

**CRR 998 of 2025**

**In re:** An application under Section 401 read with Section 482 of the Code of Criminal Procedure/Section 442 read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita.

- A n d -

**In the matter of : Prabir Kumar Dutta**

.... Petitioner.

Mr. Pradip Kumar Roy, Sr. Adv.,  
Mrs. Dipanwita Sarkar

... For the Petitioner.

Mr. Debasish Roy, learned Public Prosecutor,  
Mr. Joydeep Biswas,  
Mr. Dipankar Paramanick

... For the State.

1. This revisional application has been filed challenging three orders dated 16.12.2023, 05.02.2025, and 06.02.2025 passed by the learned Court of the Additional Sessions Judge, Bolpur, Birbhum, in Sessions Case No. 35 of 2020 corresponding to S.T. no. 1(1) of 2022, arising out of Bolpur Police Station Case No. 245 of 2016 dated 21st September 2016, registered under Sections 323, 325, 419, 420, 304, and 201 of the Indian Penal Code.
2. One Raju Thandar had been arrested by the present petitioner during his tenure as the Officer-in-Charge of Bolpur police station under Section 34 of the Police Act. The genesis of the case lies in the incident involving the alleged custodial death of the said Raju Thandar, which is regarded as one of the gravest forms of crime in a civilized society, particularly egregious when committed by an individual entrusted with the role of protector of citizens and guardian of their fundamental rights, acting under the authority and shield of the uniform.
3. The FIR was lodged in the year 2016. Upon conclusion of the investigation, a charge sheet vide. Bolpur P.S. C.S. no.

116 of 2020 dated 8.6.2020 was submitted against one Nantu Jash @ Baban U/s. 323/325/419/420/304/201 IPC Subsequently, a supplementary charge sheet vide. no. 229 of 2020 dated 3.10.2020 U/s. 166/167/323/325/343/304/201 IPC against the petitioner. Following the completion of all requisite legal formalities, the case was committed to the Court of Sessions and subsequently transferred to the learned Court of the Additional District and Sessions Judge, Birbhum, for trial.

4. The petitioner surrendered before Narendrapur Police Station, District – South 24 Parganas, on 08.11.2020, and was subsequently taken into custody. The case was fixed for framing of charge; however, the petitioner got himself admitted to a hospital, which led to a delay. Ultimately, charges were framed on 12.01.2022. The petitioner is presently undergoing trial while in custody.
5. The petitioner made several attempts to secure bail by filing repeated applications before this Hon'ble Court, but was unsuccessful in obtaining a favourable order of release. In a bail application registered as CRM (DB) No. 3018 of 2023, a Hon'ble Division Bench presided over by the Hon'ble Justice Joymalya Bagchi (as His Lordship then was), in its order dated 10th August, 2023, took serious note of the lackadaisical manner in which the prosecution had been conducted by the Public Prosecutor. The Hon'ble Bench further observed that the Public Prosecutor had failed to properly examine vital witnesses, which led the Hon'ble Bench to direct the Legal Remembrancer to take immediate steps for the removal of the said Public Prosecutor and to appoint a Special Public Prosecutor to conduct the trial. Additionally, the Hon'ble Division Bench observed that it would be open to the Special Public Prosecutor to recall any prosecution witnesses, if necessary, to ensure a just decision of the case.

6. The petitioner states that, pursuant to the liberty granted by the Hon'ble Division Bench, the prosecution recalled as many as 18 witnesses. Of them, all were examined and duly cross-examined by the petitioner, except for three witnesses. During the examination-in-chief of PW 9, PW 27, and PW 28, certain untoward incidents occurred within the courtroom. Following a heated altercation, the defence counsel representing the present petitioner left the courtroom without conducting cross-examination of those three witnesses. The learned trial court recorded that the defence had declined to cross-examine the said witnesses and proceeded further with the trial by passing orders dated 05.02.2025 and 06.02.2025. These two orders, along with the earlier order dated 16.12.2023 whereby the prosecution's prayer for recalling 18 witnesses was allowed, have been challenged in the present revisional application.
7. Mr. Roy, learned senior advocate appearing on behalf of the petitioner, in addition to advancing oral submissions, has also submitted a written note of arguments. The crux of Mr. Roy's submissions is that the accused was not, and is not, being afforded a fair and proper opportunity to defend himself before the trial court. It is contended that, during the examination of the three witnesses in question, the prosecution persistently posed similar questions to those three witnesses in an attempt to elicit answers favourable to its case. These actions infuriated the learned defence counsel and as such, he left the courtroom without conducting the cross-examination of those three witnesses.
8. Mr. Roy contends that the learned court below, without adhering to the principles enunciated in Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), has mechanically recalled the witnesses at the prosecution's instance. Furthermore, he alleges that by permitting the prosecution to repeatedly

pose the same questions to those witnesses, the learned court acted in a biased manner. He also argues that the petitioner's right to a speedy trial has been violated, as the prosecution is causing undue delay in the conclusion of the trial. Quite apart from that, Mr. Roy prays for an order enabling the petitioner to cross-examine those three witnesses.

9. Mr. Debasish Roy, learned Public Prosecutor, opposes the contention raised on behalf of the petitioner. He contends that previously, the petitioner got a friendly prosecutor. The Hon'ble Division Bench while dealing with the application for bail , CRM (DB) No. 3018 of 2023 noticed that the then special public prosecutor had been conducting the prosecution in lackadaisical manner. The Hon'ble Bench further observed that the then special Public Prosecutor had failed to properly examine vital witnesses. The Hon'ble Bench directed removal of the then Public Prosecutor and appointment of new Public Prosecutor instead. The Hon'ble Bench granted liberty to the prosecution to recall the witnesses. In compliance with the order of the Hon'ble Division Bench, a New Public Prosecutor was appointed to conduct the prosecution and pursuant to that liberty, the witnesses were re-called for a just decision of the case. He submits that the learned defence counsel could have recorded his objection and conduct the cross-examination. He submits that conduct of the learned defence counsel was not proper.

10. Although the petitioner participated in the trial and cross-examined all the witnesses who were recalled under the provisions of Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), except for the three witnesses mentioned earlier, he has nonetheless challenged the order by which such recall was permitted. The order dated 16th December, 2023 indicates that the learned trial court exercised its powers under

Section 311 of the Code pursuant to the directions issued by the Hon'ble High Court in CRM (DB) No. 3018 of 2023. The order dated 10th August, 2023, passed in CRM (DB) No. 3018 of 2023, has not been challenged by the petitioner and has, in fact, been accepted by him. Accordingly, the said order has attained finality and is binding on both the petitioner and the prosecution, and a substantial part thereof has already been acted upon. Moreover, at this stage, entertaining a challenge to the order passed by the learned trial court under Section 311 of the Code—when such order was passed in compliance with the directions of the Hon'ble Division Bench—would, in effect, amount to sitting in appeal over or exercising revisional jurisdiction against the order of the Hon'ble Division Bench, which, in my considered view, would not be appropriate for this Court.

11. The gravity of the situation and the prevailing atmosphere in the courtroom can be better understood upon a perusal of certain excerpts from the orders dated 05.02.2025 and 06.02.2025 passed by the learned trial court. In its order dated 05.02.2025, the learned court observed as follows:

*“The witness Gopal Chandra Chanda, retired SI of Bolpur Police Station, has been examined in chief in full as PW 7 and during cross-examination Ld Lawyer for the accused Prabir Kr Dutta, left the court saying that he would not cross-examine the witness and the court may do whatever pleases to do, raising misconceived, unfounded and baseless allegation against the learned Special Public Prosecutor to the effect that the Special Public Prosecutor was threatening the witness in dock to depose in a particular way”.*

12. Similarly, in the subsequent order dated 06.02.2025, the learned court below recorded the following observations:

*“It appears that the Ld Defence Counsels made some wild, motivated, fabricated, false concocted and contemptuous allegations against the Ld Special Public Prosecutor as well as the presiding officer of this Court in the petition dated, 05.02.25 (filed on 06.02.25).*

*It further appears that the instant petition of defence counsels for accused – Prabir Kumar Dutta is primarily directed to disturb, delay and derail the proceedings of the instant case. It further appears from record that this attitude of Ld Defence Counsels have occurred not for the first time on 5.2.25 but on previous occasions too ie on 8.2.24, Ld Defence Counsels have done the same thing raising wild allegations against the Court and to disturb and delay the proceedings they have left the Court and finding no other alternative this Court was constrained to close the cross examination of PW-9-Biru Bauri on the said day ie on 08.02.24.*

*The approach adopted by the Ld Defence Counsels for accused Prabir Kumar Dutta is quite unethical and disturbing one and the same is also against the judicial discipline and affecting the smooth functioning of the Court.”*

13. The legal profession is often regarded as a noble one, as it is rooted in the pursuit of justice and the protection of individual rights. A lawyer plays a vital role in the administration of justice and owes a duty of fairness not only to their client, but also to the court and the opposing party. The administration of justice is a sacred stream that must remain unpolluted. It is the responsibility of all individuals involved in judicial process to ensure its smooth and uninterrupted flow, without causing any obstruction or hindrance.

14. In catena of judgments, the Hon’ble Supreme Court observed that a trial Judge, who is entrusted with the responsibility of monitoring the conduct of a trial, acts in the greater interest of society. A strong and efficient criminal justice system is a cornerstone of the rule of law in

a vibrant civil society. The effectiveness of a democratic system is, in many ways, reflected in the manner in which its criminal justice system functions. The criminal justice system imposes a solemn duty upon the trial Judge to keep control over the proceedings. It must be placed on a proper pedestal and cannot be subjected to the whims and fancies of the parties or their counsel. A trial Judge is not expected to remain a passive spectator, rather, he is required to play a participatory and proactive role to ensure that the criminal trial is conducted fairly, efficiently, and in accordance with the law. He will not allow any criminal trial to be dealt with at the hands of the parties to the trial.

15. Admittedly, the conviction rate in our country remains considerably low. Experience shows that once a criminal case is registered and a charge sheet is filed upon completion of investigation, deliberate efforts are often made to delay the proceedings until the all witnesses is won over. It is a disheartening state of affairs that, within our criminal justice system, accused persons frequently resort to various tactics aimed at prolonging the trial. This includes repeatedly seeking adjournments and invoking the jurisdiction of higher courts on trivial grounds, all with the intention of securing a favourable outcome of the trial.

16. A lawyer, as well as a judge, bears the responsibility of ensuring that court proceedings are conducted in a dignified and congenial atmosphere. Both are equal in status within the framework of the justice delivery system and must recognize that the criminal justice system functions not only in the interest of individual litigants but also for the protection of society as a whole.

17. If any question was put by the prosecution to the three witnesses in question or to any of the other recalled witnesses which, in the opinion of the learned defense counsel, was irrelevant, inadmissible, or in violation of any

legal provision, such as Section 145 of the Indian Evidence Act, the proper course of action would have been to raise an objection and have the same recorded by the Court. Instead of withdrawing from the proceedings, the defense counsel could have objected to the specific question or answer, thereby preserving the issue for argument at the appropriate stage. It is a well-established practice that when an objection is raised during the recording of evidence, the Court typically records it with the remark 'objected to,' thus ensuring that the objection remains on record for future consideration

18. Needless to state, even after the conclusion of an accused person's examination under Section 313 of the Code, he retains the right to adduce evidence in his defence. However, it is not expected that merely because a question is asked or accepted by the Court, which, in the opinion of the accused or his counsel, may not be in accordance with law, the congenial atmosphere of the courtroom should be disturbed. It is wholly inappropriate for a learned lawyer, instead of discharging the professional duty for which he has been engaged, to abandon the proceedings and leave the courtroom while making unfounded aspersions against the Public Prosecutor and the Court.
19. Section 311 of the Code is framed in language that confers wide discretionary power upon the Court. Notably, in the second part of the provision, the legislature has consciously employed the word '*shall*', thereby making it a legislative mandate that, if it appears necessary for a just decision of the case, any person, even if not previously summoned, may be examined. This includes individuals present in court who, in the opinion of the Court, are conversant with the facts and circumstances of the case or may be capable of assisting in unfolding the prosecution's

case more effectively. Moreover, a witness already examined may also be recalled and re-examined.

20. Although the provision does not lay down specific guidelines as to whether the use of the term '*re-examine*' entitles the prosecution to put forth the same questions again, or whether such repetition would violate Section 145 of the Indian Evidence Act, any concern in that regard could and should have been addressed by the defence through a properly recorded objection at the relevant stage.

21. Mr. Debashis Roy, learned Public Prosecutor, though not expressly conceding to the petitioner's request for an opportunity to cross-examine the three witnesses, has, in his usual fairness, submitted that if this Court considers it appropriate, it may direct the learned trial court to afford the petitioner an opportunity to cross-examine the said witnesses, namely, PW 9, PW 27, and PW 28.

22. In view of the fair and reasonable stance taken by the State, this revisional application is disposed of with a direction to the learned trial court to fix two dates after the next schedule fixed for the examination of prosecution witnesses, in order to afford the petitioner an opportunity to conduct and complete the cross-examination of PW 9, PW 27, and PW 28. If the accused or his authorised representative avails himself of the opportunity granted, the learned trial court shall proceed to record the evidence emerging from the cross-examinations of the said three witnesses. In the event the petitioner fails to avail such opportunity, the learned court shall record that the cross-examination of PW 9, PW 27, and PW 28 have been declined by the petitioner.

23. It is expected that on the scheduled dates, the defence counsel, who is also a respected member of the extended judicial fraternity, shall uphold the decorum and dignity of the institution and confine his questions to those

that are relevant, admissible, and necessary for arriving at a just and proper adjudication of the case.

24. In the present case, both the prosecution and the accused are not free from blame for causing the delay, with the petitioner having sought adjournments on several occasions. It is, however, expected that the trial shall now proceed with due expedition and be concluded expeditiously, keeping in view the mandate of Article 21 of the Constitution of India, which guarantees the right to a speedy trial as an essential facet of the right to life and personal liberty.

25. It is imperative to clarify that the learned Court below shall closely monitor the trial and ensure its expeditious disposal. The learned Judge shall not be oblivious to the fact that he has taken an oath to administer justice impartially, without fear, favour, or ill will. If the learned Judge finds the conduct of the defence counsel to be unbecoming of a member of this noble profession, it is within his authority, under the provisions of the Indian Penal Code and the Advocates Act, to take appropriate action. Furthermore, if the situation so warrants, the learned Judge may bring the matter to the attention of this Hon'ble Court.

26. With these observations and order, the revisional application is **disposed of**.

27. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

28. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

Let a copy of this order be sent to the Ld. Court below forthwith.

**(Partha Sarathi Chatterjee, J.)**