

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.12596 of 2015

Date of Decision: June 26, 2015

Mohit

...Petitioner

Versus

Smt. Sumitra Kadian

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
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Present: - Mr. Mohit, petitioner-in-person.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to the respondent to conduct a fair trial by providing ample opportunity to the petitioner in complaint case COMA/753/2013 under Sections 323, 341, 506/34 IPC, titled as 'Ankit Vs. Pavitar, which is pending before the respondent.

The petitioner is an accused in complaint case COMA/753/2013. He was summoned to face trial in the said case on 13.06.2014. He is a student of LL.B. The stated grievance of the petitioner commenced from the date of hearing on 12.05.2015 when one Dr. Anil Ahuja was examined. The petitioner was not present on that day. He has a grievance that the objections raised by the petitioner's counsel to the questions put to Dr. Anil Ahuja during his examination-in-chief by the Complainant were not accepted by the respondent. On 26.05.2015, the petitioner decided to defend the case on his own. On that day, he filed an application under Section

311 Cr.P.C. to re-examine the said witness. Copy of the said application was given to the opposite party and the case was fixed for 09.06.2015 for their reply. On 09.06.2015, reply of opposite party was received and the case was adjourned to 12.06.2015 for arguments.

It is averred that the petitioner requested that the case be adjourned for a longer date so that he could get an ample opportunity to prepare an effective defence but the oral request of the petitioner in this regard was not accepted. Consequently, he filed an application requesting that the date be fixed after 15 days so that he could get proper opportunity to defend his case. Moreover, on 12.06.2015, the petitioner and his brother were to appear in a Court in Tohana in another case. He states that on 12.06.2015, he was informed that his application regarding fixing of a date after 15 days had become infructuous and he was asked to address arguments on his application under Section 311 Cr.P.C. The petitioner submitted another application for giving him proper opportunity. Though the application was not accepted but the case was adjourned for hearing to 01.07.2015.

The petitioner has also filed another application under Section 340 Cr.P.C. read with Section 195 Cr.P.C., which vide order dated 12.06.2015 was adjourned to 07.08.2015 for evidence of the applicant-accused.

The petitioner alleges that the respondent has refused to hear him and repeatedly asked that he be represented through counsel. The petitioner states that ever since he has been

summoned as an accused, the Court has been giving short dates, resultantly, he is being deprived of his opportunity of fair trial. In this regard, he has given a table depicting the dates given in the case. The said table is extracted hereunder:

Date of hearing	Next date of hearing allotted
03.12.2013	03.01.2014
03.01.2014	13.01.2014
13.01.2014	24.02.2014
24.02.2014	28.04.2014
28.04.2014	19.05.2014
19.05.2014	13.06.2014
13.06.2014	24.07.2014
24.07.2014	29.08.2014
29.08.2014	30.09.2014
30.09.2014	18.11.2014
18.11.2014	16.01.2015
16.01.2015	20.02.2015
20.02.2015	27.03.2015
27.03.2015	12.05.2015
12.05.2015	26.05.2015
26.05.2015	09.06.2015
09.06.2015	12.06.2015
12.06.2015	01.07.2015

The petitioner states that a fair trial of a person accused in a crime is an integral part of Article 21. In this context, he has referred to a judgment of Hon'ble Supreme Court in **Mohd. Hussain @ Julfikar Ali v. The State (Govt. of NCT) Delhi** AIR 2012 SC **3860**. He has argued that the Court is under the constitutional obligation to ensure that the said right is not frustrated.

I have heard the petitioner-in-person.

The primary grievance of the petitioner as projected in this

petition appears to be that by fixing the application under Section 311 Cr.P.C. filed by the petitioner for arguments on 12.06.2015 after receipt of the reply from the complainant on 9.6.2015, adequate opportunity was not given to him to prepare his defence. His request for fixing the case after 15 days was not entertained. Be that as it may, the petitioner has himself stated that on 12.06.2015, the case was adjourned to 01.07.2015. This, in any case, gives him more than the 15 days that he had prayed for.

His application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. is pending for 07.08.2015 for evidence of the accused-applicant. Thus, both the applications are pending and have not yet been decided. The grievance of the petitioner, thus, is premature.

Besides, if the petitioner is aggrieved of any order that may be passed on his applications, he would have a right to assail the same in accordance with law. A writ petition is not the remedy in such a situation when there is alternative remedy provided under the Criminal Procedure Code.

The table extracted by the petitioner regarding the dates for which the case was fixed do not *prima facie* indicate that the dates have been fixed at such short intervals as to prejudice the rights of the parties. In any case, if the petitioner is aggrieved of any particular order, which curtails his right to a fair trial and is prejudicial to him, it would be open to him to challenge the same in accordance with law. No such order has been shown to the Court. He has only referred to

some observations made in Court that he should engage a counsel.
There is no order wherein the petitioner has been denied hearing because he was not represented by counsel.

Accordingly, there is no merit in this petition and the same is dismissed.

June 26, 2015

Atul

**(HARINDER SINGH SIDHU)
JUDGE**