

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (M) 1172 of 2025

Subhojit Sen

v/s.

Central Bureau of Investigation

For the Petitioner:

Mr. Sandipan Ganguly
Mr. Gopal Chandra Halder
Mr. Avik Ghatak
Mr. Soumya Nag
Mr. A. Rakshit
Mr. S. Sen
Mr. Rajdip Sengupta

For the State:

Mr. Dhiraj Trivedi
Mr. Amajit De

For the Defacto Complainant:

Mr. Moyukh Mukherjee

Judgment delivered on:

28.08.2025

SUVRA GHOSH, J. :-

1. The petitioner is a retired Government employee and has prayed for bail.
2. Learned counsel for the petitioner has submitted that written complaint was initially lodged by one Madhabi Sarkar, mother of victim Abhijit Sarkar on 2nd May, 2021 wherein there were allegations of assault on the victim by unknown miscreants over the issue of occupation of rooms belonging to the railways. She lodged a further complaint on 3rd May, 2021 on the same allegations as in the earlier complaint. Investigation of both the complaints was taken over by the Homicide Squad of the Detective Department, Lalbazar, Kolkata on 8th May, 2021 and both the

cases were amalgamated in terms of an order passed by the learned Additional Chief Judicial Magistrate, Sealdah on 31st May, 2021. Charge sheet was submitted by the Homicide Squad against 15 accused persons on 6th August, 2021 wherein the petitioner was not named. The statement of Biswajit Sarkar, son of the complainant and brother of the deceased/victim was recorded on 26th August, 2021 wherein he named 21 offenders and stated that the earlier complaints were not written by his mother though they bear her signature. Her signatures were taken on blank papers by lady S.I. Ratna Sarkar of Narkeldanga P.S. The petitioner was not named by Biswajit Sarkar. Another statement of Biswajit Sarkar was recorded on 5th September, 2021 which also does not implicate the petitioner.

3. The statement of Biswajit Sarkar recorded on 26th September, 2021 also does not name the petitioner.
4. The case was transferred to the Central Bureau of Investigation (for short the C.B.I) by an order of this Court passed in Public Interest Litigations with a direction to re-register the case and conduct further investigation. The CBI also recorded the statement of Biswajit Sarkar which does not attribute any role to the petitioner in the alleged offence. Several notices were issued upon the petitioner under Section 160 of the Code of Criminal Procedure which were responded to by him. The first supplementary charge sheet submitted by the CBI on 30th September, 2021 against 20 persons named the petitioner as charge sheet witness no. 13. After four years the CBI has submitted another supplementary charge sheet on 30th June, 2025 wherein the petitioner has been arrayed as an accused

alongwith 17 others. In his statement recorded under Section 164 of the Code of Criminal Procedure on 3rd February, 2022, Biswajit Sarkar has stated that the petitioner arrived at the spot much after the alleged incident and the bloodstained brickbat which was used to assault the victim was washed by constable Dipankar on instruction of the petitioner. He has also stated that the petitioner/officer-in-charge of Narkeldanga P.S. took the brickbat and the mobile phone of this witness.

5. The petitioner has co-operated in investigation of the case and responded to all the notices issued by the CBI. He was not interrogated by the CBI from 2022 to 2025 and his custody was not required by the CBI during the entire course of investigation. Upon submission of charge sheet the CBI sought issuance of process upon the accused including the petitioner. The learned Special Court also thought it fit to issue summons upon them instead of warrant of arrest. The petitioner surrendered before the learned Court pursuant to the summons issued upon him and prayed for bail. The same learned Court turned down his prayer for bail and took him into custody. The petitioner is in custody since 18th July, 2025 and has prayed for bail.
6. Learned counsel has placed reliance on the authorities in Siddharth v/s. State of Uttar Pradesh and Another reported in (2022) 1 Supreme Court Cases 676, Aman Preet Singh v/s. Central Bureau of Investigation reported in (2022) 13 Supreme Court Cases 764 and Tarsem Lal v/s. Directorate of Enforcement Jalandhar Zonal Office reported in (2024) 7 Supreme Court Cases 61 in support of his contention.

7. Learned counsels for the CBI and the defacto complainant have vehemently opposed the prayer. Learned counsel for the CBI has submitted that the petitioner was shown as a witness in the first supplementary charge sheet on a presumption that he performed his duty diligently. It transpired in course of further investigation that despite complaints being made before the police and G.D. entries recorded to that effect, no effective and immediate assistance was rendered by the police to the victim and his family on the relevant date. The police reached the scene of crime belatedly, thus allowing the mob to continue with their brutal attack. Timely intervention of the police could have saved the life of the victim. The blood soaked brickbat which was the offending weapon was washed by the police on instruction of the petitioner who also took away the said brickbat and the mobile phone of Biswajit Sarkar. He alongwith other police personnel threatened Biswajit Sarkar and his mother to withdraw the case. The petitioner has therefore abetted the crime, destroyed evidence and screened the offenders. All the statements of Biswajit Sarkar recorded under Section 161/164 of the Code of Criminal Procedure explicitly speak about the involvement of the petitioner in the crime. The mobile recordings and facebook live of the victim demonstrate a clear picture of the incident.
8. Learned counsel for the defacto complainant has referred to the authority in *Satender Kumar Antil v/s. CBI* reported in (2022) 10 Supreme Court Cases 51 and has submitted that grant of bail to the co-accused by a co-ordinate Bench of this Court has been assailed before the Hon'ble Supreme Court. Though the police were aware of the entire incident, the

first complaint is a complete deviation therefrom and the signatures of the defacto complainant/mother of the victim were taken on blank papers. The delayed response of the police resulted in the death of the victim. As the victim was an active member of a particular political dispensation, the police deliberately allowed the incident to happen. The assault took place in presence of police personnel. Learned counsel has submitted in tune with the submission made on behalf of the CBI and has added that the petitioner is guilty of offence under Section 201/120B/107 of the Indian Penal Code.

9. I have considered the rival submission of the parties and material on record.
10. The incident pertains to the gruesome murder of victim Abhijit Sarkar. In dealing with the present application, the role of the petitioner in the said incident needs to be assessed on the anvil of the material on record.
11. On 2nd May, 2021 victim Abhijit Sarkar was assailed by an unruly mob and succumbed to his injuries. The video footages prima facie demonstrate the incident but no person has been identified therein. It is not in dispute that the petitioner who was the officer-in-charge of Narkeldanga P.S. at the relevant time reached the place of occurrence after the incident took place. The delay in arrival of the petitioner at the spot has been termed as a deliberate lapse invoking offence under Section 201/120B/107 of the Code. It is a fact that the police was informed of the incident by the victim's brother. It is not clear as to after what interval of time the police arrived at the spot. Record reveals that the bloodstained offending brickbat was washed on instruction of the petitioner. One of the

witnesses has stated that a lady of the locality drew the attention of the police to the fear of local children on seeing blood after which the petitioner gave such instruction.

12. Whether such conduct of the petitioner can be said to be an act of abetment or criminal conspiracy shall be decided by the learned trial Court at the appropriate stage of the proceedings. Allegation of causing disappearance of evidence of offence to screen the offender attracts punishment under Section 201 of the Indian Penal Code which is bailable.
13. The first complaint was lodged on 2nd May, 2021. Statements of the mother and brother of the victim were recorded on several occasions and charge sheet submitted on 6th August, 2021. The first supplementary charge sheet was submitted by the CBI on 30th September, 2021. Most of the evidence was available to the CBI when the first supplementary charge sheet was filed. The petitioner was shown as a witness therein. After waiting for four years, the second supplementary charge sheet was filed on 30th June, 2025 wherein the petitioner was arrayed as an accused and charges levelled against him. The delay in arrival of the police and alleged washing of the bloodstained brickbat by the petitioner found place in the second supplementary charge sheet for the first time despite such incidents having occurred on 2nd May, 2021.
14. In submitting the second supplementary charge sheet, the CBI prayed for issuance of process upon the petitioner and others. Upon elaborate discussion with regard to issuance of process, the learned Special Court held that there was no ground for issuing warrant of arrest against the 18

accused persons (including the petitioner) and directed issuance of summons upon them. The petitioner responded to the summons and appeared before the learned Court. His bail prayer was turned down by the said learned Court considering the merits of the case.

15. The Hon'ble Supreme Court, in the authorities in Siddharth (supra) and Aman Preet Singh (supra) has observed that when the accused has joined the investigation and his custody was not required during the period of investigation, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. Satender Kumar Antil (supra) says that discretion given under Section 88 of the Code does not confer any right on a person who is present in the Court rather it is the power given to the Court to facilitate his appearance, which clearly indicates that use of the word "may" is discretionary and it is for the Court to exercise such discretion when situation so demands. This judgment has been relied upon in the authority in Tarsem Lal (supra) wherein the Hon'ble Supreme Court has echoed the proposition of law laid down in the earlier judgments on this issue.

16. In the present case, the petitioner co-operated in investigation and the CBI did not require his custodial interrogation throughout the investigation. Further investigation continued for about four years and the petitioner was not arrested throughout the said period. It is trite law that pre-trial custody is not a punitive measure. Despite the gravity of the offence, the role of the petitioner and extent of his involvement therein

need to be assessed on the anvil of the evidence on record during trial. In view of the fact that the petitioner has been roped in after four years of registration of the FIR and investigation has concluded without his arrest being necessary, there is no reason to detain him in custody. He may be released on bail subject to stringent conditions in order to secure his attendance before the learned trial Court and instil confidence in the minds of the witnesses.

17. Accordingly, prayer for bail is allowed.

18. The petitioner Subhojit Sen be released on bail upon furnishing bond of Rs. 10,000/- (Rs. Ten Thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Calcutta, subject to the following conditions:-

- i. He shall not enter the jurisdiction of Narkeldanga P.S.
- ii. He shall appear before the learned trial Court on every date of hearing.
- iii. He shall not intimidate witnesses or tamper with evidence in any manner whatsoever.
- iv. He shall deposit his passport, if any, before the learned trial Court.
- v. He shall provide his mobile phone number before the learned trial Court and the CBI and shall not change the same without prior intimation to the said authorities.

19. In the event the petitioner fails to adhere to any of the conditions stated above without justifiable cause, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

20. CRM (M) 1172 of 2025 is accordingly disposed of.
21. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)