

Circuit Bench of Calcutta High Court
At Jalpaiguri

CRR 274 of 2022

In the matter of : Subhas Sarkar & Ors.

Mr. Bikash Singha ... for the petitioners

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Niloy Chakraborty ... for the State

Affidavit of service filed on behalf of the petitioners is taken on record.

The anxiety of protracted trial being N.D.P.S. Case No. 31 of 2019 arising out of Kotwali P.S. Case No. 598 of 2019 dated 15.9.2019 has led the petitioners file this application under Section 482 read with Section 483 of the Code of Criminal Procedure.

It is contended by Mr. Singha, learned Counsel appearing on behalf of the petitioners that petitioner nos. 1 and 2 are in custody since 15.9.2019 and are facing trial from there. Charge-sheet was filed on 06.3.2020. Trial was commenced on 02.8.2022 and till date one witness has been examined that too in part. 15.1.2023 is the next date for further evidence of P.W.I

Upon perusal of the order sheet, I find that out of three petitioners, petitioner nos. 1 & 2 undoubtedly are in custody while petitioner no. 3 was instrumental in getting the trial protracted. It is because of her absence, the learned Trial Court could not comply with the provision of Section 207 of Cr.P.C. Petitioners, particularly petitioner no. 3 is trying to

take advantage of her own wrong blaming the learned Trial Court for inordinate delay in trial. In my view it is a vexatious proceeding bereft of merit, should be dismissed with cost to be paid by Petitioner no. 3.

However, upon perusal of the copy of the charge sheet annexed to the petition, I find out of total seventeen witnesses, four witnesses are not the members of the police force, rest thirteen witnesses are from police force. Therefore, I am inclined to direct the learned Trial Court to prepare a schedule to complete the recording of evidence of all the seventeen witnesses preferably in one schedule, with a liberty to the learned Public Prosecutor to indicate the witnesses, the prosecution wants to examine. Thereafter the learned Trial Court shall direct the Officer-in-Charge of the concerned police station to instruct the I.O. of this case to produce the witnesses on the designated dates before the Court as is directed by the

In ***ZAHIRA HABIBULLAH H SEIKH VS. STATE OF GUJRAT*** report in **2004 AIR SCW 2356**, Hon'ble Supreme Court held:-

"This Court stressed upon the need of the Investigating Officer being present during trial, unless compelling reasons exists for a departure."

In the instant case this does not appear to have been done and there is no explanation whatsoever as to why it was not done, even Public Prosecutor does not appear to have taken note of it's desirability.

In ***SAILENDRA KUMAR VS. STATE OF BIHAR*** reported in **2004 AIR SCW 2356**, Hon'ble Supreme Court held:-

"In our view, in a murder trial it is sordid and repulsive matter that without informing the police station Officer-in-charge, the matters are proceeded by the Court and by the A.P.P. and tried to be disposed of as if prosecution has not led any evidence. From the facts stated above, it appears that by one way or the

other the Additional Sessions Judge as well as A.P.P. have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the Investigating Officer, if he failed to remain present at the time of the trial of the case.

The presence of Investigating Officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the Court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in lurch.”

No witness shall be examined in part unless exceptional circumstance demands, provision of Section 309 Cr.P.C. should be followed in letter and spirit.

I would like to indicate that in every case, immediately after commencement of trial:-

- i) Learned Trial Court is required to indicate the dates fixed for recording of evidence.
- ii) Learned Trial Judge shall inform the concerned Police Station in writing about the dates so fixed by the learned Trial Court for recording of evidence of prosecution witnesses with a direction upon the Officer-in-charge of the concerned Police Station to ensure the presence of I.O. before the Court on such dates along with witnesses.
- iii) If due to some unavoidable circumstances it is not possible for the Investigating Officer to remain present before the Court, the Officer-in-charge shall depute any other competent police

officer who shall ensure the presence of witnesses before the Court on the date of recording of evidence.

- iv) It is the duty of the Investigating Officer to protect the witnesses and ensure their presence before the Trial Court, for taking the trial to its logical conclusion. It will help both the victim and the accused person, to have speedy justice which pertains to their right to life as well.
- v) If the concerned Police Officer fails to act in terms of the direction of the Court, learned Trial Court shall be at liberty to take appropriate action to uphold the majesty of law including taking step for drawing up criminal contempt by competent Court of law. In appropriate cases such failure may be considered as an attempt of screening the offender from legal punishment.

It goes without saying that the judgement passed by Hon'ble Supreme Court in the case of Zahira Habibullah H Seikh (supra) and Sailendra Kumar (supra) are binding not only upon all Courts under Article 141 of the Constitution, it becomes law of the land. Police authority is bound to follow such mandate in letter and spirit.

I hope and believe that this action on the part of the learned Trial Court will ensure the right of the litigants to have speedy trial.

With these observations, the criminal revision is disposed of. Petitioner no. 3 is directed to pay a sum of Rs.5,000/- to the Secretary D.L.S.A. Jalpaiguri within fifteen days from this date as cost.

Let a copy of this order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)