



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**MISCELLANEOUS APPLICATION DIARY NO.44979/2025**

**WITH**

**INTERLOCUTORY APPLICATION NOS.197604/2025 &  
227763/2025**

**IN**

**CRIMINAL APPEAL NO.43/2025**

**SK. MD. ANISUR RAHAMAN**

**..APPLICANT/APPELLANT**

**VS.**

**THE STATE OF WEST BENGAL & ANR.**

**.....RESPONDENTS**

**WITH**

**MISCELLANEOUS APPLICATION DIARY NO.55130/2025**

**WITH INTERLOCUTORY APPLICATION NO.244053/2025**

**IN CRIMINAL APPEAL NO.43/2025**

**AFJAL ALI SHA @ ABJAL SHAUKAT SHA**

**.....APPLICANT**

**VS.**

**THE STATE OF WEST BENGAL & ANR.**

**.....RESPONDENTS**

## **J U D G M E N T**

**DIPANKAR DATTA, J.**

### **FACTS**

- 1.** The basic facts, relevant for disposal of the application for cancellation of bail (I.A. No.244053/2025) and the application for modification of one of the conditions for bail (I.A. No.197604/2025) along with an application for condonation of delay (I.A. No.227763/2025) in presentation of such application for modification, which we propose to dispose of by this common order, are not in dispute.
- 2.** SK. Md. Anisur Rahaman<sup>1</sup> along with several co-accused is facing trial, *inter alia*, for the offence of murder. By an order of this Court dated 3<sup>rd</sup> January, 2025, Anisur has been granted bail. While Anisur seeks modification of the condition that requires him to remain confined to the city of Kolkata after his release on bail, Afjal Ali Sha @ Abjal Shaukat Sha<sup>2</sup> (brother of Kurban Sha<sup>3</sup>) seeks cancellation of bail granted to Anisur on the grounds urged in the application for cancellation.

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<sup>1</sup> Anisur

<sup>2</sup> Afjal

<sup>3</sup> the victim

- 3.** Panskura P.S. Case No.496 of 2019 dated 8<sup>th</sup> October, 2019 was registered under Section 302/120B, Indian Penal Code, 1860<sup>4</sup> read with section 25/27 of the Arms Act, 1959 at the instance of one Jahar Sha<sup>5</sup> (nephew of the victim). The allegation levelled is that Anisur had entered into a conspiracy with the co-accused to eliminate his political rival, viz. the victim, and that in furtherance of such conspiracy, on 7<sup>th</sup> October, 2019, the victim was shot in the presence of the de-facto complainant for taking up vendetta against Anisur. On 16<sup>th</sup> November, 2019, Anisur was arrested.
- 4.** Upon conclusion of investigation, police report (charge-sheet) under Section 173(2) of the Code of Criminal Procedure, 1973<sup>6</sup> was filed against Anisur and the co-accused. Charges having been framed, all the accused were committed for trial. The trial<sup>7</sup> was assigned to the 3<sup>rd</sup> Court of Additional Sessions Judge, Tamluk, Purba Medinipur, West Bengal. The de-facto complainant was examined as PW-1. He narrated the incident of murder and in course thereof implicated Anisur as a conspirator in the murder.
- 5.** While the trial was in progress before the court at Tamluk and Anisur continued to remain in custody, surprisingly enough, the Legal Remembrancer and ex-officio Secretary to the Government of West

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<sup>4</sup> IPC

<sup>5</sup> the de-facto complainant

<sup>6</sup> Cr. PC

<sup>7</sup> S.T. Case No.01(03)

Bengal, Judicial Department, made an order dated 26<sup>th</sup> February, 2021 to the following effect:

“ORDER

The undersigned is directed to say that the Government has been pleased to instruct the concerned Ld. Public Prosecutor for withdrawal of the case being Sessions Case No.33 of 2020 arising out of Panskura P.S. Case No.496 of 2019 dated 08.10.2019 u/s. 302/120B IPC and U/s 25/27 of the Arms Act, pending before Ld. 3<sup>rd</sup> Additional District and Sessions Judge, Tamluk, Purba Medinipur under the provisions of Section 321 of Cr.P.C. subject to consent of the Id. Court.”

6. The order dated 26<sup>th</sup> February, 2021 came to be challenged by the de-facto complainant in a writ petition<sup>8</sup> before the High Court at Calcutta.
7. During the pendency of the said writ petition, the court at Tamluk seized of the sessions trial mechanically acquitted the accused by an order dated 2<sup>nd</sup> March, 2021 as the prosecution had been withdrawn under Section 321, Cr. PC.
8. The writ petition of the de-facto complainant was taken up for consideration on 2<sup>nd</sup> March, 2021 itself by a Single Judge of the High Court. By an order of even date, the order dated 26<sup>th</sup> February, 2021 was set aside.
9. Anisur carried the order dated 2<sup>nd</sup> March, 2021 in an intra-court appeal. A Division Bench by its order dated 13<sup>th</sup> April, 2021 set aside the order under challenge on the technical ground of violation of principles of natural justice. The writ petition was directed to be re-heard on remand. However, while so ordering, the Division Bench clarified that the status

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<sup>8</sup> WPA No. 6315 of 2021

prevailing when the Single Judge passed the order dated 2<sup>nd</sup> March, 2021 shall continue.

- 10.** Since Anisur was already in custody and the Division Bench had not directed his release, the Single Judge observed that he would continue in such custody unless order to the contrary is passed by an appropriate court.
- 11.** On 28<sup>th</sup> April, 2021, the Single Judge hearing the writ petition of the de-facto complainant was urged by him to allow his prayer for withdrawal of the writ petition based on an apprehended threat to his life and liberty. The prayer for withdrawal of the writ petition was disallowed for the reasons recorded by the Single Judge, which are not required to be noted in details here. Suffice it to note that Afjal having scent of the de-facto complainant's desire to withdraw the writ petition had moved an application for addition of party<sup>9</sup>. The Single Judge found that Afjal was the brother of the victim and hence had the *locus standi* to continue with such writ petition. Afjal, thus, came to be transposed as the petitioner in place of the de-facto complainant.
- 12.** Crestfallen by such development, whereby the writ petition survived, Anisur carried the order dated 28<sup>th</sup> April, 2021 in an intra-court appeal<sup>10</sup>. By a judgment and order dated 2<sup>nd</sup> July, 2021, the Division Bench dismissed the appeal.

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<sup>9</sup> CAN 1 of 2021

<sup>10</sup> MAT 550 of 2021

- 13.** It was at this stage that Afjal approached this Court with an application<sup>11</sup> under Section 406, Cr. PC seeking transfer of the trial to a different State. Stay of proceedings before the trial court was ordered on 5<sup>th</sup> October, 2021, resulting in the trial being halted.
- 14.** Anisur had applied for bail but such application was not being heard in view of the order of stay dated 5<sup>th</sup> October, 2021. As such, this fact was brought to the notice of this Court. By a further order dated 2<sup>nd</sup> May, 2022, this Court clarified that the order of stay will not stand in the way of the trial court to hear any application for bail at the instance of the accused.
- 15.** The trial court then took up for consideration the application for bail filed by Anisur. Upon hearing the parties, the trial court dismissed the application for bail by an order dated 12<sup>th</sup> May, 2022.
- 16.** Aggrieved thereby, Anisur then applied for bail<sup>12</sup> under Section 439, Cr. PC before the High Court. By a detailed judgment and order dated 10<sup>th</sup> June, 2022, a Division Bench of the High Court dismissed the application for bail.
- 17.** The judgment and order dated 10<sup>th</sup> June, 2022 of the High Court was laid to challenge by Anisur before this Court in a special leave petition<sup>13</sup>. It was dismissed by this Court on 15<sup>th</sup> December, 2022.

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<sup>11</sup> T.P. (CrI.) 409 of 2021

<sup>12</sup> CRM (DB) 1472 of 2022

<sup>13</sup> SLP (CrI.) 9051 of 2022

- 18.** Meanwhile, the Single Judge by a fresh order dated 2<sup>nd</sup> August, 2022 allowed the writ petition and set aside the order dated 26<sup>th</sup> February, 2021.
- 19.** While the trial proceeded, the de-facto complainant in course of his cross-examination resiled from the statements made in examination-in-chief. Surprisingly, the de-facto complainant was not declared hostile. This led Afjal to file an application to declare the de-facto complainant hostile and to allow Afjal's lawyer to cross-examine the de-facto complainant. The trial court, however, rejected such application.
- 20.** By an order dated 17<sup>th</sup> March, 2023, this Court allowed the transfer petition of Afjal. The concluding paragraphs of the order are reproduced hereunder:

“36. Taking into consideration all the facts and circumstances, we deem it appropriate to dispose of this transfer petition in following terms:-

- (i) Criminal Trial bearing ST No. 1 (03) of 2020 arising out of FIR No. 495/2019 registered at Police Station Panskura, District Purba Medinipur is ordered to be transferred from the Court of Additional Sessions Judge, 3<sup>rd</sup> Court, Tamluk, Purba Medinipur, West Bengal to the Court of Chief Judge, City Sessions Court at Calcutta.
- (ii) The trial shall be conducted by the Chief Judge, City Sessions Court and he shall not entrust the case to any other Additional Sessions Judge.
- (iii) The Chief Judge, City Sessions Court shall endeavour to take up the trial on a weekly basis and shall make an effort to conclude the same within a period of six months.
- (iv) The State of West Bengal is directed to appoint a Special Public Prosecutor on the recommendations of the Chief Judge, City Sessions Court, Calcutta with the prior approval of the High Court. This exercise shall be completed within two weeks.
- (v) The wife of the Deceased, the Petitioner and other crucial prosecution witnesses shall be provided adequate security. The State of West Bengal is directed to ensure that no harm is caused to the life and liberty of the witnesses and no direct or indirect attempt is made by Respondent No. 2 or his co-accused persons or anyone on their behalf to influence, frighten or threaten the witnesses.

(vi) The De-facto Complainant who is also stated to be the eye-witness and has allegedly resiled from his version recorded during the examination-in-chief, shall be subjected to cross-examination by the Special Public Prosecutor, for which the advocate engaged by the Petitioner may provide assistance to the learned Special Public Prosecutor.

(vii) Respondent No. 2 or any other accused who are in custody shall be transferred forthwith to the Central Jail at Calcutta.

(viii) Respondent No. 2, having regard to his criminal antecedents, as well as other accused who are in custody, shall not be enlarged on bail till the conclusion of trial save and except by the High Court.

(ix) The Learned Portfolio Judge of the Calcutta High Court is requested to regularly monitor and supervise the trial proceedings in terms of the directions issued hereinabove.

37. This transfer petition is hence, disposed of in above stated terms.”

**21.** The trial has since been proceeding before the Court of the Chief Judge, City Sessions Court at Calcutta<sup>14</sup>. We have also been informed that in terms of the order dated 17<sup>th</sup> March, 2023 passed by this Court, a Special Public Prosecutor has been appointed to present the case of the prosecution at the trial.

**22.** Not one to be discouraged by repeated rejection of his prayers, Anisur again applied for bail<sup>15</sup> before the High Court under Section 439, Cr. PC but without success. Vide order dated 29<sup>th</sup> January, 2024, the Division Bench [presided over by the Judge who was the presiding judge of the bench which dismissed the earlier application by order dated 10<sup>th</sup> June, 2022] dismissed the application for bail by ordering as follows:

“11. In order to ensure expeditious trial, we direct the trial court as follows:-

- (i) Trial court shall continue to hold the trial on a day-to-day basis;
- (ii) In the event examination-in-chief of a witness has commenced the trial Judge shall ensure his/her examination is concluded on

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<sup>14</sup> Sessions Court

<sup>15</sup> CRM (DB) No.3916 of 2023

the day itself and if the time of the Court or other circumstances do not permit, the examination-in-chief shall be concluded by the next day positively. In similar fashion cross-examination of the witness shall not exceed 2/3 consecutive dates;

- (iii) Subject to the pendency in the file of the trial Judge, the judge shall ensure at least two hours are allotted on each day to conduct trial particularly when witness action is in progress. No adjournment shall be given to either of the parties on unnecessary grounds including resolutions of the bar association not to attend proceedings.
- (iv) We hope and trust that the trial Court and all stake holders shall make efforts to conclude the examination of all vulnerable witnesses by 30<sup>th</sup> April, 2024.”

**23.** Close on the heels of such rejection, Anisur once again applied for bail before the High Court by filing an application<sup>16</sup> under Section 439, Cr. PC. It was rejected by an order of another Division Bench dated 8<sup>th</sup> November, 2024. Both the Judges constituting the Division Bench penned individual opinions and recorded reasons as to why Anisur did not deserve to be released on bail, despite being incarcerated for more than five years.

**24.** The said order of rejection was carried in appeal<sup>17</sup> before this Court. Fortune smiled on Anisur. His appeal succeeded. By an order dated 3<sup>rd</sup> January, 2025, a co-ordinate Bench of this Court (cor. Abhay S. Oka and Augustine George Masih, JJ.) passed the following order:

“Leave granted.

Heard the learned senior counsel appearing for the appellant, the learned senior counsel appearing for the respondent-State of West Bengal and the learned senior counsel appearing for the second respondent (complainant).

The appellant is in the custody for the last 5 years and 2 months. As per order

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<sup>16</sup> CRM (DB) No.1510 of 2024

<sup>17</sup> Criminal Appeal No.43/2025

dated 17<sup>th</sup> March, 2023 passed by this Court, the trial was expected to be completed within six months. As of today, out of 114 witnesses, 75 have been examined.

We have perused the notes of evidence. Considering the facts of the case and the role attributed to the appellant, the appellant deserves to be enlarged on bail subject to stringent conditions. One of the conditions will be that the appellant will remain confined to the city of Kolkata after his release on bail and shall mark the attendance every day at appropriate Police Station as may be directed by the Trial Court. Another condition will be that if it is found that the trial is being delayed at the instance of the appellant due to either his non-cooperation or his advocate indulging in unnecessary long cross-examination, the bail will be liable to be cancelled.

Apart from the aforesaid conditions, usual conditions shall be imposed which will ensure that the appellant does not tamper with the prosecution evidence and prosecution witnesses.

The State will have to cooperate with the Trial Court by ensuring the presence of all official witnesses. The State will have to render all effective assistance to the Special Public Prosecutor appointed under the orders of this Court.

We direct the State to render all possible cooperation to the Special Public Prosecutor by ensuring that all official witnesses remain present before the Court. We also direct the State to ensure that if any witness needs the protection, he/she shall be provided adequate protection.

We direct that the appellant shall be enlarged on bail till the conclusion of the trial by producing him before the Trial Court within a maximum period of one week from today. The Trial Court shall fix appropriate terms and conditions including the conditions incorporated above. The Trial Court shall give hearing to the counsel for the State and the second respondent on the terms and conditions of bail.

In the event the appellant commits any breach of the terms and conditions, it will be always open for the respondents to apply to this Court for cancellation of bail.

The appeal is accordingly disposed of.”

- 25.** Despite being granted bail by the aforesaid order, Anisur felt dissatisfied with the condition that restricted his movements. He applied for

modification of such condition<sup>18</sup>. By an order dated 5<sup>th</sup> May, 2025, a coordinate Bench (cor. Abhay S. Oka and Ujjal Bhuyan, JJ.) rejected the application holding that no case is made out “at this stage”.

- 26.** Undeterred, Anisur has now renewed his prayer for modification of the condition requiring him to remain confined to the city of Kolkata after his release on bail. According to Anisur, such a condition is an unreasonable restriction on his right to liberty protected by Article 21 of the Constitution of India.
- 27.** Also, Afjal has prayed for cancellation of bail granted to Anisur contending that there can be no fair trial if Anisur is not taken into custody. Be it recorded here that such application has been filed by Afjal after he was permitted, by an order dated 19<sup>th</sup> September, 2025, to withdraw the previous application for cancellation of bail and file afresh by 27<sup>th</sup> September, 2025.

### **ARGUMENTS**

- 28.** We have patiently heard Mr. Vikas Singh, learned senior counsel for Anisur, Mr. P.S. Patwalia, learned senior counsel for Afjal, and Mr. Shadan Farasat, learned senior counsel for the State of West Bengal.
- 29.** Mr. Patwalia has contended that Anisur enjoys political patronage, so much so that the State of West Bengal has left no stone unturned to ensure his acquittal. He has lamented that the developments over the months in course of the trial before the Sessions Court would reveal a

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<sup>18</sup> Misc. Application Diary No. 18397 of 2025

mockery of the criminal justice system. According to him, witnesses were turning hostile even when Anisur was in custody; however, emboldened by release on bail by this Court, Anisur cast his net of influence wide and has been successful in having a good number of other prosecution witnesses turn hostile out of fear and intimidation. It is contended that only the second investigating officer (PW-88) has stood his ground and mustered courage to testify and is presently being examined. Photographs of Anisur with a prominent political leader of the ruling dispensation, which are part of the application for cancellation of bail, have been brought to our notice to show the extent of clout that Anisur enjoys. Scathing remarks made by the Judges of the High Court as well as this Court have been read out to expose how the State of West Bengal has shamelessly sought to shield Anisur.

- 30.** Mr. Patwalia has also brought to our notice that after being released on bail, the Superintendent of Police, Purba Medinipur, West Bengal, has deputed two police personnel as Anisur's security staff. According to him, Anisur was provided security in 2013 but such security cover has now been continued without any assessment of threat perception. He contended that such action of the Superintendent of Police speaks volume of the special favour that Anisur has been receiving from the district police authorities.
- 31.** To ensure that the trial is not rendered an unfair and ineffective trial, Mr. Patwalia claimed that the bail granted to Anisur should be cancelled. He,

accordingly, prayed that upon cancellation of bail, Anisur be taken back into custody till completion of the trial.

- 32.** *Per contra*, Mr. Vikas Singh contended that a witch-hunt is in progress to anyhow nail Anisur despite he having absolutely no nexus with the incident of murder of the victim and no material having surfaced that he conspired to murder the victim. According to him, because of the restrictions imposed on movements of Anisur, he has been deprived of leading a meaningful life in his home district which happens to be Purba Medinipur, West Bengal. Not only has Anisur been unable to attend to his ailing parents (one of whom has since passed away), he could not even attend the last rites of his deceased brother-in-law who too passed away recently.
- 33.** Mr. Singh further contended that since the trial is on the verge of completion and that the remaining witnesses are all public officials, there is no possibility of tampering evidence or influencing witnesses; thus, the condition of bail that Anisur should be confined to the city of Kolkata may be revoked.
- 34.** We had enquired from Mr. Farasat as to the existence of any order passed by the Superintendent of Police on assessment of threat perception of Anisur after his release on bail. The answer was in the negative.

### **OUR VIEWS AND CONCLUSIONS**

- 35.** The facts, as outlined, detailing the progression of the sessions trial and the series of events and judicial orders so far, are self-explanatory. Lest

any observation made by us influences the Sessions Court, we refrain from commenting on the manner in which the trial has been progressing. However, while we consider it appropriate to observe that the developments [which, *inter alia*, include the de-facto complainant resiling from his stand and almost 10 police witnesses turning hostile apart from other witnesses and the State giving direction for withdrawal of prosecution (ultimately set aside)] do leave a very bitter taste in the mouth, it would be worthwhile to read portions of certain orders passed by the High Court as well as the order dated 17<sup>th</sup> March, 2023 of this Court on the transfer petition.

- 36.** The order dated 10<sup>th</sup> June, 2022 rejecting the application for bail of Anisur, *inter alia*, reads as follows:

“We have also given anxious thought to the contention of Mr. \*\*\* that detention of the petitioner at this stage when the prosecution is stayed by the Hon’ble Apex Court is in breach of his fundamental right under Article 21 of the Constitution of India. A fair prosecution requires to address not only the rights of the accused but also the rights of the victims in particular and the public confidence in criminal justice administration in general. Manner in which the prosecution is sought to be jettisoned gives rise to grave doubt with regard to the *bona fides* of the State in effectively prosecuting the petitioner and the other accused persons. As noted above, while on one hand the State chooses to support its stance of withdrawal of prosecution, on other hand it appears to be conducting a ‘lip-service’ trial wherein most witnesses have turned hostile.

An aura of fear and apprehension seems to pervade the minds of the witnesses and the relations of the victim. In fact, Jahar Sha (informant in the case) was constrained to withdraw himself from the writ proceeding challenging the withdrawal of prosecution. This calls for a balancing act between rights of victim i.e., access to justice and witness protection and the right of the petitioner-accused under Article 21 of the Constitution of India.

In view of the painful state of affairs where the bias of the State is heavily loaded in favour of the petitioner-accused, it would be prudent for us to tilt in favour of protection of the witnesses and family members of the deceased and ensure a fair and just prosecution. Hence, we are not inclined to release the petitioner on bail.

- 37.** The aforesaid order was upheld by a coordinate bench of this Court on 15<sup>th</sup> December, 2022 by recording that there was no reason to interfere.
- 38.** As has been noted above, the Single Judge set aside the order dated 26<sup>th</sup> February, 2021 by a judgment and order dated 2<sup>nd</sup> August, 2022.

The following observations may be read:

“45. Mere lip-service to the settled legal criteria in the application under Section 321, Cr.PC does not, by itself, lend sanctity to the motive behind non-prosecution. Rather, the dubious manner in which the application was shifted back early at the behest of the State and allowed by the trial Court on the very same date when the present writ petition was fixed and was being taken up for hearing by this court in the first round of litigation, even after the trial court being informed and well aware of such fixation in this court, evokes suspicion about the motive rather than confidence in the application being moved by the PP in good faith.

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47. The surrounding circumstance and varied developments in the instant case, as discussed above, all cast a shadow of doubt on the motive behind the State’s fiat to withdraw prosecution against the respondent no. 5 and the other co-accused persons in the case. No ingredient of public justice and/or interest of administration of justice has been made out at all for withdrawing prosecution against the accused persons, that too at an advanced stage of trial.

48. Just as political vendetta has been belied as a ground for withdrawal in the instant case, the averment in the application under Section 321, Cr.PC to the effect that the respondent no. 5 has not previously been accused of any serious offence is also fraught with untruth, since the respondent is not only a history-sheeter during the same political regime which now seeks to withdraw prosecution against him, but has been charged with heinous crimes such as murder, rape, etc. Such antecedent, without anything else, do not justify the argument that the withdrawal was for public interest or in the interest of proper administration of justice.

49. The State’s argument, that the withdrawal is in public interest, is betrayed by the events as traced out above. Rather, the communication of the State instruction to the trial court simultaneously with the PP and the concurrent haste adopted in the trial, despite witness after witness turning hostile but not being declared so, while in the same breath seeking withdrawal of prosecution, does not augur well in favour of the bona fides of the prosecution.

50. The other argument of the respondent no. 5, that the present writ petition is a non-starter in the absence of challenge to the order under Section 321, Cr.PC, though specious, is still-born, since the impugned memo logically culminated in the application and the order under the said provision and is a continuum of the same cause of action. In fact, in the first round of litigation before remand, the writ petition had been allowed by setting aside not only the impugned memo but all consequential action.

51. Hence, it would only subserve justice, good conscience and public interest if the trial of the respondent no. 5 and other accused persons is conducted properly and with the same zeal as the withdrawal of prosecution has been pursued, and not vice versa.”

**39.** Certain passages from the order of this Court dated 17<sup>th</sup> March, 2023, while disposing of the transfer petition read as under:

“33. Adverting to the facts of the case in hand in light of the principles enunciated by this Court from time to time, it is true that the State of West Bengal has taken a complete u-turn with a view to help the main accused, namely, Respondent No. 2 and it went to the extent of resorting to its powers under Section 321 of CrPC to withdraw the prosecution itself. A plain reading of Section 321, CrPC leaves no room to doubt that it is the Public Prosecutor in-charge of the case who has to apply his mind independently and impartially to form a view for withdrawal from the prosecution with the consent of the court. The procedure followed in the case in hand was completely alien to the scheme of Section 321, CrPC as the decision to withdraw prosecution was taken at the level of the State Government and the Public Prosecutor was merely asked to act upon the said Government notification. The Link Judge also showed tearing hurry in accepting the application of the Public Prosecutor and permitting withdrawal from prosecution even before the date when the case was listed for prosecution evidence.

34. However, none of these patent illegalities were allowed to sustain as a result of the pro-active exercise of appellate/revisional/writ jurisdiction by the High Court. Not only was the State Government’s notification set aside, the order passed by the Link Judge permitting such withdrawal was also annulled by the High Court. It is a matter of record that the learned Trial Judge has repeatedly declined bail to Respondent No. 2 and even the High Court rejected his prayer for enlargement on bail. In this factual scenario, the question arises whether it is essential to transfer the trial outside the State of West Bengal or whether the ends of justice can be adequately met by issuing alternative appropriate directions?

#### D. CONCLUSIONS

35. Having given our thoughtful consideration to this issue, it appears to us that there is no legal necessity to transfer the trial outside the State of West Bengal and the apprehensions of the petitioner, some of which are indeed genuine, can be

effectively redressed by issuing appropriate directions. We say so for the reason that more than 90 witnesses, most of whom are Bengali speaking, are yet to be examined. The transfer of trial to any other neighbouring state will cause serious impediment in the deposition of those witnesses and some of them might be reluctant to travel to a far away place and, thus, the case of the Prosecution will be severely prejudiced. So long as the High Court and District Judiciary are ensuring the fairness in trial proceedings within their jurisdictional framework, we are not inclined to accept that the victim's family will not get fair justice, if the trial is held in the State of West Bengal.”

**40.** The order dated 29<sup>th</sup> January, 2024 of the High Court recorded that:

“8. Under such circumstances, we are constrained to hold the trial judge has taken all efforts to conduct the trial expeditiously and conclude it within the time frame proposed by the Hon’ble Apex Court.

9. We have also examined the evidence of the witnesses who have deposed so far. PWs. 1, 8, 10, 26 and 30 have deposed against the petitioner and evidence is forthcoming with regard to his complicity in the murder. We do not wish to make further observations with regard to the evidence on record lest the same prejudices either the prosecution or the defence.

10. We have also taken note of the fact one of the prosecution witnesses, PW 29, deposed that he had been intimidated by associates of the petitioner. As per the special Public Prosecutor 18 vulnerable witnesses are yet to be examined. Offences, if proved, would attract mandatory life imprisonment. Gravity of the offence and the evidence led against the accused are relevant considerations for bail. Similarly, impact of release of the petitioner on bail on the vulnerable witnesses also needs to be kept in mind. But the Court cannot turn its eyes away from the protracted undertrial detention already suffered by the petitioner i.e. more than 4 years. One cannot be unmindful of the systematic and infrastructural shortcomings which may inspite of earnest efforts on the part of the trial Court and the stakeholders stand in the way of conclusion of trial at an early date. In order to balance the right to liberty of an undertrial which is an enshrined right under Article 21 of the Constitution of India on the one hand with the right of the State to conduct trial in a free, fair and non-intimidatory atmosphere on the other hand, we do not wish to consider the bail prayer of the petitioner favorably at this stage till all the vulnerable witnesses are examined.”

**41.** Reverting to the applications, we find from the status report of the State that presently only a couple of witnesses remain to be examined and few are to be examined on recall. It also appears from a petition filed

before the Sessions Court, handed over to us by Mr. Patwalia that recording of evidence of PW-88 is now in progress, which is likely to be followed by recording the evidence of two Magistrates (one of whom recorded the statement of a witness under Section 164, Cr. PC and the other held a T.I. Parade), a doctor and two other witnesses.

**42.** The application for cancellation of bail at the instance of Afjal seems to be more of a retaliatory response to Anisur's application for modification of bail condition rather than a genuine effort to further project before this Court how Anisur has breached the terms and conditions of bail. The anxiety and concern of Afjal is understandable. Having lost his brother in a homicidal attack, it is quite but natural that regardless of the State's effort to scuttle the trial he would sincerely and earnestly wish to have the culprits brought to book. It has, however, not been shown how a breach has occasioned. We quite agree with Mr. Patwalia, as recorded by this Court in its order dated 17<sup>th</sup> March, 2023, that the State seems to have crossed the line of being an honest and fair prosecutor and bordered on becoming a real facilitator for the accused in the sessions trial to evade conviction. There is also little doubt that witnesses for the prosecution have turned hostile, but that Anisur is directly responsible for the damage caused has not been conclusively established before us. Be that as it may, having regard to the stage the trial has progressed, we do not consider any useful purpose being served by cancelling the bail granted in favour of Anisur.

**43.** The application for cancellation of bail, thus, stands rejected.

- 44.** The application for condonation of delay (I.A. No.227763/2025) in presentation of the application for modification by Anisur stands allowed.
- 45.** Adverting to the modification application of Anisur, we do not see sufficient reason to modify the condition under consideration either.
- 46.** Anisur's previous application for modification was rejected by the bench presided over by A.S. Oka, J. The present application has been filed on 8<sup>th</sup> August, 2025, i.e., a couple of months after His Lordship demitted office. In between, there were Partial Working Days from 26<sup>th</sup> May, 2025 till 11<sup>th</sup> July, 2025. The purpose is not far to seek. We perceive this to be an attempt to take a chance because of the changed scenario.
- 47.** Though elementary, it requires restatement that it is fundamental to the rule of law to maintain the sanctity and finality of judicial verdicts. Judicial orders which determine issues arising between the parties to the *lis* bind them and its conclusive nature ensures resolution of disputes so that justice is served. The strength of judicial power lies less in the hope of perfection and more in the confidence that decisions, once made, are settled. As Justice Robert Jackson<sup>19</sup> famously said "We are not final because we are infallible, but we are infallible only because we are final". By upholding the finality of verdicts, not only is endless litigation prevented but public confidence in the judiciary is also maintained.

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<sup>19</sup> Associate Justice of the U.S. Supreme Court in *Brown v. Allen*

**48.** In the recent past, we have rather painfully observed a growing trend in this Court (of which we too are an indispensable part) of verdicts pronounced by Judges, whether still in office or not and irrespective of the time lapse since pronounced, being overturned by succeeding benches or specially constituted benches at the behest of some party aggrieved by the verdicts prior in point of time. To us, the object of Article 141 of the Constitution seems to be this: the pronouncement of a verdict by a bench on a particular issue of law (arising out of the facts involved) should settle the controversy, being final, and has to be followed by all courts as law declared by the Supreme Court. However, if a verdict is allowed to be reopened because a later different view appears to be better, the very purpose of enacting Article 141 would stand defeated. The prospect of opening up a further round of challenge before a succeeding bench, hoping that a change in composition will yield a different outcome, would undermine this Court's authority and the value of its pronouncements. A matter that is *res integra* may not be reopened or revisited or else consistency in legal interpretation could be compromised and the special authority that is invested in decisions of this Court, under Article 141, lost. The weight and influence of that special authority depend on the credibility we, the Judges, give to it. As Judges of this Court, we are alive to the position that overturning a prior verdict by a later verdict does not necessarily mean that justice is better served.

**49.** However, with an over looming sense of dissatisfaction and remorse, we propose not to walk that path. While it is true that in a case of the present nature — where an issue of a citizen’s right to move freely throughout the territory of India is involved — the principle of finality may not be applied strictly against the party whose right has been so restricted, but the antecedent facts in the light whereof the restriction is imposed assumes significance and must, of necessity, bear serious thought. Any restrictive order of the nature under consideration has to be and must be premised on some worthy reason. Such reason need not be brushed aside as irrelevant or untenable. Judicial discipline, propriety and comity, which are also inseparable parts of a just and proper decision-making process, demand that a subsequent bench of different combination defers to the view expressed by the earlier bench, unless there is something so grossly erroneous on the face of the record or palpably wrong that it necessitates a re-look in exercise of inherent jurisdiction either by a review petition or through a curative petition as explained in ***Rupa Ashok Hurra v. Ashok Hurra***<sup>20</sup>.

**50.** The very purpose of the order granting bail, in this case, would stand frustrated if the condition requiring Anisur not to leave Kolkata were modified. This Court granted bail bearing in mind two factors. First, Anisur was in custody for more than 5 years and second, despite this Court’s order dated 17<sup>th</sup> May, 2023 requiring completion of trial within 6 months, the trial had not concluded. Grant of bail being discretionary

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<sup>20</sup> (2002) 4 SCC 388

and having regard to the developments over the years, refusal to grant bail to Anisur was indeed a distinct option available to the bench. However, the bench leaned in favour of granting the concession of bail on stringent conditions which this Court found fit to impose considering the attendant circumstances and balancing competing interests of need for incarceration and right to liberty. If any modification of such condition is made now and thereby the stringency relaxed, that would not only amount to overstepping the order of this Court granting bail but would send a wrong message of this Court being unconcerned with the principle of finality of judicial decisions. The stringent condition imposed by the bench while granting bail being justified on facts and in the circumstances, and there being no significant change in circumstances warranting a reconsideration, we see no reason to interfere.

- 51.** That apart, this Court being the protector of Fundamental Rights of the people of the country cannot also perhaps overlook that Anisur has been provided security cover by none other than the Superintendent of the police force of the district of which he is a permanent resident. If indeed there is any threat perception that endangers Anisur's life in Purba Medinipur, it would be appropriate for him not to leave Kolkata till such time the trial is concluded.
- 52.** We, therefore, reject the application for modification of bail condition filed by Anisur.

- 53.** The Sessions Court is requested to prepare a schedule for recording the evidence of the remaining prosecution witnesses on successive/alternative days, as far as possible but subject to its convenience. The Sessions Court shall be free to proceed with the trial in accordance with law.
- 54.** I.A. No.244053/2025 (application for cancellation of bail) and I.A. No.197604/2025 (application for modification of one of the conditions for bail) are, accordingly, dismissed.

#### **POSTSCRIPT**

- 55.** After we had reserved judgment on the applications on 18<sup>th</sup> November, 2025 and the opinion expressed above was scheduled to be pronounced on 25<sup>th</sup> November, 2025, Mr. Patwalia mentioned the matter on 24<sup>th</sup> November, 2025 in the presence of Mr. Bedi, learned counsel for Anisur. We were shown a copy of an order dated 21<sup>st</sup> November, 2025 passed by the Sessions Court on an application filed by the Special Public Prosecutor.
- 56.** Mr. Patwalia submitted that without any reason or justification, the Sessions Court has made scathing comments against the Special Public Prosecutor and referred the matter to the Legal Remembrancer, West Bengal based on his perception that the Special Public Prosecutor has been remiss in conducting the proceedings of the trial and committed a serious lapse in filing a belated application and that too, without assigning any reason. According to him, the Special Public Prosecutor has been prosecuting the case fairly and with a good deal of competence

and Afjal has no dissatisfaction with the manner of conducting of the trial. He expresses an apprehension that unless some observations are made, the trial would end up meandering into a mere ritual being completed with the conclusion written on the wall.

**57.** Mr. Bedi, for Anisur, submitted that any interference with the order dated 21<sup>st</sup> November, 2025 in course of these proceedings would not be proper. According to him, Anisur is not responsible for the order made by the Sessions Court; Anisur is entitled to a fair trial and if any party is dissatisfied with partial allowing of the application of the prosecution, he/it may move the appropriate forum.

**58.** It is noted in such order dated 21<sup>st</sup> November, 2025 as follows:

“3. The learned Special Public Prosecutor has submitted that the prosecution wants to get the indulgence of this Court to –

- (a) Re-examine CSW 83;
- (b) Examine fresh witnesses namely; CSW 84, CSW 37, CSW 41 and the Executive Officials (DM/ADM) to prove the order of sanction (marked Z1 for identification) accorded under Section 39 Arms Act;
- (c) Examine some forensic experts who submitted their reports;
- (d) Examine PW75 (Dilip Chakraborty), who was though declared as hostile but the matter has been stayed by the Hon’ble High Court;
- (e) Examine one Dipankar Adak who is said to be an ocular witness though not cited in the charge-sheet;
- (f) Examine the seizure witnesses relating to recovery of some articles and re-examine the officials who seized those articles and
- (g) Examine ASI Goutam Roy of Panskura Police Station who made the GD entry no. 281 dated 07.10.2019 (marked Z for identification).

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7. At the outset, this Court is afraid to make a comment that the prosecution has not assigned any reason as why the witnesses sought to be re-examined [CSW 83 and seizing officials as specified in paragraph 3 (a) & (f)]. Nothing is also found explaining the reason for filing such an application is such a belated stage even after closure of the evidence of the Investigation officer.”

- 59.** Despite being critical, the Sessions Court partly allowed the application and permitted examination of executive officials (DM/ADM), Dipankar Adak and ASI Goutam Roy.
- 60.** Since the application of the prosecution has been partly allowed and partly disallowed by the Sessions Court by the said order dated 21<sup>st</sup> November, 2025, we do not propose to examine the validity thereof in course of these proceedings, except to the extent specified hereafter. Such order may be challenged in appropriate proceedings by the aggrieved party, if so advised.
- 61.** However, the alleged scathing comments made by the Sessions Court against the Special Public Prosecutor (who has been appointed pursuant to the order dated 17<sup>th</sup> March, 2023 on the transfer petition passed by this Court), to which our attention was drawn by Mr. Patwalia, read thus:

“30. At the same time, this court firmly observes that the Learned Special Public Prosecutor, Mr. \*\*\*, cannot exculpate himself from the solemn and onerous duty cast upon his office — to lend unalloyed assistance to the court and to lay bare the unvarnished truth, thereby enabling the Court to traverse the path of justice conviction, and completeness.

31. It is more so, when Mr. \*\*\*, is well aware about the directives of the Hon'ble Apex Court whereby we all are enjoined to dispose of this case within a stipulated period — a circumstance that ought to have impelled greater vigilance and circumspection on the part of Mr. Maity.

32. This Court, therefore, deems it imperative *ex debito justitiae* to express its profound disquiet the manner in which Mr. \*\*\* has represented the State in the present proceeding. His torpid and indifferent approach, *contra officii dignitatem*, stands in glaring discord with the solemn responsibility reposed in a Public Prosecutor. In a prosecution touching the very vitals of societal order and moral rectitude, such apathy is *non toleranda*.

33. Accordingly, this Court, *suo motu et cum gravi animi sensu*, urges the Learned Legal Remembrancer, Government of West Bengal, to take due cognizance of this lapse and to ensure that cases of such grave import and societal impact are hereafter conducted *cum summa diligentia et fide publica* (with the greatest diligence and public faith).

34. A copy of this order be accordingly forwarded to the Learned Legal Remembrancer, Government of West Bengal, for information.”

- 62.** The above observations have been made against the Special Public Prosecutor by the presiding officer of the Sessions Court, once he approached the Court with the application to grant the prosecution the indulgence to examine additional witnesses/re-examine witness already examined.
- 63.** We are pained to record that the comments made by the Sessions Court criticising the Special Public Prosecutor are wholly uncalled for, thoroughly unwarranted and absolutely unnecessary. In his anxiety to conclude the trial early, owing to the directions given by this Court on the transfer petition as well as the High Court while dismissing the applications for bail of Anisur, the Sessions Court perhaps omitted to bear in mind the antecedent facts relatable to progression of the trial. If indeed the Special Public Prosecutor by filing an application sought the indulgence of the Court to re-examine/examine witnesses, it was entirely within the jurisdiction of the Sessions Court to allow or reject such prayer. Indeed, the fact that the application of the prosecution has been partly allowed does suggest that the Sessions Court did not consider the attempt of the prosecution to be part of any dilatory tactics to unduly prolong the trial. Having regard thereto, the order is contradictory in the sense that on the one hand the application is partly allowed and, on the other, the Special Public Prosecutor is criticized for lack of vigilance and circumspection.

**64.** The Sessions Court, further, ought to have realised that the directions for early conclusion of trial were passed owing to long incarceration of Anisur. This Court was anxious that an under-trial's liberty should not be curtailed without sufficient reason. However, with the passing of the order dated 3<sup>rd</sup> January, 2025 by this Court releasing Anisur on bail (*albeit* with restrictions on his movement), the extreme urgency to conclude the trial as early as possible by fixing successive/alternative dates did recede a bit and the endeavour of the Sessions Court ought not to have been to discourage the prosecution from placing its case by all means, as permitted by law. If indeed the prosecution, for ensuring a fair trial for the victim as well as the accused, felt that it was essential to apply for permission to have witnesses re-examined/examined, obviously such an application was not one which necessitated scathing remarks to be made against the Special Public Prosecutor. To characterise the approach of the Special Public Prosecutor as torpid and indifferent amounts to unjustly criticising him for lack of initiative. The Sessions Court ought to have been alive to the situation that the predecessor in office of the Special Public Prosecutor was tardy, lethargic, indolent and unenthusiastic for which the current initiative of the Special Public Prosecutor was necessary for a fair, effective and meaningful trial. The Sessions Court ought not to forget the status of a prosecutor, who has been appointed pursuant to an order of this Court. Reference to legal maxims could be insightful, if the context so requires, but overusing them might distract from the main issue, coming across

as ostentatious rather than substantive. We conclude by observing that the Special Public Prosecutor has been unfairly criticised by the Sessions Court in its hurried attempt to conclude the trial without, however, realising the seriousness and magnitude of the situation. However, while viewing this as a one-off aberration on the part of the presiding officer of the Sessions Court, we hope that it is not repeated.

65. Having limited our examination to that part of the order dated 21<sup>st</sup> November, 2025 whereby reference has been made to the Legal Remembrancer, we interfere and set aside such reference.
66. The Special Public Prosecutor is encouraged to continue conducting the trial on behalf of the prosecution with fairness, integrity and diligence.
67. The Sessions Court is directed to deal with all applications that might be filed by the parties on its own merits.
68. This order may not be construed as restricting Anisur from raising legitimate objections during the trial, which the Sessions Court will decide as per law.
69. The Sessions Court may conclude the trial, in accordance with law, without being overly concerned about the previous timelines set by this Court.

.....**J.**  
**(DIPANKAR DATTA)**

.....**J.**  
**(AUGUSTINE GEORGE MASIH)**

**New Delhi;  
November 26, 2025.**