

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

Before

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 0164 2025
SC No.- 25 of 2025
ST No.- 14 (02) of 2025
arising out of
Gopalnagar PS Case No.- 552 dated 15/09/2024

Charge framed under sections 103(1)/61(2) of Bharatiya Nyaya Sanhita, 2023 (BNS)
{Similar sections of 302/120B of the Indian Penal Code, 1860}

State

represented by Ld. PP-in-Charge Shri Basudeb Datta

v.

Suman Biswas and Trisha Biswas

represented by Ld. Advocate Shri Ashis Sarkar and Shri Soumya Baidya

Order No.- 17

08/07/2025

The case record is taken up for hearing of the bail petition filed by the Ld. Advocate Shri Ashis Sarkar on behalf of the accused Suman Biswas on 02/07/2025.

In the said application the Ld. Advocate Shri Sarkar has stated that the accused is totally innocent and falsely implicated in this case. The accused is in judicial custody from 15/09/2024 for more than 270 days. The accused is already on bail. The accused is permanent resident within the jurisdiction of the Court and there is no chance of absconding. Two witnesses were already examined. In the above circumstances the Ld. Advocate has prayed for bail of the accused.

Heard.

Reiterating the grounds as mentioned in the bail petition the Ld. Advocate has submitted that two witnesses were already examined and from the evidence no intention, motive and animosity of the accused was transpired. Neither any bail application was rejected by the Hon'ble Court nor any bail application is now pending before any Upper Court. There is no chance of absconsion of the accused. It will take time to complete the trial since several witnesses are yet to be examined. Considering the detention period the Ld. Advocate has prayed for bail of the accused on any condition.

The Ld. PP-in-Charge has raised strong objection.

The Ld. PP-in-Charge has submitted that the bail application has not been filed with clean hand; material fact has been suppressed. The accused approached before the Hon'ble Court and his bail application was dismissed vide CRM (DB) No.- 805 of 2025. During last schedule almost on each and every date witnesses were present but due to absence of the Ld. Advocate on behalf of the accused on the plea of resolution of the Bar Association, witnesses had to be discharged without examination. The accused is involved with heinous crime. Among the eye witnesses of incident of murder one witness namely Jyoti Biswas who happens to be sister of the accused who narrated the incident in her statement under section 183 BNSS / 164CrPC is yet to be examined. If the accused is enlarged on bail his sister will not be in a position to adduce in this case. There is every possibility of tampering with evidence. This is a fit case for custody trial. Hence, the Ld. PP-in-Charge has prayed for rejection of bail.

In reply the Ld. Advocate on behalf of the accused has submitted that the bail petition was dismissed by the Hon'ble Court for non-prosecution. He has further submitted that due to resolution taken by the Bar Association he was not in a position to conduct evidence of witnesses who were present on the last schedule. Considering the detention period and evidence adduced so far the Ld. Advocate has prayed for releasing the accused on bail on any condition.

In support of his contentions the Ld. Advocate has relied upon ***Manu @ Monu v. State of UP : Criminal Misc. Bail Application No.- 673 of 2020.***

Considered the materials on record including the case diary.

This is a case punishable under sections 103(1)/61(2) of Bharatiya Nyaya Sanhita, 2023 (BNS) {Similar sections of 302/120B of the Indian Penal Code, 1860}. Both the accused persons being husband and wife are FIR named accused. However principal accused is Suman Biswas, the present accused against whom there is direct allegation. During investigation on 08/10/2024 the Ld. Additional District & Sessions Judge, 1st Court, Bongaon was pleased to enlarge the accused Trisha Biswas @ Upama Sarkar on bail on the ground that she being woman and detained in custody for a reasonable period and the principal accused is in custody vide CMC No.- 414 of 2024.

Subsequently, on 24/12/2024 the Ld. Additional District & Sessions Judge, 1st Court, Bongaon was pleased to **reject the bail application** of this accused since charge was submitted and the present accused being principal accused who has killed his brother-in-law in presence of eye witnesses.

Thereafter, on 28/01/2025 the Ld. Additional District & Sessions Judge, 1st Court, Bongaon was pleased to transfer the case record to this Court for disposal and on same day he was also pleased to **reject the bail application** of this accused with the following observation :

“On perusal of the record, it shows that the accused assaulted the deceased in front of his own sister. She has been stated as witness that the offending weapon has already been recovered. Considering the facts and circumstances, I am not inclined to release the accused on bail.”

On 20/02/2025 charge was framed.

Last schedule for evidence was spread over nine days from 09/06/2025 to 20/06/2025.

On 09/06/2025 and 10/06/2025 the de-facto complainant (CSW No.- 01) Sambhu Saha who happens to be father of the deceased and CSW No.- 02 Achintya Sarkar were examined, cross-examined in full and discharged and during their examination some documents including written complaint, signature on statement recorded under section 183 BNSS, signature on seizure list, inquest report, etc. were marked exhibited and thereby, taken into evidence.

Subsequently, on almost all the dates the Ld. PP-in-Charge and IO were present. It is submitted by the Ld. PP-in-Charge that on those dates witnesses were present. On last three dates of the last schedule the Ld. PP-in-Charge did not produce any witness.

The resolution of the Bar Association not to pass any adverse order started from 14/05/2025 and continued till 30/06/2025 due to hot weather.

Although during the period of resolution the Ld. Advocates including Ld. PP-in-Charge conducted trial on 09/06/2025 and 10/06/2025 but they refused to examine witnesses on subsequent dates.

Surprisingly, it is found that although the Ld. Advocate Shri Ashis Sarkar refused to examine the witnesses of this case during resolution period, but he himself cross-examined the witness in SC No.- 83 of 2022 {ST No.- 01 (05) of 2023} on 25/06/2025. It is painful and unfortunate that the Ld. Advocate Shri Ashis Sarkar being Senior Advocate has taken dual stand over the resolution of the Bar Association in two different cases.

In ***Abdul Rehman Antulay vs R.S. Nayak : 1992 (1) SCC 225 : 1991(2) SCALE 1273*** the Hon'ble Apex Court has been pleased to observe that

. . . one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution.

Here also it is the accused who is responsible for non-examination of witnesses on

the previous scheduled dates for evidence.

Moreover, from the two witnesses examined so far prima facie materials are found against the present accused; of course the credibility of the same will be assessed after completion of trial.

It is specific allegation that the present accused committed murder of his own brother-in-law i.e. husband of his own sister. The sister is yet to be examined. Only two witnesses are examined so far. Many witnesses including wife of deceased i.e. sister of the accused are yet to be examined. There is every chance of tampering of witnesses if the accused being principal accused is enlarged on bail.

Very recently on 27/11/2024 in *X v. State of Rajasthan* : **SPECIAL LEAVE PETITION (CRIMINAL) NO. 13378 OF 2024 : 2024 INSC 909** the Hon'ble Supreme Court has been pleased to lay down that

14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

Upon such consideration and hearing it appears that although the accused is in custody since 15/09/2024 and although the defence counsel has pointed out absence of intention, motive and animosity of the accused, but it also required to be kept in mind that just only two witnesses are examined till date. Some more materials witnesses are required to be examined to rule out tampering of witnesses. There is no question of trial being delayed. The accused is entitled to get speedy trial and the same is being provided to the accused.

So, considering the nature of allegation, gravity of the offence, enormity of the crime, heinousness/seriousness of the accusation, circumstances in which it was committed, severity of the punishment in the event of conviction, the nature/character and strength of evidence in support of the accusation/charge, statement of witnesses recorded under section 161 CrPC / 180 BNSS, statement of the wife of the deceased i.e. sister of the accused recorded under section 164 CrPC / 183 BNSS, seized articles including offending weapon, the fact of recovery of offending weapon being produced by the accused, several injuries over the body of the deceased as transpired from the post-mortem report and the danger of justice being thwarted with by grant of bail, reasonable apprehension of tampering of witnesses, circumstances peculiar to the accused since he is brother-in-law of the deceased as well as elder brother of wife of the deceased, the larger interests of the public or the State, the prayer for bail is refused at this stage.

The citation referred by the Ld. Advocate is not applicable to the present facts and circumstances of the case.

Both the parties are directed to get ready for trial on the fixed schedule so that witness may not be discharged without examination.

Todate.

Typed by me

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