

20.

CRR 673 of 2025

23.12.2025

Bd.

Ct. 29

Sahidul Molla @ Mondal

Vs.

The State of West Bengal

Mrs. Chandreyi Alam

Mr. Supriyo Roychowdhury

Ms. M. Roychowdhury

Mr. Manas Samanta

Ms. Pratiksha Hazrah

... for the petitioner.

Mr. Debasish Roy

Ms. Amita Gour

Mr. Atif Ahmed Siddqui

... for the State.

Status report submitted by the State is taken on record.

The petitioner is an accused in connection with DumDum P.S. Case No. 21 of 2009 dated 27.01.2009 under section 302/34 IPC read with sections 25 and 27 of the Arms Act. A written complaint was lodged on 21.07.2009 against six accused persons including the present petitioner.

Thereafter, since two accused persons out of six including present petitioner were absconding the case was filed in connection with the petitioner namely Sahidul Molla @ Mondal and one Amal Mridha (since deceased) for the present. Thereafter the case was committed before learned Additional Sessions Judge wherefrom it was transferred to the court of learned Additional Sessions Judge, Fast Track 3rd Court, Barrackpore, for trial. On the basis of prayer, trial was conducted against four accused persons who were convicted after trial and present

petitioner who was absconding was arrested at the fag end of said trial. Trial court by the impugned order no. 128 dated 15.11.2017 was pleased to record for “denovo trial” in respect of present petitioner for offence punishable under section 302/34 of IPC. Accordingly, he made necessary direction to the vernacular department.

Learned counsel for the State today placed a report regarding present status of the case which discloses that the present petitioner was brought under arrest at the stage of Defence witnesses examination of said trial. However, this Court directed to proceed with the trial for four accused persons, who were present. Accordingly, prosecution examined 31 witnesses and defence examined six witnesses and after conclusion of trial said four accused persons were found guilty and were convicted by a Judgment dated 15.12.2016.

However, charge against present petitioner and other accused Amal Mridha, (who were found as absconding during trial of said four convict), was framed on 20.09.2016. Aforesaid accused Amal Mridha is now dead. The trial against present petitioner started with the examination of P.W. 1 on 05.04.2018. Evidence of PW-2 concluded on 30.11.2022 and evidence of PW-3 concluded on 28.07.2023. However, PW-5 expired in the meantime. The evidence of other witnesses is in progress.

In the above background learned counsel for the petitioner/ accused raised objection only about using the

term “denovo trial” in the impugned order and subsequent orders.

Having considered the facts and circumstances of the case it appears that “denovo trial” is not applicable in strict sense in the present case, rather the present situation is guided under section 299 of Cr.P.C. In the instant case for example PW 5 is now dead, so prosecution would be justified in relying on the evidence already on record in respect of PW-5 in the earlier trial recorded in the absence of present petitioner under section 299(1) Cr.P.C. Similarly, out of rest charge-sheet mentioned witnesses, some of them in the meantime may have become dead, or incapable of giving evidence or his presence may not be procured without an amount of delay, and in that case prosecution would be justified in relying upon the evidence of such witnesses already on record, taken in the earlier trial in absence of petitioner herein.

Having heard learned counsel appearing for the parties and considering the aforesaid facts and circumstances of the case and also considering the provision as laid down in section 299 of the Cr.P.C, the instant trial would be conducted in respect of the present petitioner, in compliance with section 299 of the Cr.P.C. and the term “Denovo Trial” as appearing in the impugned order as well as subsequent orders shall be treated as non-est.

In such view of the matter, CRR 673 of 2025 along with connected application, if any, thus stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)