

**(2004) 11 CAL CK 0021**

**Calcutta High Court**

**Case No:** C.R.M. No. 6398 of 2004

Abul Basar Laskar

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Nov. 19, 2004

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 307

**Citation:** (2005) 1 CALLT 372 : (2005) 1 CHN 201 : (2005) CriLJ 2737 : (2005) 3 RCR(Criminal) 880

**Hon'ble Judges:** Pranab Kumar Deb, J; Amitava Lala, J

**Bench:** Division Bench

**Advocate:** Sibdas Banerjee, Himangshu De and Suman De, for the Appellant; Kazi Kafiullah and Swapan Kr. Mallick, for the Respondent

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### **Judgement**

1. This is an application for grant of bail. The case of the petitioner is that he was taken into custody on 23rd October, 2002 and till this date he is not released on bail. Seven witnesses were examined in the trial but adjourned. Now nine witnesses including two members of public, Doctor and other witnesses are awaiting for the purpose of examination. Even after shifting of the matter to the Fast Track Court as far as back on 24th June, 2004, the situation has not been changed. The prosecution case is that there is no fault on the part of the prosecution. A note has been placed by the Officer-in-Charge of Usthi P. S. It appears from there that an accused made an application for approver and the learned Trial Judge granted pardon to the accused on 29th July, 2003. However, a revisional application was made by a co-accused before this High Court which was heard and disposed of and in this way the trial was delayed for a considerable period till 31st January, 2004. It has been further contended that on 9th February, 2004, the learned Trial Judge was transferred to his new post of posting. The Court was vacant. On 9th March, 2004, the learned Public Prosecutor, South 24-Parganas, wrote a letter to the learned Public Prosecutor, High Court, narrating all the facts and the statement for

transferring the trial for proper justice. However, only on 24th June, 2003, the learned Fast Track Court joined. On 25th June, 2004, the trial was again started. The statement of the accused was heard u/s 306(4) of the Code of Criminal Procedure. On 28th July, 2004, another co-accused preferred a revisional application and an adjournment was prayed for, Two dates were fixed for bringing the High Court orders i.e. 10th August, 2004 and 19th August, 2004. A Bench of this High Court directed the learned Trial Judge to produce the records of the statement of the accused u/s 307 of the Code of Criminal Procedure on the same condition as embodied u/s 306(1) of the Code of Criminal Procedure on the basis of the judgment of the Supreme Court reported in 2001 Cr. LJ 3993, Jasbir Singh v. Vipin Kumar Jaggi, before tendering pardon. Two dates i.e. 2nd September, 2004 and 22nd September, 2004 were fixed for getting the order of the Hon'ble Court but the said order could not have been communicated to the Trial Court on or before 27th September, 2004. The last date was fixed on 11th October, 2004 but the Court adjourned the matter due to a resolution of the Bar on the occasion of expiry of the learned Senior Advocate of the Court. Again, the next date was fixed on 17th November, 2004. Although one co-accused made application for approver and challenge was thrown by another co-accused before this High Court but admittedly, the prosecution supported the cause. The petitioner's further case is that even after last date of hearing of application for bail on 16th November, 2004 application for approver of a co-accused was supported by the State by filing formal application on 18th November, 2004. Therefore, it would not be unnatural to believe that much emphasis is given by the State to support application of approver of a co-accused and for pardoning him. There is every likelihood of challenging the same in the higher Court in case of success or failure. However, we do not want to go to that far excepting making observation. We are otherwise convinced by the cause of the petitioner. By making this application, the accused-petitioner contended that there was no fault on his part even then he is in custody for a period of more than two years and if he is released on bail on any condition imposed by the Court, the trial will not be affected. But if the adjournments are obtained expeditious hearing will be delayed and he will immensely suffer unnecessarily. In such case the underlying principle of the Supreme Court reported in JT 2000(4) SC 558, Sanjoy Kumar Das and Anr. v. State of West Bengal, will be frustrated Therefore, it is to be understood at first whether there was. any fault on the part of the accused whose bail application is objected by the prosecution or not. We do not find there is any fault on the part of the present petitioner. In totality we find that there is no chance for early disposal of the trial. Of course, it is correct to say that this Court could direct the Trial Court for expeditious "disposal for the future and we direct so. But for such reason, the petitioner should not be allowed to consume punishment by detaining in custody indefinitely before completion of trial. In JT 2000(4) SC 558 (supra) Supreme Court is categorical on the cause of delay even on the part of the Court for not following Parliamentary mandate about expeditious disposal. Therefore, we are titled in favour of granting bail but, of course, with certain conditions.

2. Accordingly, we direct that the petitioner, namely, Abul Basar Laskar shall be released on bail with two local sureties to the satisfaction of the learned Chief Judicial Magistrate, Alipore. The petitioner will not leave the jurisdiction of Calcutta Police excepting for attending the Court. He will attend the Trial Court regularly, In case of failure of any of the conditions he will be again taken into custody on cancellation of bail without any reference to this Court.

3. This application is, thus, disposed of.