

THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 744 of 2024

Reserved on : 06.10.2025

Decided on : 23.12.2025

Sonu @ Tashi

...Petitioner

Versus

State of H.P. & Ors.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. H.R. Jhingta, Advocate.

For the respondents : Mr. H.S. Rawat, Additional A.G.,
for respondent No.1-State.

None for respondents No. 2
and 3.

Virender Singh, Judge

Petitioner Sonu @ Tashi, has filed the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for quashing of FIR No. 135/2017, dated 27.11.2017, (hereinafter referred to as "FIR in question") registered with Police Station Shimla East, District Shimla, H.P., under

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Sections 341, 307, 323, 325, read with Section 34 of IPC, as well as, the proceedings resultant thereto, which are pending in the Court of learned Additional Sessions Judge – 1, Shimla, District Shimla, H.P. (hereinafter referred to as “the trial Court”).

2. The relief, as claimed in the petition, has been sought, on the ground, that at the instance of respondent No. 2, police of Police Station Shimla East, registered the FIR in question, in which, the police has conducted the investigation and submitted the charge-sheet. On the basis of the said charge-sheet, the learned trial Court has taken the cognizance and charges have been framed.

3. It is the further case of the petitioner that in the FIR in question, the name of the petitioner has not been mentioned, as, it has been referred that Leky Dorje and five other students of APG University have beaten respondent No. 3 Munanizi. The statement of respondent No. 3 Munanizi (injured), is stated to have been recorded much after the incident i.e. after ten days of the alleged incident, whereas, he has been discharged from the hospital within four days of the incident. The name of the petitioner has

been added on the basis of statement under Section 161 Cr.P.C. and police could not collect any evidence to connect the petitioner with the crime in question.

4. According to the petitioner, if the entire material, collected during the investigation, is read as a whole, then, no case is made out, against the petitioner. The sole injury inflicted on the person of respondent No. 3, has been attributed to Leky Dorje, who has yet not been arrested, in this case.

5. It is the case of the petitioner that injured, as well as, the complainant, when appeared in the witness box, have not deposed anything against the accused.

6. It is his further case that the FIR has been registered on 27.11.2017, and cognizance has been taken by the learned trial Court on 18.06.2022 and till date, the prosecution could not conclude the trial against him, in the present case.

7. On the basis of the above facts, the relief of quashing of the FIR in question, as well as, resultant proceedings thereto, has been sought.

8. When, put to notice, respondent No. 2 appeared before this Court on 11.09.2024, and deposed that he does not want to engage any counsel and has also deposed that he is merely an informant and has no personal interest in the matter, whereas, respondent No. 3 has not put appearance, before this Court.

9. Respondent No. 1-State has filed the status report, disclosing therein, that on 26.11.2017, an information was received in Police Post Kasumpti, regarding a quarrel, which had taken place in APG University. ASI Dalip Chand along with other police officials, reached at the campus of APG University, where it has been informed to the police that one person Munanizi, has been taken for treatment to IGMC Shimla, where respondent No. 2, Rajesh Kumar, who at the relevant time was posted as Assistant Sports Officer, in APG University, got recorded his statement, under Section 154 Cr.P.C., disclosing therein, that he is working as Assistant Sports Officer in APG University, in August, 2017 and in addition to this, charge of boys hostel has been given to him.

9.1 On 26.11.2017, at about 9:30 pm, the complainant was standing on the road, after having dinner in the mess. Then, he noticed that Munanizi, student of B.Arct. 3rd year, who has come there to meet his friend, had a scuffle with Leky Dorje and five-six other persons. The above persons have beaten him with fist blows and Leky has inflicted the injury with the sharp edged weapon, on the head of the Munanizi. Due to the beatings, Munanizi sustained injuries over his head and all over body. Munanizi was saved by the complainant and Chief Warden Robin Mahajan. After first aid, he was brought to IGMC Shimla.

9.2 Lastly, he deposed that Leky and his friends, without any cause, had obstructed the movement of Munanizi and beaten him, as such, he has prayed that action be taken against them, upon which, police registered the case under Sections 341, 147, 149, 323 of IPC.

9.3 Thereafter, the injured was medico legally examined. The statements of witnesses were recorded under Section 161 Cr.P.C. On the basis of the statements

of the witnesses and complainant, Section 307 of IPC was added.

9.4 On 29.11.2017, accused Leky Dorje Bangche, Kinjang Thinle, Funthsho Choopel, Sonu @ Tashi (applicant), were associated in the investigation and arrested at 6:30 pm, on that day. The information was, thereafter, given to their guardians, as well as, to the Embassy of Bhutan.

9.5 On the basis of the statements of Munanizi, Sections 147 and 149 of IPC were deleted and Section 34 of IPC was added. Later on, on the basis of the opinion of the Medical Officer, Section 325 of IPC was added. Accused Leky Dorje, Kinjang Thinle and Funthsho, were declared as proclaimed offenders, by the Court of learned ACJM Court No. 2, Shimla.

9.6 Lastly, it has been submitted that charge-sheet has been filed on 11.05.2018, before the learned trial Court and six PWs have been examined, in the present case.

10. On the basis of the above facts, Dr. H.R. Jhingta, Advocate, appearing for the petitioner, has made two folded arguments, firstly, that no case is made out

against the petitioner, on the basis of the allegations as levelled against him, in the statements made by the complainant and witnesses and relief of quashing has also been sought, on account of the undue delay in the trial.

11. The petitioner is before this Court under Section 528 of BNSS (Section 482 Cr.P.C.). The jurisdiction of this Court under Section 482 Cr.P.C. (528 of BNSS), has elaborately been discussed by the Hon'ble Apex Court in the year 1992, in the case titled as **State of Haryana Vs. Chaudhary Bhajan Lal & Others**, reported as **1992 CrLJ, 527**, in which, the Hon'ble Supreme Court has formulated the guidelines for exercising the powers under Section 482 Cr.P.C. Relevant paragraph 107 of the judgment is reproduced, as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay

down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR, do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate with the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FLR do not constitute a cognizable offence but constitute only, a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. This view has again been reiterated by a three Judge Bench of the Hon’ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra & Others**, reported as **2021 SCC Online SC 315**. Relevant paragraph 38 of the judgment is reproduced, as under:-

38. In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to

prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and

prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a

prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or

oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

13. It is no longer *res integra* that at the time of deciding the petition, under Section 482 Cr.PC, this Court cannot assume the powers of the appellate/revisional Court, nor, this Court can act as trial Court. While holding so, the view of this Court is being guided by the decision of Hon'ble Supreme Court in **Chilakamarthi**

Venkateswarlu & Another versus State of Andhra Pradesh & Another, reported as **(2019) 10 SCALE 239**.

Relevant paragraph 15 of the judgment is reproduced, as under:-

“15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

14. Similar view has also been taken by the Hon’ble Supreme Court in **S.W. Palanikar & Others versus State of Bihar & Another**, reported as **(2002) 1 Supreme Court Cases 241**.

15. Being guided by the decision of Hon’ble Supreme Court, as referred above, now this Court would proceed further to determine as to whether the arguments of learned Counsel for the petitioner, that no case is made out against the petitioner, can be accepted, at this stage.

16. As per the record, the police has recorded the statement of one Vikram Singh, who has specifically

named Sonu @ Tashi, along with three other persons, who had allegedly beaten Munanizi. Even, injured Munanizi, also named the petitioner, as one of the assailants. His statement was recorded on 06.12.2017.

17. In such situation, when the petitioner has specifically been named by the prosecution witnesses, in their statements, recorded under Section 161 Cr.P.C., it cannot be held, at this stage, that no case is made out against him, from the report under Section 173 (2) Cr.P.C. As such, the arguments of the learned Counsel appearing for the petitioner, qua the fact that no case is made out against the petitioner, are liable not to be accepted. Consequently, the same are rejected. Moreover, the stand of the petitioner that PWs, who have been examined by the learned trial Court, have not supported the case of the prosecution, is not liable to be accepted, as, the evidenciary value of statements of PWs is to be considered by the learned trial Court and said power can not be snatched away by this Court, that too, under Section 528 BNSS, where the scope of interference is very limited.

18. The perusal of the record shows that there are, as many as, 13 witnesses, out of which, six PWs have been examined. The charge-sheet was submitted in the Court on 02.02.2018, and three accused namely Leky Dorje, Kinjong Thinley and Phuntsho Chhophel, have already been declared proclaimed offenders, vide orders dated 11.02.2022 & 01.04.2022. The charges against the petitioner were framed on 18.06.2022.

19. In this background, the learned Counsel appearing for the petitioner has relied upon the decision of Hon'ble Supreme Court, in case titled as "**Santosh De Vs Archna Guha & Anr., reported as AIR 1994 SC 1229**", wherein, the relief of quashing was granted on the ground of unexplained delay of eight years in commencing the trial. Relevant paragraph 12 of the judgment is reproduced as under:-

"12. We are not satisfied that there are any valid grounds for interference with the order of the High Court. The most glaring circumstance in the case is the delay in commencing the trial. The case was committed to sessions court on July 15, 1974 and the charges came to be framed by the sessions court only on April 13, 1983 i.e., after a lapse of about eight years. The appellant is not in a position to explain the reasons for this delay. In the order

under appeal, the High Court has stated that this delay is entirely on account of the default of the prosecution. This is not a case of what is called 'systemic delays' - as explained in A.R. Antulay, (AIR 1992 SC 1701). In our opinion, this unexplained delay of eight years in commencing the trial by itself infringes the right of the accused to speedy trial. In the absence of any material to the contrary, we accept the finding of the High Court that this delay of eight years is entirely and exclusively on account of the default of the prosecution. Once that is so there is no occasion for interference in this appeal. It is accordingly dismissed." (Self emphasis supplied).

20. Learned Counsel for the petitioner has also relied upon another decision of Hon'ble Supreme Court in **"Pankaj Kumar Vs State of Maharashtra & Ors., AIR 2008 SC 3077"**, wherein holding the speedy trial to be the fundamental right, proceedings were ordered to be quashed. Relevant paragraph 18, of the judgment, is reproduced, as under:-

"18. Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, appellant's constitutional right recognised under [Article 21](#) of the Constitution stands violated. It is common ground that the First Information Report was recorded on 12th May, 1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving afore-stated three financial irregularities; the chargesheet was submitted in Court on 22nd February, 1991. Nothing happened till April, 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court. Though, it is

true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned Counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant. Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti Corruption Bureau and the sword of damocles hanging perilously over his head for over fifteen years must have wrecked his entire career. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the court of Special Judge, Latur, deserve to be quashed on this short ground alone.”

21. Learned Counsel appearing for the petitioner, has also relied on the judgment of Karnataka High Court in **“K.E. Mahabaleshwara Vs State of Karnataka, reported as 1999 Cr.L.J. 2412”**, wherein, after considering the progress of the trial, relief was granted to the petitioner before it, who had sought the relief of quashing, on the basis of delay in the trial. Relevant paragraph 9, of the judgment, is reproduced, as under:-

“9. For more than eleven years the trial is pending without any progress for no fault of the accused-petitioner. On the basis of a domestic enquiry the petitioner was removed from service. The petitioner has been undergoing ordeal of attending the Court on the dates of trial without any progress. Although it has taken eleven years not a single witness has been examined by the Court. Such an inordinate delay will be a violation of Art. 21 of the Constitution. Every accused is entitled to a speedy trial. Unexplained and inordinate delay of the trial for no fault of the accused is clearly in violation of Art. 12 of the Constitution. Expeditious trial is a basic right to an accused which cannot be trampled upon unless it can be shown that the accused was to blame for the delay in the trial. No such material is placed before the Court to show that the petitioner-accused was responsible for the unreasonable delay in commencing the trial.”

22. Reliance has also been placed by the learned Counsel for the petitioner, upon the decision of a Division Bench of Delhi High Court in case reported as **“P.D.**

Sharma Vs Union of India & Anr., reported as 2000**STPL 9336 Delhi**”, wherein, the relief of quashing of FIR

has been granted, on the basis of delay in trial, in which, the accused has not attributed for the delay. Relevant paragraph 8, of the judgment, is reproduced, as under:-

“8. We had the opportunity to peruse the Trial Court record as well and on perusal found that the delay of the proceedings couldn't cannot be attributed to the petitioner/accused. Mr. Ahluwalia, counsel for the State on the other hand contended that the delay of proceedings could also not be attributed solely to the State. State took adjournments only on two to three occasions. We find no force in this submission of Mr. Ahluwalia. Admittedly it is not the case of the prosecution that delay was on account of any default of the accused nor the accused was responsible for the delay of the proceedings, therefore, it cannot be said that the petitioner is taking advantage of his own wrong. The fact remains that the prosecution was fully aware of the order passed by the learned Additional Sessions Judge dated 9th September, 1994 thereby holding that no case under Section 7 of the Essential Commodities Act was made out. Learned Additional Sessions Judge found prima facie case made out under Section 120-B read with Section 407 IPC against one set of accused and against other set of accused under Section 407 IPC only. Learned ACMM after receipt of the file from Additional Sessions Judge was only to frame the charge which was a mere formality, inspire of the same the Public Prosecutor did not care to point out to the learned ACMM to complete the ormality by framing the charge and fix the date of evidence. Why the prosecutor did not point out to the learned ACMM that Additional Sessions Judge has already prima facie given decision for framing of charge? Why he

could not get the charges framed in September, 1994? Public Prosecutor took it leisurely that is why it took nearly six years to formally frame the charge. The proceedings thus dragged on because of the indifferent attitude of the prosecution, therefore, it cannot be said that the prosecution is not to be blamed for this delay, may be part of the delay was on account of the system itself. In such circumstances, the delay cannot be attributed to the accused, the petitioner herein. In the absence of any Explanation it shows laxity on the part of the prosecution in proceeding with the case for which the petitioner cannot be blamed.”

23. In view of the above legal position, now, this Court would proceed further to ascertain the fact as to whether there is undue delay, in this case. As stated above, charges were framed way back on 18.06.2022. Thereafter, 20 effective opportunities have been granted to the prosecution to lead evidence. However, after framing the charges, on 20.12.2023, I.O. of the case was present, but, in view of the request made by learned Counsel for the accused, the witness was discharged, as prayer, was made to examine this witness, after the examination of eye witnesses.

24. Thereafter, on 06.03.2024, I.O. was present, but, was not examined, on account of the objection as raised earlier. From 19.02.2025 to 22.02.2025,

proceedings were held up, on account of non appearance of the petitioner.

25. Considering the factual position of the present case, in the light of the decisions, as referred to above, this Court is of the view that the petitioner is not able to make out a case for quashing the FIR. However, considering the number of opportunities given to the prosecution, this Court is of the view that a direction can be issued to the learned trial Court, to decide the trial against the petitioner within a period of five months, from today, i.e. on or before 31.05.2026. In order to achieve the said target, learned trial Court is at liberty, even to take coercive action to secure the presence of the witnesses.

26. The petition is disposed of, in the above terms.

27. Petitioner-accused is directed to put appearance before the learned trial Court on 02.01.2026.

28. Record be sent back forthwith.

(Virender Singh)
Judge

23rd December, 2025
(Pramod Kumar)