 01st April, 2026
AFR/ Aditi
Uploaded On -15/04/2026