

**Criminal Revision No. 15 of 2026
CNR No. WBSP10-000109-2026**

W.B. Form No. 3886.
H.C. Criminal Form No. M(17)

**HEADING OF JUDGMENT OF REVISIONAL COURT
In the Court of the Additional Sessions Judge, Fast Track,
3rd Court, Diamond Harbour**

**Present : Sri Sachindra Mohan Bhowmick
Additional Sessions Judge,
Fast Track , 3rd Court, Diamond Harbour
JO Code: WB01078**

Date of Judgment: 05.03.2026

**CRIMINAL REVISION NO. 15 of 2026
CNR No.WBSP10-000109-2026**



[Revision against the order dated 29.10.2025 and 11.12.2025 as passed by Ld. Additional Chief Judicial Magistrate, Diamond Harbour as made in Usthi PS Case no. 520 of 2024]

Safiulla Gazi @ Sofiulla Gazi

.....Revisionist

Vs

The State of West Bengal

.....Respondent/OP

For the Revisionist: Ld. Advocate, Subhankar Mondal

For the OP : Ld. PP in-charge, Maruf Nawaz Laskar

Date of Hearing: 17.02.2026

JUDGMENT

INTRODUCTION

1. The present application is one under section 438/440 of the Bharatiya Nagrik Suraksha Sanhita (hereinafter referred to as BNSS) preferred by the revisionist/applicant, **Safiulla Gazi @ Sofiulla Gazi** against the OP, the State of West Bengal assailing the order dated 29.10.2025 and 11.12.2025 as passed by Ld. Additional Chief Judicial Magistrate, Diamond Harbour (hereinafter referred to as the Ld. Trial Court) as made in Usthi PS Case No. 520 of 2024 registered as GR Case No. 3704 of 2024.

THE FACTUAL BACKDROP

2. The factual background of the case leading to the filing of present revision application may be summarized to the effect that Usthi PS case no. 520 of 2024 dated 14.11.2024 u/s 85/108/3(5) of BNS r/w Section 4 of the D. P. Act was registered as GR Case No. 3704 of 2024 and the same is pending before the court of Ld. ACJM, Diamond Harbour at the stage before commitment with the charge sheet having been filed against 7 (seven) accused persons. It is asserted that among those 7 numbers of accused persons, 6 have been enlarged on bail and the rest accused is still absconding. The present petitioner/revisionist being that charge-sheeted accused person against whom the W/A is pending for execution prefers the present revisional application. It is contended that before submission of charge sheet, on the prayer of the IO, the Ld. Trial Court issued W/A against the petitioner/revisionist fixing a date for receipt of the execution report in respect of that issued W/A but till 29.10.2025 no execution report of that W/A was received by the Ld. Court and without any prayer of the IO on record, the Ld. Trial court issued W/P & A against the said accused/revisionist vide its order dated 29.10.2025. Further contention of the revisionist/petitioner is that on 29.10.2025, there was a resolution taken by the local Bar Association with the request to the Ld. Courts not to pass any adverse order and order impugned dated 29.10.2025 was passed ignoring that resolution. Thereafter on 09.12.2025 the IO of the case submitted execution report of W/P & A against the

accused/petitioner and on perusal of the said report the case was filed for present against him vide another impugned order dated 11.12.2025 passed by the Ld. ACJM, Diamond Harbour.

3. Being aggrieved and dissatisfied with the orders dated 29.10.2025 and 11.12.2025 passed by the Ld. Trial court the revisionist/petitioner came up with the present revisional application and challenged the propriety of the impugned orders on the grounds, *inter alia*, that the order passed by the Ld. Trial court is bad in law and liable to be set aside having been passed whimsically and illegally. It is contended that the Ld. Court fails to pass the orders in consonance with the prescribed procedure in the Cr.P.C and failed to appreciate that applications under section 482 BNSS (corresponding to section 438 Cr.P.C) were pending before the Ld. District and Sessions Judge, Alipore vide C.M.C. nos. 2544/2025 and 4215/2025 at the behest of the petitioner/revisionist. On the aforesaid grounds, the revisionist/husband has prayed for setting aside the impugned order of interim maintenance passed against him by the Ld. Trial court.

ARGUMENT

7. In course of argument, Ld. Advocate for the petitioner contends that the impugned orders dated 29.10.2025 and 11.12.2025 passed by the Ld. Trial court suffer from non application of judicial mind and also violate the settled procedure of law. He contends that without receiving execution report from the concerned PS in respect of issued W/A against the accused/petitioner, the issuance of W/P & A by the Ld. Trial court was illegal, erroneous and unjustified. He submits that during the pendency of application for anticipatory bail by any accused, no order for issuance of warrant of arrest or proclamation could be passed by the Ld. Trial court. On the other hand, Ld. PP representing the respondent/State of West Bengal boastfully submitted that the impugned orders conform to all settled legal principles. He contends that the Ld. Trial court has appropriately passed impugned orders and there is no bar on the trial court from issuing proclamation against absconding accused during pendency of the application for anticipatory bail. He submits that impugned orders do not suffer from any illegality and infirmity and there is no scope of interference by this

court with those impugned orders in exercise of the present revisional jurisdiction.

POINT FOR CONSIDERATION

8. The sole point for consideration before this Court is whether there is any sufficient ground to interfere with the impugned orders in exercise of the revisional jurisdiction of this Court ?

DECISION WITH REASONS

9. The formal FIR came to be registered at local PS vide Usthi PS case No. 520/24 dated 14.11.24 under section 85/103(1)/3(5) of BNS read with section 3 /4 of the D.P.Act on the basis of the written complaint filed by the defacto complainant with the allegation against the accused persons that they being the husband and in-laws of the deceased daughter of the defacto complainant used to inflict physical and mental torture upon her daughter on demand of more dowry and on 14.11.2024 at about 10 AM she got an information about the critical condition of her daughter and on reaching at her matrimonial home, she found her daughter dead and alleged that the accused persons had committed murder of her daughter. The present revisionist is the husband of the deceased daughter of defacto complainant.

10. The case record of the Ld. Trial court reveals that out of 7 (seven) FIR named accused persons, one was arrested and granted bail u/s 439 Cr. P.C and the four accused persons were granted anticipatory bail by the Ld. Sessions Judge, Alipore. Since the remaining two accused persons namely Safiulla Gazi (the petitioner) and Jinnatun Bibi were absconding, the IO made a prayer for issuance of warrant of arrest against them before the Ld. Trail court and that prayer was allowed and the W/As were issued.

11. In the meantime, charge sheet vide no. 337/25 dated 25.07.25 of Usthi PS was submitted against all the seven accused persons u/s 85/103/3(5) of BNS and the Ld. Trial court took cognizance of the offence. The absconding accused, Jinnatun

Bibi was granted anticipatory bail by the Ld. Sessions Judge Alipore and she was enlarged on regular bail.

12. Now, as the accused/petitioner was still absconding and warrant of arrest was not executed since long, Ld. Trial court thought it fit to issue W/P & A against the accused/petitioner vide its order dated 29.10.2025, one of the two orders under challenge in the present case. The petitioner assailed the order dated 29.10.2025 on the contention that the same was passed by the Ld. Trial court without receiving any report from the concerned PS regarding execution of warrant of arrest.

13. Section 82 of the Code of Criminal Procedure (corresponding to Section 84 BNSS) deals with the provision regarding issuance of proclamation against an absconding accused person. For better understanding, the provision may be reproduced hereunder:

82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows :-

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.

(4) [Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]

14. Therefore, the aforesaid provision demands that the court must have 'reasons to believe' that the accused person against whom a warrant has been issued by it has actually absconded or is concealing himself so that such warrant cannot be executed before issuance of proclamation against him. The Court must also see whether all efforts have been made by a police officer to execute the arrest warrant issued against the accused. Thus, 'reason to believe' that a person against whom warrant has been issued is either absconding or concealing himself should be reflected by the material placed on record for the Court.

15. Here in this case, the Ld. Trial court appears to have not recorded his satisfaction or reasons to believe that the accused/petitioner has absconded or concealed himself so that warrant cannot be executed. Evidently, no report regarding non- execution of warrant of arrest against the accused/petitioner was received by the Ld. Trial court before he proceeded to issue proclamation against him vide the impugned order dated 29.10.2025. It seems that the order of issuance of proclamation has been issued by the Ld. Trial court in a routine manner ignoring the mandatory requirement to record satisfaction/reasons to believe as contemplated in section 82 of the Cr.P.C. Since the issuance of W/P & A against the accused/petitioner is found to be not in consonance with the procedure of law, the subsequent order dated 11.12.2025 by which the case was filed for present against the accused/petitioner is also found to be improper and unjustified.

16. Therefore, in the light of above discussion and taking into consideration the attending facts and circumstances, I am of the view that the both the impugned

orders dated 29.10.2025 and 11.12.2025 passed by the Ld. Trial court are not legal and required to be set aside.

FINAL OUTCOME

17. Therefore, in the light of my discussion in the foregoing paragraphs and considering the attending facts and circumstances, this court finds sufficient merit in the present revisional application and the same is hereby allowed.

18. Hence, it is

ORDERED

that the instant revisional application being Criminal Revision No. 15 of 2026 be and the same is hereby allowed on merit but without any order as to costs.

The orders under challenge dated 29.10.2025 and 11.12.2025 passed by the Ld. Additional Chief Judicial Magistrate, Diamond Harbour in Usthi PS Case No. 520 of 2024 corresponding to GR Case No. 3704 of 2024 are hereby set aside.

Ld. Trial court is hereby directed to call for report regarding execution of issued warrant of arrest against the accused/petitioner from the concerned PS and only upon receipt of the execution report of issued warrant and on recording his 'reasons to believe' thereon, he would proceed to issue proclamation against the accused/petitioner in terms of section 82 of Cr.P.C, if necessary.

With the aforesaid observation, the present case stands disposed of on contest.

Let a copy of this judgment along with the Trial Court Record be sent down to the Court of Ld. Additional Chief Judicial Magistrate, Diamond Harbour for information and necessary action.

Typed by me:

Sd/-
ADJ, FTC- III
Diamond Harbour,
South 24 Parganas

Sd/-
(Sachindra Mohan Bhowmick)
ADJ, FTC- III
Diamond Harbour,
South 24 Parganas