

**In the Court of the Additional District & Sessions Judge,
2nd Court,
Bongaon, Dist.- North 24 Parganas**

Present

Shri Pradip Kumar Adhikary, WBSJ,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge,
2nd Court,
Bongaon, Dist.- North 24 Parganas.

**CNR No.- WBNP 0600 0016 2023
SC No.- 40 (08) of 2023
ST No.- 162 of 2015
Arising out of
Gaighata PS Case No.- 179 dated 12/09/2002
Charge framed under sections 365/376 of the Indian Penal Code, 1860**

**State
v.
Kabil Mondal @ Safique Mondal**

Order No.- 140
11/02/2025

Today is fixed for appearance of the accused on Court bail and appointment of the Public Prosecutor / Additional Public Prosecutor.

The sole accused on Court bail is absent and filed an application praying for another date as he could not turn up due to disorder of conveyance.

Heard.

Considering the ground the prayer is allowed.

The accused is directed to remain present on the next date in default warrant of arrest will be issued.

None appeared for conducting prosecution of the case.

It appears that on 29/08/2024 the District Magistrate, North 24 Parganas was requested to appoint a Public Prosecutor or Additional Public Prosecutor for conduct of prosecution of the case in consultation with the Ld. Sessions Judge, North 24 Parganas.

But till today the District Magistrate, North 24 Parganas neither made any correspondence in this regard nor any Public Prosecutor or Additional Public Prosecutor appeared for conduct of the prosecution of this case.

The District Magistrate, North 24 Parganas is in a habit not to send any correspondence to the Court in compliance with the order sheet as sent to him in many cases awaiting for appointment of Public Prosecutor or Additional Public Prosecutor

The negligent conduct on the part of the concerned District Magistrate has constrained the Court to remind him that in criminal jurisprudence the State is a prosecutor and that is why primary position is assigned to the Public Prosecutor. Public Prosecutor has a very important role to play in the administration of justice and, particularly, in criminal justice system.

The main function of the Public Prosecutor as well as Assistant Public Prosecutor is to act and/or plead on behalf of the Government in a court; both of them conduct cases on behalf of the government.

In **Deepak Aggarwal v. Keshav Kaushik : CIVIL APPEAL NO.- 561 OF 2013 (Arising out of SLP(C) No.- 17463 of 2010)** the Hon'ble Apex Court has been pleased to lay down that

There are two modes of appointment of the Public Prosecutors, one, preparation of a panel of names of persons, who in the opinion of the District Magistrate after consultation with the Sessions Judge, are fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. The other, appointment of Public Prosecutor or an Additional Public Prosecutor from amongst the persons in a State where exists regular cadre of prosecuting officers.

Observing the role of a Public Prosecutor in **Shiv Kumar v. Hukam Chand : (1999) 7 SCC 467** the Hon'ble Apex Court has been pleased to enshrine that

From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court.

Here in this case the concerned District Magistrate has failed to discharge his statutory duty.

The speedy trial is an integral and essential part of the fundamental right to life and liberty of an accused person enshrined in Article 21 of the Constitution of India. No procedure which does not ensure a reasonable quick trial can be regarded as reasonable, fair or just and it would fall out of Article 21. The consequence of the violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right. (**Manka Gandhi v. Union of India : AIR 1978 SC 597** and **Hussainara Khatoon v. State of Bihar : AIR 1979 SC 1369**)

In **Swapna Kumar Chakravorti v State Of West Bengal : 1995 CriLJ 3090** the Hon'ble Justice Satya Brata Sinha, J. has been pleased to observe that

*8. It is implicit in the broad sweep and contents of Article 21 as interpreted by the Hon'ble Supreme Court in **Maneka Gandhi v. Union of India**, that the constitution confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair and just'. Such deprivation would be violative of his fundamental right and secure his release. Now obviously the procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair and just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial cannot be regarded as 'reasonable, fair and just' and it would fall foul of Article 21. There can therefore be no doubt that speedy trial of a criminal case is mandated by the Constitution. **Speedy trial is meant reasonably expeditious trial as is an integrated and essential part of the fundamental right to life and liberty enshrined in Article 21.***

*24. In **Abdul Rahman Antulay v. R.S. Nayak**, , the Supreme Court upon taking into consideration its earlier decisions categorically held that High Court has the power to pass appropriate order to prevent abuse of pendency of any Court or otherwise to secure the ends of justice. In the said decision itself the Supreme Court considered a full bench decision of Patna High Court in **Madhenshwardhari Singh v. State of Bihar**, , wherein another earlier full bench of the same Court in **State of Bihar v. Maksudan Singh**, , which has also been relied upon by the learned counsel for the petitioner and held that no outer limit can be fixed for conclusion of the trial although the decision of the full bench of the Patna High Court aforementioned was upheld on facts as it was found that the petitioner was not guilty of obstructive tactics and delay was entirely of the prosecution's doing which was prejudicial to the accused. The Supreme Court however, appears to have not agreed with the principle*

enunciated in the aforementioned full bench decisions of the Patna High Court that a criminal proceedings could be quashed only because a trial could not be completed within ten years. In the aforementioned decision it was held that the principles laid down are not exhaustive. It was stated :- (Para 54 of AIR).

"In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive it is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are :-

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

*2. **Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.** This is how, this Court has understood this right and there is no reason to take a restricted view.*

By not appointing the Public Prosecutor or Additional Public Prosecutor the concerned District Magistrate is causing obstruction in the speedy trial of the case which is an integral and essential part of the fundamental right to life and liberty of a person implicit in Article 21.

With much pain the Court would like to inform the concerned District Magistrate, North 24 Parganas that the stage wise pending reports in the CIS shows that around 75 cases are pending in this Court for appointment of Public Prosecutor.

However, giving a further opportunity the District Magistrate, North 24 Parganas is requested to appoint a Public Prosecutor or Additional Public Prosecutor for conduct of prosecution of the case in accordance with law.

To 11/03/2025 for appearance of the accused on Court bail and and appointment of the Public Prosecutor / Additional Public Prosecutor in-charge of the case.

Let a copy of this order along with a list of cases pending for appointment of Public Prosecutor as on today generated from CIS be sent to the District Magistrate, North 24 Parganas for compliance.

Another copy of this order and list of cases pending for appointment of Public Prosecutor as on today generated from CIS be also sent to the Ld. District & Sessions Judge, North 24 Parganas, the Superintendent of Police, Basirhat PD as well as to the Sub-Divisional Officer, Bongaon for information.

Typed by me

Additional District & Sessions Judge,
2nd Court,
Basirhat, Dist.- North 24 Parganas.

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