

**In the Court of the Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas**

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Present

Shri Pradip Kumar Adhikary, WBJS,  
J O Code (UID No.) - WB916,  
Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas.

**CNR No.- WBNP 1000 1689 2019  
Sessions Case No.- 337 of 2019  
(Registration Number)  
ST No.- 61 of 2019**

**arising out of Basirhat PS Case No.- 1462 of 2016 dated 06/12/2016**

**Charge framed under sections 363/366/368/370/370A/342/343/344/346/419/120B of the  
Indian Penal Code, 1860  
and  
sections 3/4/5/6/7/9 of the Immoral Traffic (Prevention) Act, 1956**

**State**

**v.**

**Hasirun Laskar @ Jhuma Laskar, Rafikul Laskar, Gouri Tamang, Mrinal Kanti  
Sarkar @ Gopal, Pooja Lal Bahadur Sharma @ Asma, Sagar @ Israfil Laskar and  
Priti Tamang @ Pawar Madam, since deceased**

Order No.- 42  
27/02/2023

Today is fixed for passing appropriate order regarding four different applications under section 231(2) CrPC.

**Out of seven (07) accused the case against the accused Priti Tamang @ Pawar Madam was filed for ever on 01/02/2022 since she died.**

The case is now proceeding against **six (06) accused.**

Out of six (06) accused three (03) accused **Hasirun Laskar @ Jhuma Laskar, Mrinal Kanti Sarkar @ Gopal and Pooja Lal Bahadur Sharma @ Asma are on Court bail.**

Out of these three (03) accused two (02) accused Mrinal Kanti Sarkar @ Gopal and Pooja Lal Bahadur Sharma @ Asma are present by filing separate hazira.

Another (01) accused Hasirun Laskar @ Jhuma Laskar is absent and filed an application praying for proceeding the case in her absence thorough Ld. Advocate as she could not turn up due to unavoidable circumstances.

Heard.

Considering the ground the prayer is allowed.

The remaining three (03) accused **Rafikul Laskar, Gouri Tamang and Sagar @ Israfil Laskar** are produced from judicial custody and they are remanded to judicial custody till next date.

The Ld. Special Public Prosecutor is absent without taking any steps.

On 31/01/2023 after cross-examination of the P.W.- 01 by the accused Mrinal Kanti Sarkar @ Gopal, the accused Hasirun Laskar @ Jhuma Laskar filed an application praying for deferring the cross-examination of P.W.- 01 till the examination of CSW Nos.- 01, Badshar Sardar, CSW No.- 02, the victim girl and CSW No.- 04, another victim girl.

The accused Gouri Tamang also filed an application under section 231(2) of the CrPC praying for defer of the cross-examination the P.W.- 01 till the examination-in-chief of her father i.e. CSW No.- 01.

The accused Rafikul Laskar has also filed an application praying for cross-examination of the de-facto complainant, victim girl and sister of the victim girl i.e. CSW No.- 03 jointly since they are related to each other.

On 01/02/2023 the accused Sagar @ Israfil Laskar filed an application under section 231(2) of the CrPC praying for defer of the cross-examination of the CSW No.- 01, the de-facto complainant, CSW No.- 02, the victim and CSW No.- 03, sister of the victim, since there are interested witnesses being father and daughters.

All the four applications were taken up together for hearing on 01/02/2023 and heard all the parties in length.

The Ld. Advocate on behalf of the accused Sagar @ Israfil Laskar has submitted that since the CSW No.- 01 is father of the victim i.e. CSW No.- 02 and CSW No.- 03 and since the CSW No.- 02 and CSW No.- 03 are sisters they are very much interest witnesses and as such he has prayed for defer the cross-examination of those witnesses for protecting the interest of the accused.

The Ld. Advocate on behalf of the accused Hasirun Laskar @ Jhuma Laskar has submitted that there are two victims i.e. CSW No.- 02 and CSW No.- 04 and the de-facto complainant i.e. CSW No.- 01 is father of the CSW No.- 02 and as such he has prayed for passing necessary order so that cross-examination of the CSW No.- 01 may be deferred till the examination-in-chief of CSW No.- 02 and CSW No.- 04.

The Ld. Advocate on behalf of the accused Gouri Tamang has prayed for deferral of the cross-examination of the CSW No.- 02 i.e. victim till the examination of her father i.e. CSW No.- 01.

The Ld. Advocate on behalf of the accused Rafikul Laskar has pleaded that since the CSW No.- 01, CSW No.- 02 and CSW No.- 03 are related to each other, they are required to be cross-examined jointly and as such he has prayed for passing necessary order to that effect.

Endorsing his objection in all those four petitions the Spl. PP has submitted that the victim i.e. CSW No.- 02 is the main witness of this case and she gave statement under section 164 CrPC before the Ld. Judicial Magistrate, Basirhat. Another victim is the victim of another case which is pending in another Court. The de-facto complainant has lodged just a missing complaint and he is not present at the PO as well as at the time of recovery of the victim. He has further submitted that the sister of the victim is also not an eye witness and he may not tender her witness during trial. On the above circumstances the Ld. Spl. PP has prayed for rejection of all the applications.

The Ld. Advocates seeking deferral of cross-examination of the victim and the de-facto complainant till the examination of sister of the victim have submitted that how they

will anticipate that the prosecution will not tender evidence of sister of the victim.

Referring the Guidelines for Recording of Evidence of Vulnerable Witnesses as laid down by the Hon'ble Court in the light of direction of the Hon'ble Supreme Court in Smruti Tukaram Badade v. State of Maharashtra in Criminal Appeal No.- 1101 of 2019 the Ld. Advocate on behalf of the de-facto complainant as well as the victim has submitted that since there are different accused intending to cross-examine separately, they may be directed to provide questions in advance.

On being requested the Ld. Advocate on behalf of the accused Pooja Lal Bahadur Sharma @ Asma who is ready to cross-examine the victim and who has not filed any petition under section 231(2) of the CrPC has submitted that the Court is required to pass a balance order keeping in mind the interest of both sides i.e. the accused as well as the victim and witnesses. He has submitted that the interest of the accused may not be jeopardised.

Considered the materials on record.

Upon such hearing and consideration it appears that on 12/12/2019 charge was framed against the accused punishable under sections 363/366/368/370/370A/342/343/344/346/419/120B of the Indian Penal Code, 1860 and sections 3/4/5/6/7/9 of the Immoral Traffic (Prevention) Act, 1956 and dates were fixed on 28/02/2020 and 29/02/2020 for evidence of CSW Nos.- 01 and 02 respectively.

On 07/02/2020 a vakalatnama was filed on behalf of the de-facto complainant and she also filed an application praying for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019.

On 28/02/2020 one witness was present. But on that date no Advocates were found on behalf of the accused Rafikul Laskar, Gouri Tamang and Preti Tamang @ Pawar Madam and accordingly, the Chairman, SDLSA, Basirhat was requested to appoint three eminent Advocates for conducting trial on behalf of those three accused. On 28/02/2020 the Ld. Advocate on behalf of the de-facto complainant submitted that the bail out accused and relatives of other accused have been threatening the victim and her family and accordingly, prayed for cancellation of bail. As the Ld. Senior Advocate was absent, the hearing was adjourned. However, the Court directed the IC, Basirhat to keep (at least twice in a week) watch by deputing a lady police constable on the victim so that no person can threat her or her family.

On 09/07/2020 the accused Rafikul Laskar filed an application praying for bail which was rejected.

On 17/08/2020 the accused Israfil Laskar @ Sagar filed an application praying for bail which was also rejected.

On 29/09/2020 a fresh vakalatnama was filed on behalf of the accused Gouri Tamang.

On the next date i.e. on 16/10/2020 the victim was present but the accused Priti Tamang was unrepresented and accordingly, the matter was placed to the Chairman, SDLSA, Basirhat for appointment of lawyer for unrepresented accused fixing date on 05/12/2020.

On 05/12/2020 Ld. Advocate appointed by the SDLSA, Basirhat appeared to defend Priti Tamang and accordingly, the case was fixed on 16/01/2021 for evidence and hearing of cancellation of bail application.

On 16/01/2021 the victim was present but the accused Pooja Lal Bahadur Sharma filed an application praying for time as the Ld. Advocate was not available due to some urgency.

On 06/02/2021 again the witness was present but the Ld. Advocates on behalf of the accused Rafikul Laskar and Israfil Laskar were not available to take part in evidence.

On 20/03/2021 it was informed to the Court that the accused Priti Tamang died and accordingly, a report was called for from the Superintendent, Basiraht Sub-Correctional Home. A bail application was also filed by the accused Gouri Tamang. In rejected the said bail application the Court ordered that "It further appears that the victim is also coming and going on the basis of adjournment which arise on the different pleas of different accused on different occasion including arranging for appoint Lawyer from the State panel to sum of custody accused and also informing about the sudden demise of one of co-accused where report is necessary to proceed the case.

On 01/02/2022 the case against the accused Priti Tamang @ Pawar Madam was filed for ever.

On 10/03/2022 the victim was present. However, the PO was on leave.

On the next date i.e. on 20/04/2022 several petitions were heard including two bail applications. The petitions dated 01/02/2022 and 20/04/2022 for confirmation of interim bail filed by the accused Pooja Lal Bahadur Sharma were rejected. Two bail petitions filed by the accused Rafikul Laskar and Israfil Laskar @ Sagar were rejected. The petition dated 06/02/2021 for cal for LCR and CD of Basirhat PS Case No.- 17 of 2020 was rejected. After disposing of those petition the case was fixed for hearing of cancellation of bail petition.

On 03/06/2022 the accused Israfil Laskar @ Sagar filed a fresh vakalatnama along with bail petition which was rejected.

On 19/07/2020 the accused Israfil Laskar @ Sagar again filed a bail petition which was also rejected.

The case record came up before this PO on 04/11/2022 fixed for passing order in respect of the petition dated 07/02/2020 and petition dated 20/04/2022. On that date the accused Gouri Tamang and Sagar @ Israfil Laskar filed separate bail applications which were rejected. The Court found that the petition for confirmation of the interim bail granted to the accused Pooja Lal Bahadur Sharma @ Asam and waiver of the condition imposed therein on 12/12/2019 filed on 20/04/2022 was rejected on that date itself.

The Court also found that

Now it remains that the application for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019 filed by the de-facto complainant Badsha Sardar on 07/02/2020 stands in the way of trial.

If the trial of the case and the hearing of the said petition are proceeded separately, no prejudice will be caused to the either parties; rather it will expedite the progress of the case.

Accordingly, the Court fixed 19/11/2022 for hearing of the application for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019 filed by the de-facto complainant Badsha Sardar on 07/02/2020, written objection, if any, in the mean time.

The Court also directed the Officer-in-Charge, Beniapur PS to submit a report stating whether the accused Puja Lal Sharma @ Asma complied with or violated the condition nos.- 2 and 5 by the next date positively.

The Investigating Officer was also directed to submit a report stating whether the accused Puja Lal Sharma @ Asma complied with or violated the condition no.- 03.

The Bench Clerk was also directed to scan the record and submit a report stating whether this accused remained present or not on each and every date of trial.

The case was also fixed on 06/12/2022 for evidence of CSW Nos.- 01 and 02.

On 06/12/2022 he accused Rafikul Laskar, Gouri Tamang Sagar @ Israfil Laskar again filed separate bail applications which were duly rejected.

On 06/12/2022 the P.W.- 02 who happens to be the victim girl was present. However, the P.W.- 01, the de-facto complainant could not turn due to illness supported by xerox copies of medical papers.

But the accused Puja Lal Sharma @ Asma filed an application stating that the Ld. Advocate is not willing to examine the witness unless examination of the informant is done and as such he has prayed for another date for examination of informant.

After hearing of both sides as well as referring the provisions of section 231 and 309 CrPC as well as relying upon the principles as laid down in ***State of West Bengal v. Sangita Sahu @ Shaw : CRM No.- 3697 of 2018*** the Court passed the following order :

Today the victim is present but the accused Puja Lal Sharma @ Asma stands in the way of recording her evidence by filing the instant petition on the pretext that the de-facto complainant has to be deposed first.

The instant petition is filed with mala fide intention in order to cause delay in the trial and to frustrate the victim. The petition is not tenable in the eye of law and as such the same is rejected with cost of Rs. 10,000/- (Rupees ten thousand only) to be paid by the accused Puja Lal Sharma @ Asma to the victim on the next date.

In the meantime the Officer-in-Charge, Beniapur PS and the Investigating Officer submitted their respective report.

Since hearing has not been done on the reports submitted by Police Officers, giving an opportunity to both sides to forward their respective submission over the matter, both the parties were directed to get ready for hearing of the application for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019 filed by the de-facto complainant Badsha Sardar on 07/02/2020.

In compliance with the mandates of ***Freedom Firm v. Commissioner of Police.,2015 SCC OnLine Bom 4265 decided on 30-10- 2015*** the Investigating Officer was also directed to submit a report.

On 27/01/2023 as the Court found that the Investigating Officer neither submitted any report nor filed any kind of application either explaining non-compliance of order of the Court or praying for time for report, he was directed to appear in person and to file written explanation to that effect. He was further directed to comply the order of the Court by the next date positively.

On the next date i.e. on 30/01/2023 the Investigating Officer was present and filed an application stating that he submitted his report on 25/01/2023. He also enclosed a copy of received copy of his submitted report. Accordingly, the Court passed the following order :

From copy of received copy of report dated 24/01/2023 it appears that on 25/01/2023 the Investigating Officer submitted the report as sought for by order dated 06/12/2022 and the same was duly received by the Bench Clerk.

It is very ashtonishing that in spite of receiving said report submitted by the

Investigating Officer as sought for, the Bench Clerk neither put up the same before the PO nor placed the same on record on the date of receiving the same. Even on the date of hearing i.e. on 27/01/2023 the Bench Clerk neither placed the report during hearing of the case nor produced the same even at the time of passing order. The above conduct of the Bench Clerk demonstrates not only gross negligence, wilful default and dereliction of duty but also shows that he intentional suppressed the report and thereby misled the Court for the reason best known to him.

Heaping sorrow upon sorrows even today also the Bench Clerk failed to place the said report on repeated asking.

In the above circumstances the Bench Clerk is directed to file a written explanation to that effect.

He is further directed to file show-cause as why the matter shall not be referred to the appropriate authority for initiation of necessary action against him for his gross negligence, wilful default and dereliction of duty as well as suppression of report and misleading the Court.

The Bench Clerk is further directed to trace out the report submitted by the Investigation Officer on 25/01/2023 and place the same on record under intimation of the PO at the earliest.

The Court further ordered that

Since the Investigating Officer has filed a copy of said report, there is no legal impediment for taking up the case record for hearing of the application for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019 filed by the de-facto complainant Badsha Sardar on 07/02/2020 and accordingly, the case record is taken up for hearing of the said application.

Heard the Ld. Spl. PP, the Ld. Advocate on behalf of the de-facto complainant and the Ld. Advocates on behalf of the accused opposing the said application in length.

The date for passing order will be notified soon after placing of the report by the Bench Clerk.

On the next date i.e. on 31/01/2023 the victim was present and was examined as P.W.- 01 in full, cross-examined in part and discharged.

After cross-examination of the P.W.- 01 by the accused Mrinal Kanti Sarkar @ Gopal, the accused Hasirun Laskar @ Jhuma Laskar, Gouri Tamang and Rafikul Laskar filed their respective petitions in question.

On the next date i.e. on 01/02/2023 the accused Sagar @ Israfil Laskar also filed same kind of petition.

All those four applications were heard on 01/02/2023 in length.

The contents of the respective petitions as well as respective submission advanced by the parties have already been noted.

Criminal trial is meant for doing justice not only to the victim but also to the accused and the society at large. Every criminal trial is a voyage of discovery in which truth is the quest.

In **Natasha Singh v. CBI : (2013) 5 SCC 741** the Hon'ble Apex Court has been pleased to herald that

*Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized.*

In **Selvi J.Jayalithaa v. State of Karnataka : (2014) 2 SCC 401** the Hon'ble Apex Court dealing with the concept of a fair trial has been pleased to enshrine that

*26. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.*

*Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.*

*"No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'etre in prescribing the time frame" for conclusion of the trial.*

*Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights. (Vide: Smt. Triveniben v. State of Gujarat, AIR 1989 SC 1335; A.R. Antulay & Ors, v. R.S. Nayak, AIR 1992 SC 1701; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604; Dwarka Prasad Agarwal (D) by L.Rs. & Anr. v. B.D. Agarwal & Ors., AIR 2003 SC 2686; K. Anbazhagan v. Supdt. of Police, AIR 2004 SC 524; Zahira Habibullah Sheikh (5) v. State of Gujarat, AIR 2006 SC 1367; Noor Aga v. State of Punjab & Anr., (2008) 16 SCC 417; Capt. Amarinder Singh v. Parkash Singh Badal & Ors., (2009) 6 SCC 260; Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), AIR 2012 SC 750; Sudevanand v. State through CBI, (2012) 3 SCC 387; Rattiram & Ors. v. State of M.P., (2012) 4 SCC 516; and Natasha Singh v. CBI, (2013) 5 SCC 741).*

Relying upon **Natasha Singh v. CBI : (2013) 5 SCC 741**, **Selvi J.Jayalithaa v. State of Karnataka : (2014) 2 SCC 401** and other various case laws in **Bablu Kumar v State of Bihar : (2015) 8 SCC 787** the Hon'ble Apex Court has been pleased to observe that

*18. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest (2009) 6 SCC 767 (1999) 8 SCC 715 (2004) 10 SCC 598 (1995) 5 SCC 518 (2012) 8 SCC 263 by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a 'mock trial'. It is a serious concern of the society. Every member of the collective has an inherent interest in*

such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

In **State of Kerala v. Rasheed : (2019) 13 SCC 297 : (2019) 4 SCC (Cri) 552 : 2018 SCC OnLine SC 2251** at page 306 the Hon'ble Supreme Court has been pleased to lay down that

22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

- (i) possibility of undue influence on witness(es);
- (ii) possibility of threats to witness(es);
- (iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- (iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- (v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC [**309. Power to postpone or adjourn proceedings.—(1)** In every inquiry or trial the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:”See also *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712; and *S.J. Chaudhary v. State (UT of Delhi)*, (1984) 1 SCC 722 : 1984 SCC (Cri) 163.] .

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) CrPC.

24. The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

24.1. A detailed case-calendar must be prepared at the commencement of the trial after framing of charges.

24.2. The case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted.

24.3. The case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible.

24.4. Testimony of witnesses deposing on the same subject-matter must be proximately scheduled.

24.5. The request for deferral under Section 231(2) CrPC must be preferably made before the preparation of the case-calendar.

24.6. The grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses.

24.7. While granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for.

24.8. The case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary.

24.9. In cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation.

Very recently on 31/01/2023 in **Manoranjan Sardar @ Kedar v. State : CRM (DB) No.- 256 of 2023** the Hon'ble Court has been pleased to observe that

*Deferment of cross-examination at the behest of the defence is a well known tactic which affects the fairness of trial. We do not appreciate such conduct.*

The instant case is required to be examined in light of the aforesaid settled legal propositions.

It has already been stated that on 12/12/2019 charge was framed. Thereafter, several adjournments have been given to the accused on the pretext of various grounds. Some accused although have come up with succession bail applications but their Ld. Advocates have been found absent during evidence. Even the accused has been found not willing to examine the victim unless the information is examined. Lastly, on 31/01/2023 the victim was examined.

During this long period from framing of charge till prior to the examination of the victim none of the accused has filed any application praying for deferral under section 231(2) CrPC. It is the mandate of the Hon'ble Apex Court that the request of deferral under section 231(2) CrPC must be preferably made before the preparation of the case-calendar. However, considering the facts and circumstances of the case **the cross-examination of the P.W.- 01 is deferred till the examination of the CSW No.- 01, the de-facto complainant and the CSW No.- 04, another victim. The prayer for deferral of the cross-examination of the P.W.- 01 till the examination of the CSW No.- 03 who happens to be sister of P.W.- 01 is refused.**

There is no iota of doubt that the P.W.- 01 is a vulnerable witness. Considering the threat perception she has already been provided protection vide order dated 28/02/2020.

With the objective of ensuring a safe and conducive environment for recording the evidence of Vulnerable Witnesses in the light of the directions issued by the Supreme Court of India in Smruti Tukaram Badade Vs. State of Maharashtra & Anr. in Miscellaneous Application No. 1852 of 2019 in Criminal Appeal No. 1101 of 2019, the Hon'ble High Court has been pleased to formulate "Guidelines for Recording Evidence of Vulnerable Witnesses".

Directing to take necessary steps to mitigate or minimize the stress upon the vulnerable witnesses the Guidelines lay down that

#### **6. Identification of Stress causing factors of adversarial Criminal Justice System-**

*The Court shall consider the following factors which cause stress, especially but not only limited to child witnesses, rendering them further vulnerable witnesses, and impeding*

complete disclosure, and take necessary steps to mitigate or minimize the stress. The factors include, amongst others: {State v. Sujeet Kumar, 2014(4) JCC 2718 (High Court of Delhi): Breaking the Cycle of Violence : Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses, US Dept. of Justice}

- a. Multiple depositions
- b. Not using developmentally appropriate language
- c. Delays and repeated adjournments
- d. Testifying more than once
- e. Prolonged/protracted court proceedings
- f. Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, and mental health practitioners, and lack of convergence with authorities such as Child Welfare Committees, District Child Protection Units, One Stop Centres etc.
- g. Fear of public exposure
- h. Anxiety about threats from the accused and/or their associates
- i. Confusion and guilt about testifying against a family member or relative
- j. Lack of understanding of complex legal procedures
- k. Face-to-face contact with the accused
- l. Practices insensitive to developmental needs
- m. Aggressive and inappropriate cross-examination, including asking irrelevant questions
- n. Lack of adequate support, witness protection, and victims' services
- o. Sequestration of witnesses who may be supportive to the vulnerable witness
- p. Placement that exposes the vulnerable witness to intimidation, pressure, or continued abuse
- q. Lack of preparation to enable fearless and robust testifying
- r. Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness
- s. Worry about being yelled at, ridiculed, or getting into trouble for testifying
- t. Worry about retaliation or repercussions for themselves or their family
- u. Worry about not being understood or being able to communicate effectively
- v. Formality of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel
- w. Inaccessibility of the courtroom, particularly for vulnerable witnesses with disabilities.

The Guidelines further lay down that

#### **8. Directions for Judges of Criminal Courts, Children's Courts and Juvenile Justice Boards -**

(i) Vulnerable witnesses shall receive high priority and shall be dealt with as expeditiously as possible, minimizing unnecessary delays and adjournments to avoid repeated appearances of the witness in the Court. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays.)

(ii) Judges and court administrators should ensure that the developmental needs of vulnerable witnesses are identified, recognized and accommodated in the arrangement of the courtroom and recording of the testimony. For instance, judges should use developmentally appropriate language, schedule hearings for the record of testimony bearing in mind the attention span, physical needs and exam schedules of young vulnerable witnesses, and allow the use of testimonial aids as well as interpreters, translators, when necessary.

(iii) The judges should ensure that vulnerable witnesses with disability are able to exercise their right to access the court without discrimination on the basis of disability. 50 In case of a victim under Sections 354, 354A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E, or 509, IPC, where the victim is temporarily or permanently mentally or physically disabled, their statement under Section 164(5-A) shall be considered as a statement in lieu of examination-in-chief.

(iv) Additional measures may be taken to enable the recording of evidence of vulnerable

witnesses with disability. For instance, steps can be taken to record witness testimony in compliance with Section 278, Cr.PC in Braille to ensure a vulnerable witness is not dependent on another person to read their testimony out; use of amplification devices/ document magnifiers/ ensuring that all notices that require a response or an action to be taken (e.g. summons, orders) are available by accessible means and in accessible formats; use of video and audio guides; engagement of sign language interpreters; enabling wheelchair access in the court premises, courtroom and witness box. Adequate time should be given to vulnerable witnesses using communication boards during evidence.

(v) The Court should be satisfied that a victim or vulnerable witness is not scared and that they are able to reveal what happened to them when they are subjected to an examination during recording of evidence. The Court must ensure that the victim or vulnerable witness is not concealing any portion of evidence for the reason that they were ashamed of what happened to them.

(vi) The Court shall ensure that adequate time and opportunity is given to refresh the memory of vulnerable witnesses.

(vii) In cases of sexual offences, judges should avoid asking the vulnerable witness to demonstrate intimate touching on their own body, during the recording of the testimony and vulnerable witnesses can instead be asked to point to a body outline diagram.

(viii) Judges should be flexible in allowing the vulnerable witnesses to have a Support Person present while testifying and should guard against unnecessary sequestration of Support Persons or any other persons permitted to be present during the testimony of the witness.

(ix) Judges should encourage the victim or vulnerable witness to let the court know if they have a problem, do not understand a question or if they may need a break.

(x) Judges should ensure that steps are taken to ensure the atmosphere is comfortable and not intimidating. For instance, the court may consider allowing a limited number of defence lawyers to be present in the courtroom during the deposition of a vulnerable witness or not allowing counsel to ask questions in an intimidating tone or interrupting the witness.

(xi) Judges shall carefully monitor the examination and cross examination of the victim or vulnerable witnesses to avoid any harassment or intimidation to the victim or vulnerable witness.

(xii) Judges may allow a vulnerable witness to carry a comfort item during the deposition.

(xiii) Judges may provide transport or transportation cost for the vulnerable witness in accordance with the guidelines prescribed by the concerned High Court in this regard.

(xiv) Judges shall ensure that the requisite guidelines and Standard Operating Procedures affirmed by the Hon'ble Supreme Court in respect of recording of evidence of vulnerable witnesses is followed.

The Guidelines further mandate that

### **23. Mode of questioning-**

(i) To facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witnesses and may do so by:

a. ensuring that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;

b. protecting vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;

c. avoiding waste of time by declining questions which the court considers

*unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand.*

*d. allowing the vulnerable witness to testify in a narrative form.*

*e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels.*

*f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.*

*(ii) Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness.*

*(iii) The court should allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court should ascertain the spoken language of the victim or vulnerable witness and the range of their vocabulary before recording the evidence. 62 The court must not allow the question carrying words capable of multiple meanings, questions having use of both past and present in one sentence, or multiple questions, which is likely to confuse a witness. Where the witness seems confused, instead of repetition of the same question, the court should direct its re-phrasing.*

*Explanation: The reaction of a vulnerable witness shall be treated as sufficient clue that the question was not clear so it shall be rephrased and put to the witness in a different way.*

*(iv) Given the developmental level of vulnerable witnesses, excessively long questions shall be required to be rephrased and thereafter put to witness.*

*(v) Questions framed as compound or complex sentence structure; or two-part questions or those containing double negatives shall be rephrased and thereafter put to witness.*

Keeping in mind the mandates of the Guidelines and since this case involves multiple accused persons, in order to mitigate or minimize the stress upon the vulnerable witness and for the purpose of minimize repetition of questions, for ensuring a comfortable environment, for minimizing unnecessary delays and adjournments to avoid repeated appearance of both witness and accused, the accused desirous to cross-examine the P.W.- 01 are directed to provide written questions in advance soon after examination-in-chief of CSW No.- 01 and CSW No.- 04.

To 20/03/2023 for examination of CSW No.- 01;

To 21/03/2023 for examination of CSW No.- 04; and

To 24/03/2023 for submission of written questions and cross-examination of the P.W.- 01.

To date i.e. 02/03/2023 for filing written explanation and show-cause by the Bench Clerk and placing the report submitted by the Investigating Officer on 25/01/2023 and notification of the date of passing order regarding application for cancellation of interim bail granted to the accused Puja Lal Sharma @ Asma on 12/12/2019 filed by the de-facto complainant Badsha Sardar on 07/02/2020.

Typed by me

Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas.

Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas.