

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLMC No.728 of 2026**

(In the matter of a petition under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023).

State (N.I.A.), Bhubaneswar *Petitioner (s)*

-versus-

Gameli Chinna Rao @ Santu @ Opposite Party (s)
Khilla @ Bandhu Santosh @ Killo
Mohan Rao @ Pulleya Melaka

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner (s) : *Mr. Santosh Kumar Mund,*
Special Public Prosecutor (NIA)

For Opp. Party (s) : *Mr. Prasanta Kumar Jena, Adv*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -07.05.2026

DATE OF JUDGMENT: -25.06.2026

Dr. Sanjeeb K Panigrahi, J.

1. The petitioner-State (NIA) seeks to challenge the order dated 12.12.2025 passed by the learned Sessions Judge, Khurda at Bhubaneswar in T.R. Case No. 24 of 2012.
2. The petitioner further seeks a direction to the learned Special Court to summon and examine Nobisa Sirka @ Azad, son of Bhima Sirka, cited at Sl. No. 31 of the charge-sheet, as a prosecution witness in accordance with law.



I. FACTUAL MATRIX:

3. The prosecution case, in brief, is that the accused persons are members of the Communist Party of India (Maoist), a proscribed terrorist organisation. It is alleged that, in furtherance of their common object, they caused a pre-planned landmine blast targeting personnel of the BSF, which affected a Bolero vehicle bearing Registration No. GJ-18-G/2041. It is further alleged that the accused persons thereafter resorted to indiscriminate firing and grenade lobbing at the occupants of the vehicle, resulting in the death of four BSF personnel, namely, (i) J.R. Khaswan, Commandant, 107 Bn. BSF, (ii) Rajesh Saran, 2-I/C, (iii) Inspector Ashok Yadav, and (iv) ASI (RM) Jitendra Kumar, besides causing injuries to other occupants of the vehicle. The prosecution further alleges that, after the incident, the arms, ammunition and other belongings of the deceased personnel were looted.
4. On the basis of the aforesaid occurrence, Chitrakonda P.S. Case No. 07 of 2012 dated 10.02.2012 was registered for the alleged commission of offences punishable under Sections 147, 148, 121, 121-A, 122, 124, 324, 302, 395 and 149 of the IPC, Sections 25 and 27 of the Arms Act, and Sections 3, 4 and 5 of the Explosive Substances Act.
5. Subsequently, pursuant to Order No. F.11011/28/2012-IS-IV dated 01.06.2012 issued by the Ministry of Home Affairs, Government of India, the NIA re-registered the case as RC No. 02/2012/NIA/DLI under the aforesaid provisions and took over the investigation.



6. During the course of investigation, the present accused, Gameli Chinna Rao, was arrested by the Odisha Police on 07.05.2013. Upon search, a 9 mm Browning pistol (Belgium-made) bearing Body No. 245PX24364 along with a magazine, 16 rounds of 9 mm ball ammunition, one pistol pouch, one magazine pouch, Maoist literature, one micro SD memory card, two pen drives, five gelatin sticks, nine detonators, one bundle of splinters, two mobile phones, three mobile chargers, one DVD remote, three earphones, a fake voter identity card in the name of Jakaka Kalo bearing the photograph of the accused, one spectacle, cash amounting to Rs. 64,630/- in different denominations, twenty-seven dry-cell batteries and approximately three kilograms of ammonium nitrate were allegedly recovered from his conscious possession and seized under due seizure lists.
7. During the course of investigation, it was revealed that the 9 mm pistol bearing Body No. 245PX24364, allegedly recovered from the possession of accused Gameli Chinna Rao, was the same weapon that had been looted during the occurrence in question and had originally been issued to Late J.R. Khaswan, Commandant, 107 Bn., BSF. According to the prosecution, the recovery of the said weapon connected the accused with the alleged offence and the larger conspiracy underlying the incident. Consequently, the respondent-accused, Gameli Chinna Rao, was shown arrested in connection with RC No. 02/2012/NIA/DLI.



8. Upon completion of investigation, a charge-sheet was submitted on 09.05.2014 against the respondent-accused, while keeping the investigation open. Thereafter, on 06.08.2015, a supplementary charge-sheet was filed against fifteen additional accused persons. In all, fifty-four witnesses were cited by the prosecution in the charge-sheet and supplementary charge-sheet.
9. The respondent-accused was lodged in Rayagada Jail in connection with other criminal cases and could be produced before the learned Special Court (NIA) only on 24.08.2017, despite several efforts having been made earlier to secure his production. It is further stated that since the remaining accused persons were either absconding or were in custody in other cases and had not been produced before the learned Special Court, the trial could not proceed for a considerable period.
10. Since the remaining accused persons were absconding, the case against the respondent-accused was split up. Thereafter, on 10.07.2019, charges were framed against him for the alleged commission of offences punishable under Sections 147, 148, 121/149, 121-A/149, 122/149, 124-A/149, 324/149, 326/149, 307/149, 302/149, 395/149 and 412 of the IPC, Sections 25 and 27 of the Arms Act, Sections 3, 4 and 5 of the Explosive Substances Act, Sections 16 and 17 of the Criminal Law Amendment Act, and Section 16 of the Unlawful Activities (Prevention) Act, 1967.



11. Upon framing of charges on 10.07.2019, the trial commenced and the examination of prosecution witnesses began on 19.08.2019. By 17.02.2020, five prosecution witnesses had been examined.
12. It is stated that the Court of the District and Sessions Judge, Khurda at Bhubaneswar, functioning as the Special Court (NIA), was burdened with a substantial judicial workload and, therefore, could not devote exclusive time to the present case. Thereafter, from February 2020 onwards, normal court functioning was significantly affected due to the COVID-19 pandemic. Regular court proceedings resumed only towards the latter part of 2022. Subsequently, the trial progressed and, by the end of 2024, most of the prosecution witnesses, including certain police officers associated with the investigation, had been examined.
13. It is stated that prosecution witness P.K. Bisoyi, a person with physical disability, was present before the learned Trial Court on 21.10.2024. However, his examination could not be undertaken on that date due to a technical glitch which prevented the production of the respondent-accused through video conferencing. Thereafter, the witness is stated to have suffered a paralytic stroke and became seriously ill. Consequently, his evidence was ultimately recorded on commission on 10.10.2025.
14. On 08.12.2025, the prosecution filed an application seeking issuance of summons to four witnesses cited at Sl. Nos. 31, 33, 35 and 36 of the charge-sheet. According to the prosecution, one of them, namely



Nobisa Sirka @ Azad, a surrendered Maoist, had been examined during the course of investigation and, his statement having been found relevant and material for unfolding the alleged conspiracy, establishing link evidence and proving the operational activities of the accused persons, he was cited as a prosecution witness at Sl. No. 31 of the charge-sheet. The prosecution further contended that the evidence of the said witness was vital for proving the charges levelled against the accused. However, owing to inadvertence, he had been left out and was not examined during the course of trial.

15. By order dated 12.12.2025, the learned Special Court allowed the prosecution's prayer in part and directed issuance of summons to three of the four witnesses named in the application. However, the prayer for issuance of summons to witness Nobisa Sirka @ Azad was rejected.

16. Aggrieved by the rejection of its prayer to summon Nobisa Sirka @ Azad, the petitioner has filed the present petition contending that the said witness is material to the prosecution case and that his examination is necessary for a just adjudication of the proceedings.

II. SUBMISSIONS OF THE PETITIONER:

17. Learned counsel for the petitioner made the following submissions in support of his contentions:

- i. The petitioner-State (NIA) submitted that the learned Special Court failed to appreciate that once a person is cited as a prosecution witness in the charge-sheet, the prosecution has a legitimate right to



examine such witness unless the Court finds strong reasons to the contrary. It was further submitted that the impugned order defeats the very object of a fair trial and proper presentation of the prosecution evidence.

- ii. The petitioner–State (NIA) further submitted that it is a settled principle of law that the powers under Section 311 Cr.P.C. are wide and are to be exercised to ensure that all relevant evidence necessary for arriving at the truth is brought before the Court. It was contended that the Court is empowered to summon any person as a witness if such person's evidence appears to be essential for the just decision of the case. According to the petitioner, the impugned order reflects non-application of mind and an erroneous exercise of jurisdiction. In order to buttress this argument, the petitioner placed reliance upon the decision of the Supreme Court in *Varsha Garg v. State of Madhya Pradesh*¹, wherein it was held that the power under Section 311 Cr.P.C. is couched in broad terms and may be exercised at any stage of an inquiry, trial or other proceeding to aid in the discovery of truth. It was further held that where the evidence of a person appears to be essential for the just decision of the case, the Court is under an obligation to summon and examine, or recall and re-examine, such person. The Supreme Court observed that the essentiality of the evidence and the necessity of a just decision constitute the guiding factors for the exercise of power under Section 311 Cr.P.C.

¹ (2023) 19 SCC 646.



- iii. The petitioner–State (NIA) further relied upon *V.N. Patil v. K. Niranjana Kumar & Others*², wherein the Supreme Court held that the object underlying Section 311 Cr.P.C. is to prevent failure of justice on account of any mistake of either party in bringing valuable evidence on record and that the determinative factor for exercise of the power is whether such evidence is essential to the just decision of the case. It was also observed that though the power under Section 311 Cr.P.C. is wide and can be exercised at any stage of the proceedings, it must be exercised judiciously and with due caution.
- iv. Reliance was also placed on *Swapan Kumar Chatterjee v. Central Bureau of Investigation*³, wherein the Supreme Court reiterated that the power under Section 311 Cr.P.C. is intended to advance the cause of justice and discover the truth. The petitioner submitted that the said decision recognizes the wide amplitude of the Court's power to summon, recall or re-examine witnesses whenever necessary in the interests of justice, while emphasizing that such power must be exercised judiciously, for strong and valid reasons, and with due caution and circumspection.
- v. The petitioner–State (NIA) further submitted that refusal to summon a witness cited in the charge-sheet, particularly in a case involving offences under special enactments and issues concerning national

² (2021) 3 SCC 661.

³ 2019 (14) SCC 328.



security, causes serious prejudice to the prosecution and may result in a miscarriage of justice.

- vi. On the aforesaid grounds, the petitioner–State (NIA) submitted that the impugned order dated 12.12.2025 is illegal, arbitrary and unsustainable in law and, therefore, liable to be set aside.

III. SUBMISSIONS OF THE OPPOSITE PARTIES:

18. Per contra, learned counsel for the opposite parties made the following submissions in support of his contentions:

- i. It was contended that witness No. 31, namely Nobisa Sirka @ Azad, is a surrendered Maoist and, therefore, his evidence would not assist the prosecution and is not worthy of reliance.
- ii. It was submitted that the accused has remained in custody for a considerable period and that directions have been issued for expeditious disposal of the trial.
- iii. It was submitted that the application filed by the prosecution was intended only to prolong the proceedings and delay the conclusion of the trial.

IV. COURT’S REASONING AND ANALYSIS:

19. Heard learned counsel for the parties and perused the material on record.

20. The scope and ambit of the power under Section 311 Cr.P.C. are no longer res integra. The provision confers wide powers upon the Court to summon any person as a witness, or to examine, recall or re-



examine any person already examined, if such evidence appears to be essential to the just decision of the case. The underlying object of the provision is to ensure that all relevant and material evidence necessary for arriving at the truth is brought before the Court and that no failure of justice occurs on account of any omission on the part of either party.

21. Such power under Section 311 Cr.P.C., though wide, is required to be exercised judiciously and not arbitrarily. The determinative consideration is whether the evidence sought to be adduced appears to be essential for a just decision of the case. The Court, while exercising such power, must balance the need for a fair opportunity to the parties to present their case with the requirement of expeditious disposal of criminal proceedings.
22. In this regard, the Supreme Court in *Zahira Habibullah Sheikh (5) v. State of Gujarat*⁴, examined the scope of powers under Section 311 and observed:

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section

⁴ (2006) 3 SCC 374.



which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”

23. In the same vein, in **Swapan Kumar Chatterjee v. Central Bureau of Investigation**⁵, the Supreme Court observed as replicated hereinunder:

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

⁵ (2019) 14 SCC 328.



24. In *Varsha Garg (supra)* it was observed that the power of the Court under Section 311 is not constrained by the closure of evidence. The power must be exercised wherever the Court finds that any evidence is essential for the just decision of the case. The statutory provision goes on to emphasize that the Court is not a hapless bystander in the derailment of justice. Quite to the contrary, the Court has a vital role to discharge in ensuring that the cause of discovering truth, as an aid in the realization of justice, is manifest.
25. In the present case, it is not in dispute that Nobisa Sirka @ Azad was cited as a prosecution witness at Sl. No. 31 of the charge-sheet. It is also not in dispute that the prosecution sought his examination by filing an application dated 08.12.2025 on the ground that his evidence was relevant to the prosecution case and that his non-examination earlier was due to inadvertence.
26. A perusal of the impugned order shows that while the learned Special Court permitted issuance of summons to the other witnesses named in the application, it declined to summon witness No. 31. However, the impugned order does not disclose any finding that the proposed evidence was irrelevant, unnecessary for a just decision of the case, or intended merely to fill up lacunae.
27. The principal reason appearing from the impugned order is that the witness is a surrendered Maoist. In the considered view of this Court, such circumstance by itself cannot constitute a valid ground to refuse his examination. The evidentiary value of the testimony of a witness is



a matter for appreciation at the stage of final adjudication after the witness is examined and subjected to cross-examination. At the stage of considering an application under Section 311 Cr.P.C., the Court is concerned with the relevance of the proposed evidence and not with its ultimate evidentiary worth.

28. It is also relevant to note that the witness sought to be examined is not a new witness sought to be introduced at a belated stage and that he was cited as a prosecution witness in the charge-sheet itself. The prosecution asserts that his examination is necessary for proving aspects of its case and that his omission earlier was inadvertent. There is nothing brought to the notice of this Court to indicate that the prosecution seeks to alter the nature of its case or introduce any altogether new material through the proposed examination.
29. In the absence of any cogent reason assigned by the learned Special Court for declining the prayer to summon witness No. 31, this Court finds no justification to sustain the impugned order. As noted earlier, the witness was cited in the charge-sheet itself and his examination is sought on the ground that his evidence is relevant to the issues arising in the trial.

V. CONCLUSION:

30. Accordingly, the impugned order dated 12.12.2025, insofar as it rejects the prayer for summoning charge-sheet witness No. 31, namely Nobisa Sirka @ Azad, is set aside. The learned Special Court shall take



appropriate steps for securing the attendance of the said witness and proceed in accordance with law.

31. It is clarified that this Court has expressed no opinion on the merits of the testimony of the said witness or on the merits of the prosecution case. All questions relating to the evidentiary value of the testimony of the witness shall be determined independently by the learned Trial Court at the appropriate stage of the trial.
32. The Criminal Miscellaneous Petition is, accordingly, **allowed** to the extent indicated above.
33. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 25th June, 2026 /*