

Circuit Bench of Calcutta High Court
At Jalpaiguri

CRR 297 of 2022

In the matter of : Md. Sahil Sk @ Seru

Mr. Hillol Saha Podder ... for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly ... for the State

Heard Mr. Podder learned counsel representing the petitioner and Mr. Chakraborty, learned counsel representing the State.

It is contended by the learned counsel for the petitioner that petitioner is in custody since 30.5.2021 though the trial has been commenced but it is moving at a canterbury gallop. Out of ten witnesses cited in the charge-sheet only one witness was examined in the month of June. The slow pace of trial is virtually denying the right of the petitioner to have expeditious justice.

My attention is drawn to the order sheet of the learned Trial Court wherefrom I find that on 01.06.2022, P.W. I Samik Paul was examined in part and his examination was deferred. On 02.6.2022, P.W. I was examined in-chief and cross-examined and thereby discharged. Thereafter on 15.7.2022, 16.8.2022, 19.9.2022 the learned Trial Court could not examine any prosecution witness. 07.2.2023 is the next date fixed recording of evidence of CSWs 2 and 3.

It goes without saying that litigant has fundamental right to have speedy justice. Every Court should strive to protect such right

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."

Therefore, learned Trial Court is directed to instruct the prosecution and in particular the I.O. to ensure the presence of witnesses of every designated dates fixed for recording of evidence. 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.

Let a copy of this judgement be sent down to learned Trial Court for information and necessary compliance.

Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(Siddhartha Roy Chowdhury, J.)