

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.107 of 2019

Arising Out of PS. Case No.-4 Year-1997 Thana- MUSAHARI District- Muzaffarpur

Umesh Kumar Singh aged about 64 years Gender-Male Late Ram Dayal Singh, resident of Indira Nagar Colony, Muzaffarpur, P.S-Sadar, Dist.-Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar
2. The Director General of Police, Bihar, Patna
3. The Superintendent of Police , Muzaffarpur
4. The Station House Officer, Mushari, District-Muzaffarpur

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 108 of 2019

Arising Out of PS. Case No.-100 Year-1996 Thana- MUSAHARI District- Muzaffarpur

Umesh Kumar Singh aged about 64 years Gender- Male son of Late Ram Dayal Sing, resident of Indira Nagar Colony Muzaffarpur, P.S.-Sadar, District-Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar
2. The Director General of Police,Bihar Patna Patna
3. The Superintendent of Police, Muzaffarpur Muzaffarpur
4. The Station House Officer, Mushari, District-Muzaffarpur Muzaffarpur

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 107 of 2019)

For the Petitioner : Mr.Vinay Mistry, Advocate
Mr. Prince Kumar Mishra, Advocate

For the State : Mr. Sheo Shankar Pd, SC-8

(In Criminal Writ Jurisdiction Case No. 108 of 2019)

For the Petitioner : Mr.Vinay Mistry, Advocate
Mr. Prince Kumar Mishra, Advocate

For the State : Mr. Md. Nadim Seraj, GP-5



CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date : 01-04-2019

Since these two cases raised the common question of law between the same parties, they have been heard together and are being disposed of by a common order.

2. **Cr. WJC No. 108 of 2019** has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India seeking quashing of the entire criminal proceedings pending against him in **Mushahari P. S. Case No. 100 of 1996** corresponding to Trial No. 429 of 2017 pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-XII, Muzaffarpur for allegedly committing offence punishable under Section 435 of the Indian Penal Code, 1860 (for short 'IPC').

3. **Cr. WJC No. 107 of 2019** has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India seeking quashing of the entire criminal proceedings pending against him in **Mushahari P. S. Case No. 4 of 1997** corresponding to Trial No. 1733 of 2018 pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-VIII, Muzaffarpur for allegedly committing offences punishable under Sections 409, 419 and 420 of the IPC.



4. In order to appreciate the rival stands of the parties, it would be necessary to notice the background facts of these cases in a little detail.

5. **Mushahari P. S. Case No. 100 of 1996** was instituted on the basis of oral statement of one Satish Chaudhary, which was recorded by one A. K. Mishra, Sub-Inspector of Mushahari Police Station at 1.30 am in the night intervening between 3/4.11.1996.

6. In his oral statement made to the police, Mr. Satish Chaudhary stated that the office of Salaha Branch of Vaishali Regional Rural Bank, Vaishali runs on the first floor of his house and he with his family resides on the ground floor. In the night intervening between 3/4.11.1996, he was sleeping in his house after taking dinner. At about 12 midnight, he suddenly saw smoke emanating from upper side ventilator of the house. Thereafter, he came out making noise and many villagers came on hearing his noise. In the meantime, police patrolling party of Musahari Police Station and local mukhiya also came. Fire in the bank was brought under control by spraying water by the police and the villagers. He saw that the main gate was unlocked and the key was also attached to it. Likewise, locks of the east and the west room of the bank were also open and keys were attached to them too. In those



rooms, some papers were found lying burnt. There was also a plastic jerrycan from which smell of petrol was coming out. There was also a torch. The Branch Manager was transferred on 03.11.1996 and a new Branch Manager was likely to join on 04.11.1996.

7. On the basis of the above incidents, he claimed that unknown persons have burnt papers of the bank upon entering the premise, after opening locks of its main gate.

8. On the basis of aforestated statements, the Officer-in-charge of Mushahari Police Station, namely, Awadhesh Kumar Singh drew a first information report (for short 'FIR') of **Mushahari P. S. Case No. 100 of 1996** under Section 436 of the IPC against unknown accused persons and took up investigation himself.

9. On completion of investigation, a police report under Section 173 (2) of the Code of Criminal Procedure (for short 'CrPC') was submitted vide charge sheet no. 56 of 1999 dated 12.07.1999 under Section 435 of the IPC against the petitioner whereas one Umesh Kumar Verma was shown absconding. The petitioner had surrendered before the court on 25.06.1999. On perusal of the charge sheet, it would be manifest that prosecution intends to examine 10 witnesses in support of charge.



10. The learned Jurisdictional Magistrate took cognizance of the offence after going through the materials collected by the police during investigation and the police report submitted under Section 173(2) of the CrPC on 06.08.1999. Subsequently, charge was framed and summons were issued to the prosecution witnesses.

11. P.W. 1 Satish Chaudhary was examined during trial on 27.08.2007. After lapse of more than 8 years, P.W. 2 Arun Kumar Chaudhary was examined on 05.04.2016, P. W. 3 Ved Prakash Shrivastava was examined on 04.05.2016 and P.W. 4 Nand Kishor Singh was examined on 07.06.2016.

12. **Mushahari P. S. Case No. 4 of 1997** was instituted on the basis of written report submitted by Shri Awadh Kishor Sinha to the Officer-in-charge of Mushahari Police Station on 30.01.1997 under Sections 409, 419 and 420 of the IPC. In his written report, he has stated that the FIR was instituted in respect of mischief by fire caused on 03.11.1996 in Salaha Branch of Vaishali Regional Rural Bank. From the action taken so far in connection with the case, it appears that the persons responsible for causing mischief have not yet been arrested. The circumstantial evidence reveals that the motive for causing mischief by fire was to conceal and destroy the evidence in



respect of scam/misappropriation committed by the employee of the bank. The officers and employees posted in the bank were suspected to be involved in commission of the offence. An auditor was appointed for inquiry after the said incident in order to find out the probability of scam/misappropriation in the bank. From the audit's report based on documents, it transpired that the petitioner, a Branch Manager and the cashier Umesh Kumar Verma, while they were posted in the said branch have misappropriated the amount to the tune of twenty lakh fifty thousand four hundred eighty one rupees and fifty paise.

13. On completion of investigation, the investigating officer submitted a report under Section 173(2) of the CrPC vide charge sheet no. 7 of 1999 dated 12.07.1999 under Sections 419, 420 and 409 of the IPC. In the said charge sheet, the petitioner and Umesh Kumar Verma were sent up for trial. On perusal of the charge-sheet, it would appear that the petitioner has already surrendered in the court whereas another accused Umesh Kumar Verma was shown as absconding. It would also be pertinent to note here that in column 13 of the charge sheet, name of nine witnesses have been given whom the prosecution intends to examine in support of the charges.



14. On perusal of the said report, the learned Jurisdictional Magistrate took cognizance of the offence on 13.12.1999. Subsequently, charges were framed against the petitioner under Sections 409, 419 and 420 of the IPC on 19.03.2002 to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.

15. In course of trial, P.W. 1 Lalan Baitha was examined on 20.10.2014, P.W.2 Awadh Kishor Prasad was examined on 22.11.2014 and P.W. 3 Rajeshwar Prasad was examined on 12.12.2014.

16. Learned counsel appearing on behalf of the petitioner submitted that though a period of about 20 years has elapsed since the institution of the FIRs in question giving rise to two criminal proceedings, trials have not been completed and there is no likelihood of their completion in near future. Thus, the petitioner has been deprived of his constitutional right to speedy trial flowing from Article 21 of the Constitution of India. He has drawn my attention towards the order sheet of the court below in the aforesaid two cases in order to corroborate his contention that for no fault on the part of the petitioner, the trial has remained inconclusive in spite of all possible efforts taken by the court. He has submitted that delay in trial of the aforesaid cases is not



attributable to the petitioner. Inordinately delay is proof of prejudice caused to the petitioner. He has submitted that the prosecution has failed to show exceptional circumstance which could possibly be taken into consideration for condoning a callous and inordinate delay of more than two decades in completion of trials against the petitioner.

17. According to him, it is bounden duty of the trial courts to ascertain that cases are disposed of speedily. The State being the protector of fundamental rights of its people has bounden duty to ensure speedy trial and avoid any excessive delay in trial of criminal cases in order to prevent grave miscarriage of justice. He contended that till date, the prosecution has failed to prove any credible evidence on the basis of which the petitioner can be convicted in the remotest way. Under such circumstances, there is no adequate reason why the prosecution should be allowed to continue the trial any more. In support of his contention, he has submitted that the Supreme Court has repeatedly expressed its concern about the problem in completion of trial. According to him, entire criminal prosecution is liable to be quashed on the basis of law laid down by the Supreme Court in *Abdul Rehman Antuley & Ors. v. R. S. Nayak & Anr.* reported in (1992) 1 SCC 225, *P. Ramachandra Rao v. State of Karnataka*



reported in *(2002) 4 SCC 578* and *Vakil Prasad Singh v. State of Bihar*, reported in *(2009) 3 SCC 355*.

18. Per contra, learned counsel appearing for the State contended that in view of seriousness of the offences alleged against the petitioner, these writ petitions are liable to be dismissed. He submitted that though there is some delay on behalf of the prosecution in the completion of trial, the same alone cannot be a ground for terminating the criminal trials against the petitioner which relate to misappropriation of public money. He contended that there is no outer limit for conclusion of criminal proceedings. Hence, the petitioner does not have any vested right. He further contended that the delay in trial was also attributable to the petitioner.

19. Before advertng to the core issue whether under the given circumstances, the petitioner is entitled for getting the entire criminal proceeding against him quashed, it would be appropriate to notice the manner in which the trial in the aforestated two cases proceeded in some detail.

20. Firstly, I would like to deal with **Mushahari P. S. Case No. 4 of 1997** corresponding to Trial No. 1733 of 2018.

21. In **Mushahari P. S. Case No. 4 of 1997**, it is reiterated that in the FIR instituted on 30.01.1997, charge-sheet



was submitted on 12.07.1999 whereafter cognizance was taken on 13.12.1999 and charges were framed against the petitioner on 19.03.2002. In the charge sheet prosecution has named 9 witnesses to be examined. In course of trial, out of whom, P.W. 1 Lalan Baitha, P.W.2 Awadh Kishor Prasad and P.W. 3 Rajeshwar Prasad were examined on 20.10.2014, 22.11.2014 and 12.12.2014 respectively. After framing of charges, the trial proceeded against the petitioner in **Mushahari P. S. Case No. 4 of 1997** in the following manner:-

Sl. No.	Date of order	Order
1.	24.04.02	Petitioner (accused) physically present; Presiding Officer transferred.
2.	26.06.02/ 23.06.02	Petitioner (accused) physically present; Service Report of Summons not received; Witness absent; Put up on 28/06/2002 for evidence.
3.	28.06.02	Petitioner (accused) physically present; Service Report of Summons not received; Witness absent; Let APP produce evidence; Put up on 27/07/2002 for evidence.
4.	27.07.02	Petitioner (accused) physically present; Issue fresh summons upon witnesses; Let D.O. letter be issued to the Superintendent of Police.
5.	28.08.02	Petitioner (accused) physically present; Witness absent; Put up on 30/09/2002 for evidence.
6.	30.09.02	Petitioner (accused) represented through Advocate; Witness absent; Put up on 23/11/2002 for evidence.
7.	23.11.02	Petitioner (accused) physically present; Witness absent; Put up on 02/01/2003 for evidence.
8.	10.01.03	Petitioner (accused) represented through Advocate; Witness absent; Put up on 28/01/2003 for evidence.
9.	28.01.03	Petitioner (accused) physically present; Witnesses not present. Put up on 03.03.2003 for evidence.



10.	03.03.03	Petitioner (accused) physically present; Put up on 29.03.03 for evidence.
11.	29.03.03	Petitioner (accused) physically present; Witness is absent. A.P.P. to produce witness. Put up on 30.04.03 for evidence.
12.	30.04.03	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 27.05.03 for evidence.
13.	27.05.03/ 17.06.03	Petitioner (accused) physically present; Witness is absent. Put up on 19.07.03 for evidence.
14.	19.07.03	Petitioner (accused) physically present; Witness is absent. Put up on 18.08.03 for evidence.
15.	18.08.03	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 11.09.03 for evidence.
16.	11.09.03	Petitioner (accused) physically present; Witness absent; Office of APP to issue letter to the Chief Manager, Vaishali Kshetriya Gramin Bank, Muzaffarpur for evidence/witnesses. Put up on 19.11.03 for evidence.
17.	19.11.03	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 01.12.03 for evidence.
18.	01.12.03	Petitioner (accused) physically present; Witness is absent. Put up on 07.01.04 for evidence.
19.	07.01.04	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 28.01.04 for evidence.
20.	28.01.04	Petitioner (accused) physically present; Witness is absent. Put up on 23.02.04 for evidence.
21.	23.02.04	Petitioner (accused) physically present; Witness is absent. Put up on 25.03.04 for evidence.
22.	25.03.04	Petitioner (accused) physically present; Witness is absent. Put up on 28.04.04 for evidence.
23.	28.04.04	Petitioner (accused) physically present; Witness is absent. Put up on 24.05.04 for evidence.
24.	24.05.04	Petitioner (accused) physically present; Witness is absent. Put up on 30.06.04 for evidence.
25.	30.06.04	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 24.07.04 for evidence.
26.	24.07.04	Petitioner (accused) physically present; Witness is absent. Put up on 30.09.04 for evidence.
27.	03.09.04	Petitioner (accused) represented through



		Advocate; Witness is absent. Put up on 07.10.04 for evidence.
28.	07.10.04	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 25.11.04 for evidence.
29.	25.11.04	Petitioner (accused) physically present; Witness is absent. Put up on 21.12.04 for evidence.
30.	21.12.04	Petitioner (accused) physically present; Witness is absent. Put up on 25.01.05 for evidence.
31.	25.01.05	Petitioner (accused) physically present; Witness is absent. A.P.P. has filed an application. Put up on 25.02.05 for hearing & evidence.
32.	25.02.05	Petitioner (accused) physically present; Witness is absent. Put up on 04.03.05 for hearing & evidence.
33.	04.03.05	Petitioner (accused) physically present; A.P.P. has filed an application today. Heard both the parties. Put up on 17.03.05 for order.
34.	17.03.05	Petitioner (accused) physically present; Record has been produced for order.
35.	06.04.05	Petitioner (accused) physically present; Haziri of witness has been filed. Put up on 19.04.05 for order.
36.	19.04.05	Petitioner (accused) physically present; Put up on 13.06.05 for hearing.
37.	13.06.05	Petitioner (accused) physically present; Put up on 27.07.05 for hearing.
38.	27.07.05	Petitioner (accused) physically present; Put up on 20.08.05 for hearing.
39.	20.08.05	Petitioner (accused) physically present.
40.	03.09.05	Petitioner (accused) physically present; Put up on 19.09.05 for hearing.
41.	19.09.05	Petitioner (accused) physically present; Put up on 01.10.05.
42.	30.09.05	As per order of Learned C.J.M. Muzaffarpur Case No. 25/05 dt. 24.08.05 the case record has been forwarded to the court of Sr. R. Kumar, Muzaffarpur for disposal.
43.	01.10.05	Record received from the court of S.D.J.M. (E); Petitioner (accused) physically present; Put up on 28.12.05 for appearance.
44.	28.12.05	Petitioner (accused) physically present.



45.	30.01.06	Petitioner (accused) physically present; Put up on 10.03.06 for appearance.
46.	10.03.06	Petitioner (accused) physically present; Put up on 06.07.06 for appearance.
47.	06.07.06	Petitioner (accused) physically present; Put up on 09.10.06 for appearance.
48.	09.10.06	Petitioner (accused) physically present; Put up on 02.02.07 for appearance.
49.	02.02.07	Petitioner (accused) physically present; Put up on 29.05.07 for appearance.
50.	29.05.07	Petitioner (accused) physically present; Put up on 03.09.07 for appearance.
51.	03.09.07	Petitioner (accused) physically present; Put up on 04.10.08 for appearance.
52.	04.01.08	Petitioner (accused) physically present; Put up on 29.04.18 for appearance.
53.	29.04.08	Petitioner (accused) represented through Advocate; Put up on 26.08.08 for appearance.
54.	26.08.08	Petitioner (accused) physically present; Put up on 18.01.09 for appearance.
55.	18.01.09/ 19.01.09	Petitioner (accused) physically present; Put up on 16.03.09 for appearance.
56.	16.03.09	Petitioner (accused) physically present; Put up on 26.06.09 for appearance.
57.	26.06.09	Petitioner (accused) physically present; Put up on 11.09.09 for appearance.
58.	11.09.09	Petitioner (accused) absent; Put up on 02.12.09 for appearance.
59.	02.12.09	Petitioner (accused) physically present; Put up on 24.02.2010 for appearance.
60.	24.02.10	Petitioner (accused) absent; Put up on 24.06.10 for appearance.
61.	24.06.10	Petitioner (accused) represented through Advocate; Put up on 08.09.10 for appearance.
62.	08.09.10	Petitioner (accused) represented through Advocate; Put up on 01.02.11 for appearance.
63.	01.02.11	Advocates refrained from judicial work. Petitioner (accused) represented through Advocate; Put up on 01.05.11 for appearance.
64.	01.05.11/ 02.05.11	Petitioner (accused) represented through Advocate; Put up on 06.07.11 for appearance.
65.	06.07.11	Petitioner (accused) physically present; Put up on 22.11.11 for appearance.



66.	22.11.11	Petitioner (accused) absent; Put up on 11.02.12 for appearance.
67.	11.02.12/ 13.02.12	Petitioner (accused) represented through Advocate; Put up on 17.05.12 for appearance.
68.	17.05.12/ 18.05.12	Petitioner (accused) physically present; Put up on 30.08.12 for appearance.
69.	30.08.12	Petitioner (accused) represented through Advocate; Put up on 21.12.12 for appearance.
70.	21.12.12	Petitioner (accused) represented through Advocate; Put up on 11.04.13 for appearance.
71.	11.04.13	Petitioner (accused) physically present; Put up on 30.05.13 for appearance.
72.	30.05.13	Petitioner (accused) physically present; Put up on 18.09.13 for appearance.
73.	28.08.13	The Hon'ble Patna HC vide order dated 18/07/2013, directed to submit a report in respect of Mushahari P.S. Case No.04/1997 TR-914/2013 regarding state of the case and the reason for non-conclusion of the trial keeping in view the fact that FIR was lodged in the year 1997.
74.	18.09.13	Petitioner (accused) physically present; Witness is absent. Put up on 26.10.13 for evidence.
75.	26.10.13	Petitioner (accused) physically present; Witness is absent. Put up on 18.01.14 for evidence.
76.	18.01.14	Petitioner (accused) physically present; Witness is absent. Put up on 22.03.14 for evidence.
77.	22.03.14	Petitioner (accused) physically present; Prosecution filed application for issuance of summon through General Manager, Vaishali Kshetriya Gramin Bank Office, Muzaffarpur office to issue B/W on witness through Chief Manager, Kshetriya Gramin Bank. Put up on 19.06.14 for evidence.
78.	19.06.14	Petitioner (accused) physically present; Witness is not present. Put up on 11.08.14 for evidence.
79.	11.08.14	Petitioner (accused) physically present; Put up on 20.10.14 for evidence.
80.	20.10.14	Petitioner (accused) physically present; PW1 namely Lalan Baitha was examined & cross examined. Photocopies of exhibit 10 & 11 of audit report have been recorded in course of examination. Put up on 22.11.14 for evidence.
81.	22.11.14	Petitioner (accused) physically present; PW2



		namely Awadh Kishore Sinha was examined and cross examined. Put up the case on 12.12.14 for evidence.
82.	12.12.14	Petitioner (accused) physically present; PW3 namely Rajeshwar Prasad was examined, cross examined and discharged. Put up on 20.01.15 for evidence.
83.	20.01.15	Petitioner (accused) physically present; Witness is absent. Put up on 25.03.15 for evidence.
84.	25.03.15	Petitioner (accused) physically present; Witness is absent. Put up the case on 10.06.15 for evidence.
85.	10.06.15	Petitioner (accused) physically present; Witness is absent. Put up on 24.07.15 for evidence.
86.	24.07.15	Petitioner (accused) physically present; Witness is absent. Put up on 26.09.15 for evidence.
87.	24.09.15	(illegible)
88.	26.09.15	(illegible); record received from the court of (illegible) Put up on date fixed.
89.	27.10.15	Petitioner (accused) physically present; Witness is absent. Prosecution to produce witness. Put up on 08.12.15 for evidence.
90.	08.12.15	Petitioner (accused) represented through Advocate; Witness absent; Put up on 27.01.16 for evidence.
91.	27.01.16	Petitioner (accused) physically present; Witness absent; To 02.03.16 for evidence.
92.	02.03.16	Petitioner (accused) physically present; Witness absent; To 30.03.16 for evidence.
93.	30.03.16	Petitioner (accused) physically present; Prosecution is directed to produce evidence on the dates fixed, otherwise evidence can be closed.
94.	26.04.16	Petitioner (accused) physically present; Witness is not present. Prosecution to produce evidence. To 17.05.16 for evidence.
95.	17.05.16	Petitioner (accused) physically present; Witness is absent. Prosecution to produce evidence. To 12.07.16 for evidence.
96.	12.07.16	Petitioner (accused) physically present; Witness is absent. To 31.08.16 for evidence.
97.	31.08.16	Petitioner (accused) physically present; Witness is absent. A.P.O. to produce evidence. To 13.09.16 for evidence.



98.	13.09.16/ 14.09.16	Petitioner (accused) physically present; Witness is absent. To 26.09.16 for evidence.
99.	26.09.16	Petitioner (accused) physically present; Witness is absent. To 24.10.16 for evidence.
100.	24.10.16	Petitioner (accused) physically present; To 09.11.16 for evidence.
101.	09.11.16	Petitioner (accused) physically present; Witness is absent. Let it be seen by A.P.O. Issue B/W against rest of non official witnesses and summon against official witnesses. To 05.12.16 for evidence.
102.	05.12.16	Petitioner (accused) physically present; Office to get the record seen by A.P.O. To 10.01.17 for evidence.
103.	10.01.17	Petitioner (accused) physically present; It has been prayed by the A.P.O. on behalf of the prosecution to grant time to produce original documents. Prayer is accepted. To 27.02.17 for evidence.
104.	27.02.17	Petitioner (accused) physically present; Witness is absent. It has been prayed by prosecution that original records relating to this case has been put up in pending case against this very accused in the court of ACJM-IV, Muzaffarpur. Above case is also of same nature. Hence, send this case to ACJM-IV Muzaffarpur for trial. To 27.03.17 for further proceeding.
105.	27.03.17	Petitioner (accused) physically present; In the light of order passed on 27.02.17 an application has been filed on behalf of prosecution. Accused has prayed that all original papers relating to this case are attached to the case of same nature pending in the court of ACJM-IV-cum-Sub Judge-XIII, Muzaffarpur; To 17.04.17 for production of records.
106.	17.04.17	Petitioner (accused) represented through Advocate; Witness is absent. To 03.05.17 for further proceeding.
107.	03.05.17	Petitioner (accused) physically present; Witness not present; To 06.06.17 for further proceeding.
108.	06.06.17	Petitioner (accused) physically present; Witness absent. To 04.07.17 for evidence & further proceeding.
109.	04.07.17	Petitioner (accused) physically present; Witness is absent. To 25.07.17 for evidence & further proceeding.



110.	25.07.17	Petitioner (accused) physically present; Witness not present; To 16.08.17 for evidence & further proceeding.
111.	16.08.17	Petitioner (accused) physically present; Witness not present; To 19.09.17 for evidence & further proceeding.
112.	19.09.17	Petitioner (accused) physically present; Witness not present; To 18.10.17 for evidence & further proceeding.
113.	18.10.17	Petitioner (accused) physically present; Witness not present; To 15.11.17 for evidence & further proceeding.
114.	15.11.17	Petitioner (accused) physically present; Witness not present; To 19.12.17 for evidence & further proceeding.
115.	19.12.17	Petitioner (accused) physically present; Witness not present; To 17.01.18 for evidence & further proceeding.
116.	17.01.18	Petitioner (accused) represented through Advocate; Witness not present; To 26.02.18 for evidence & further proceeding.
117.	26.02.18	Petitioner (accused) physically present; Witness not present; To 26.03.18 for evidence & further proceeding.
118.	26.03.18	Petitioner (accused) physically present; Witness not present; To 24.04.18 for evidence & further proceeding.
119.	24.04.18	Petitioner (accused) represented through Advocate; Witness not present; To 17.05.18 for evidence & further proceeding.
120.	17.05.18	Petitioner (accused) physically present; Witness not present; To 31.07.18 for evidence & further proceeding.
121.	31.07.18	Petitioner (accused) represented through Advocate; Witness not present; To 27.09.18 for evidence & further proceeding.
122.	27.09.18	Petitioner (accused) represented through Advocate; Witness not present; To 10.12.18 for evidence & further proceeding.
123.	15.10.18	Petitioner (accused) physically present; As per G.O.No.312 dt. 2018 of the learned District & Session Judge, Muzaffarpur case record is transferred to the court of ACJM VIII Muzaffarpur.
124.	25.10.18	Put up on 10.12.18.



22. From the aforesaid tabular chart, it would be evident that since the date of framing of charge, the petitioner is regularly attending the court but the prosecution has conducted the case in the most casual manner. Though charges were framed in March, 2002, till 11.08.2014 more than 70 adjournments were granted to the prosecution to produce witnesses, no witness was examined meaning thereby that after framing of charges for more than 12 years the prosecution did not examine a single witness in support of its case.

23. First witness was examined on 20.10.2014, second witness was examined on 22.11.2014 and the third witness was examined on 12.12.2014. Thereafter, again, the prosecution has forgotten to examine any witness. After 12.12.2014, till 15.10.2018 more than 35 adjournments were granted to the prosecution to produce witnesses and repeated directions were given by the trial magistrate that in case the prosecution fails to produce witnesses the evidence would be closed, no witness has been examined by the prosecution.

24. Let me now consider the manner in which the trial proceeded in **Mushahari P. S. Case No. 100 of 1996**, which was registered on 04.11.1996 and on completion of investigation,



charge-sheet was submitted on 12.07.1999. In the said case, charge was framed under Section 435 of the IPC against the petitioner on 02.04.2007 and, thereafter, the trial proceeded in the following manner:-

Sl.No.	Date of Order	Order
1.	16.04.07	Petitioner (accused) physically present; Witness not present. Put up on 19.06.2007 for presence.
2.	19.06.07	Petitioner (accused) represented through Advocate; Witness not present; Put up on 08.08.07 for presence.
3.	08.08.07	Petitioner (accused) physically present; Witness not present; Put up on 26.08.07 for presence.
4.	26.08.07/ 27.08.07	Petitioner (accused) physically present; Haziri of witness (PW1) namely Satish Chaudhary was given by the A.P.P. put up on 01.10.07 for appearance.
5.	01.10.07	Presiding officer has been transferred. Put up on 21.11.07 for presence.
6.	21.11.07	Petitioner (accused) physically present; Put up on 04.01.08 for presence. Presiding Officer transferred.
7.	04.01.08	Petitioner (accused) physically present; Witness not present; Put up on 15.02.08 for presence.
8.	15.02.08	Petitioner (accused) physically present; Witness not present; Put up on 04.04.08 for presence.
9.	04.04.08	Petitioner (accused) physically present; Witness not present; Put up on 19.05.08 for presence.
10.	19.05.08	Petitioner (accused) physically present; Witness not present; Put up on 27.06.08 for appearance.
11.	27.06.08	Petitioner (accused) physically present; Witness not present; Put up on 14.08.08 for presence.
12.	14.08.08	Petitioner (accused) physically present; Witness not present; Put up on 19.11.08 for appearance.
13.	19.11.08	Petitioner (accused) physically present; Witness not present; Put up on 18.01.09 for evidence.
14.	22.12.08	As per order of learned Distt. & Sessions Judge, Muzaffarpur the case record has been transferred to the court of Sri T.K.Sinha for disposal.



15.	18.01.09/ 19.01.09	Petitioner (accused) physically present; Witness is not present. Put up on 16.03.09 for evidence.
16.	16.03.09	Petitioner (accused) absent; Witness is not present. Put up on 15.06.09 for evidence.
17.	15.06.09	P.O. has been transferred. Accused filed Haziri on 09.08.09 for evidence.
18.	09.08.09/ 17.08.09	Record received on transfer from the court of Ld. Sri T.K. Sinha and put up on 12.10.09.
19.	12.10.09	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 27.01.10.
20.	27.01.10	P.O. transferred; Petitioner (accused) physically present; Witness is absent. Put up on 26.04.10 for evidence.
21.	26.04.10	Petitioner (accused) physically present; Witness is absent. Put up on 24.06.10 for evidence.
22.	24.06.10	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 30.07.10 for evidence.
23.	30.07.10	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 02.11.10 for evidence.
24.	02.11.10	Petitioner (accused) physically present; Witness is absent. Put up on 18.12.10 for evidence.
25.	18.12.10	Petitioner (accused) physically present; Witness is absent. Put up on 17.02.11 for evidence.
26.	17.02.11	Advocate Association is on strike. Put up on 11.04.11 for evidence.
27.	11.04.11	Petitioner (accused) physically present; Witness is absent. Put up on 24.05.11 for evidence.
28.	24.05.11	Petitioner (accused) physically present; Witness is absent. Put up on 08.07.11 for evidence.
29.	08.07.11	Petitioner (accused) physically present; Witness is absent. Put up on 19.09.11 for evidence.
30.	19.09.11	Petitioner (accused) physically present; Witness not present; Put up on 20.10.11 for evidence.
31.	20.10.11	Petitioner (accused) represented through Advocate.
32.	10.01.12	Petitioner (accused) physically present; Witness not present; Put up on 10.02.12 for evidence.
33.	10.02.12	Petitioner (accused) physically present; Witness not present; Put up on 11.04.12 for evidence.
34.	11.04.12	Petitioner (accused) physically present; Witness not present; Put up on 11.05.12 for evidence.



35.	11.05.12	Petitioner (accused) physically present; Witness not present; Put up on 12.06.12 for evidence.
36.	12.06.12	Petitioner (accused) physically present; Witness not present; Put up on 26.07.12 for evidence.
37.	26.07.12	Petitioner (accused) absent; Witness is absent. Put up on 16.08.12 for evidence.
38.	16.08.12	Petitioner (accused) absent; Witness is absent. Put up on 18.12.12 for evidence.
39.	18.12.12	Petitioner (accused) represented through Advocate; Put up on 14.02.13 for evidence.
40.	14.02.13	Petitioner (accused) physically present; Witness is absent. Put up on 08.04.13 for evidence.
41.	08.04.13	Petitioner (accused) physically present; Witness is absent. Put up on 30.06.13 for evidence.
42.	30.06.13	Petitioner (accused) represented through Advocate; Put up on 26.07.13 for evidence.
43.	26.07.13	Petitioner (accused) represented through Advocate; Witness is absent. Put up on 02.09.13 for evidence.
44.	02.09.13	Petitioner (accused) physically present; Witness is absent. Put up on 03.10.13 for evidence.
45.	03.10.13	Petitioner (accused) physically present; Witness not present; Put up on 06.12.13 for evidence.
46.	06.12.13	Petitioner (accused) physically present; Witness not present; Put up on 28.01.14 for evidence.
47.	28.01.14	Petitioner (accused) represented through Advocate; Witness not present; Put up on 24.03.14 for evidence.
48.	24.03.14	Petitioner (accused) represented through Advocate; Witness not present; Put up on 19.05.14 for evidence.
49.	19.05.14	Petitioner (accused) physically present; Witness not present; Put up on 16.07.14 for evidence.
50.	16.07.14	Petitioner (accused) represented through Advocate; Witness not present; Put up on 08.10.14 for evidence.
51.	08.10.14	Petitioner (accused) physically present; Witness not present; Put up on 04.12.14 for evidence.
52.	04.12.14	Petitioner (accused) represented through Advocate; Witness not present; Put up on 15.01.2015 for evidence.
53.	15.01.15	Petitioner (accused) physically present; Witness not present; Put up on 10.04.2015 for evidence.



54.	10.04.15	Petitioner (accused) physically present; Witness not present; Put up on 11.05.2015 for evidence.
55.	11.05.15	Petitioner (accused) physically present; Witness not present; Put up on 09.06.15 for evidence.
56.	09.06.15	Petitioner (accused) represented through Advocate; Witness not present; Put up on 14.08.2015 for evidence.
57.	14.08.15	Petitioner (accused) physically present; Witness is absent. Put up on 18.09.15 for evidence.
58.	18.09.15	The records have been transferred from the court of Sri A.K. Dixit, Ist class J.M. Muzaffarpur and it has been received. Petitioner (accused) physically present; Witness not present; Put up on 18.12.15 for evidence.
59.	18.12.15	Petitioner (accused) physically present; Witness not present; Put up on 04.02.16 for evidence.
60.	04.02.16	Petitioner (accused) physically present; Witness not present; Put up on 10.02.16 for evidence.
61.	10.02.16	Petitioner (accused) absent; Witness not present; Put up on 25.02.16 for evidence.
62.	25.02.16	Petitioner (accused) physically present; Witness not present; Put up on 05.03.16 for evidence.
63.	05.03.16	Petitioner (accused) physically present; Witness is not present. Prosecution is directed to present witness otherwise proper order will be passed. Put up on 10.03.16 for evidence.
64.	10.03.16	Petitioner (accused) physically present; An application has been filed on behalf of prosecution to issue Dasti summon for production of witness. Put up on 05.04.16 for evidence.
65.	30.03.16	Haziri has been filed on behalf of the witness Arun Kumar Chaudhary (PW2). P.R. Bond has been filed on behalf of PW2.
66.	05.04.16	Petitioner (accused) represented through Advocate; PW2 examined, cross-examined and discharged. Put up on 04.05.16 for evidence.
67.	04.05.16	Petitioner (accused) physically present; PW3 examined and cross examined, the signature of Kamendra Mohan has been marked as exhibit-2 on the seizure list. Put up on 30.05.16 for evidence.
68.	30.05.16	Petitioner (accused) physically present; Rest cross examination of PW3 took place.
69.	07.06.16	Petitioner (accused) physically present; Rest



		cross-examination of PW4; Put up on 08.07.16 for evidence.
70.	08.07.16	Petitioner (accused) physically present; Put up on 02.09.16 for evidence.
71.	02.09.16	Petitioner (accused) physically present; Put up on 08.12.16 for evidence.
72.	08.12.16	Petitioner (accused) physically present; Witness is absent. Put up on 29.01.17 for evidence.
73.	29.01.17/ 30.01.17	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 08.03.17 for evidence.
74.	08.03.17	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 27.04.17 for evidence.
75.	27.04.17	Petitioner (accused) physically present; Witness is not present. Put up on 19.05.17 for evidence.
76.	19.05.17	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 30.06.17 for evidence.
77.	30.06.17	P.O. on leave. Petitioner (accused) represented through Advocate; Witness is not present. Put up on 31.07.17 for evidence.
78.	31.07.17	Petitioner (accused) physically present; Witness is not present. Put up on 04.09.17 for evidence.
79.	04.09.17	Petitioner (accused) physically present; Witness is not present. Put up on 28.10.17 for evidence.
80.	28.10.17	Petitioner (accused) absent; Put up on 01.12.17 for evidence.
81.	01.12.17	Petitioner (accused) physically present; Witness is not present. Put up on 04.01.18 for evidence.
82.	04.01.18	Petitioner (accused) represented through Advocate; Put up on 28.02.18 for evidence.
83.	28.02.18	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 03.04.18 for evidence.
84.	03.04.18	Petitioner (accused) represented through Advocate; Witness is not present. Put up on 18.06.18 for evidence.
85.	18.06.18	Petitioner (accused) physically present; Witness is not present. Prosecution to produce witness. Put up on 16.07.18 for evidence.
86.	16.07.18	Petitioner (accused) physically present; Witness is not present. Prosecution to produce witness. Put up on 20.08.18 for evidence.



87.	20.08.18	Petitioner (accused) physically present; Witness is not present. Prosecution to produce witness. Put up on 30.09.18 for evidence.
88.	30.09.18/ 01.10.18	Petitioner (accused) physically present; Witness is not present. Office to issue Dasti summons. Put up on 27.10.18 for evidence.
89.	27.10.18	Petitioner (accused) physically present; Witness not present; Put up on 23.11.18 for evidence.
90.	23.11.18/ 24.11.18	P.O. on leave. Petitioner (accused) represented through Advocate; Witness not present; Put up on 22.12.18 for evidence.
91.	22.12.18	P.O. on leave. Petitioner (accused) physically present; Put up on 17.02.19 for evidence.

25. From the above tabular chart, it is evident that after framing of charges, the petitioner regularly attended the court. It can also be inferred that the prosecution has conducted the case in the most casual manner. After examination of P.W. 1 on 27.08.2007, the prosecution completely forgot to prosecute the case. Having examined the P.W.1 in August, 2007, no efforts were made by the prosecution to examine other witnesses for a long period of 9 years. On 05.03.2006, the concerned Magistrate directed the prosecution to produce witnesses and a failure to comply with the same would lead to the closure of the prosecution evidence. Thereafter, P.W. 2, P.W. 3 and P.W. 4 were examined on 05.04.2016, 04.05.2016 and 07.06.2016 respectively.

26. Having considered the manner in which the trial has proceeded in the court below in the two criminal proceedings, one thing is clear that the petitioner is not responsible for causing



delay in the completion of trial. It is also not a case of systematic delay. The delay is solely on account of the callous attitude of the prosecution. It has failed to produce its witnesses despite more than 100 adjournments spanning over a period of more than 20 years from the date of institution of the FIR and 17 years from the date of framing of charge in one of the cases.

27. The mandate of law is not only that guilty of an offence should not escape punishment but it is also necessary that the accused persons in a criminal case facing trial should not be harassed indefinitely.

28. Fair and speedy trial are the cornerstones of an efficient justice system which in turn is a linchpin of a robust democratic regime. The right to speedy trial envisions greater respect for the due process of law. An evaluation of the origins of the right to speedy trial is essential in order to understand its evaluation into a hallmark of the criminal justice system. This right traces its origin back to the Assize of Clarendon dating back to 1166 and Magna Carta of 1215. Darren Allen in his article '*The Constitutional Floor Doctrine and the Right to a Speedy Trial*', 26 CAMPBELL L. REV. 101, 103 (2004) observes as follows:

"In the midst of a civil war, English barons cornered King John on the meadows of Runnymede in 1215 and forced the desperate



*monarch to relinquish some powers of his throne. Affixing his seal to this “Great Charter,” King John ceded that some rights are protected against the authority of the sovereign. By the terms of this historic parchment, even the king was subject to a rule of law. Of the many limitations on the power of the sovereign, the Magna Carta required that he respect the right of all “freemen” to a **speedy disposition of trials**. Over the course of the following centuries, this right took on increasing importance as the steady march of progress expanded that pool of “free” men.”*

29. It is important to note that with time, the right to speedy trial traversed boundaries and eventually defined the aspirations of the people of America. First, it applied only to the Federal Government [**Barron v. Baltimore, 32 U.S. 243 (1833)**]. However, the U. S. Supreme Court in 1967 widened the scope of this right holding it as one of the most basic rights preserved by the Constitution, gradually making it binding on the States [**Klopfer v. North Carolina, 386 U.S. 213 (1967)**]. The journey of this right from England to colonial America has been documented by Darren Allen. In his words:

“The speedy trial right eventually migrated to America with the first ships of English settlers. Before the Revolutionary War,



American colonists heralded the Magna Carta and its provisions as natural law, inalienable by any act of the king or Parliament. Even after disagreement over this principle compelled the American colonies to divorce themselves from the British Empire, the speedy trial right attached itself to the emerging American legal system. George Mason borrowed the speedy trial guarantee from the Magna Carta while authorising the Virginia Declaration of Rights in the early stages of the American Revolution. Almost fourteen years later, James Madison proposed the speedy trial right among a “Bill of Rights”, a list of amendments designed to quell concerns about the expansive power of the new post-Articles government. When Madison’s proposals passed Congress and survived ratification, the right to a speedy trial was memorialized as constitutional doctrine in the Sixth Amendment.”

30. A concerted effort by the Indian judiciary to uphold the constitutional ethos of justice i.e. social, economic and political as laid down in the Preamble in order to remedy the perils facing undertrials has been seen in various judicial decisions. However, the dismal state of criminal justice system in the present time runs counter to the fundamental right to life and liberty enshrined in Article 21.



31. Article 38 of the Constitution of India visualizes an affirmative state action for bringing about a new social order based on justice, social, economic and political. Moreover, the Constitution envisages a justice delivery system that is based on distributive equality and rule of law. Article 39A is based on the twin principles of equality in providing justice and free legal aid. The main thrust of these provisions is to deliver prompt and inexpensive justice to the people at large without compromising with the quality of justice. This position of law has been well charted out in the decision of *Maneka Gandhi v. Union of India*, reported in *(1978) 1 SCC 248*. The Court opined that Article 21 confers a fundamental right on every person not to be deprived of his life and liberty except according to procedure established by law, that such procedure is not some semblance of a procedure but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.



32. While tracing the history of Indian legislation on this issue, the Supreme Court of India observed that speedy trial is a fundamental right of an accused and State Governments should prevent any unreasonable delay in disposal of cases. The beacon of justice glares and speaks through the authoritative voice of Justice P. N. Bhagwati in ***Hussainara Khatoon (1) & Ors. v. Home Secretary, State of Bihar*** reported in (1980) 1 SCC 81 :

“5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. ...”

33. Speedy trial is the essence of criminal justice and it protects both the State and the accused because it is based on



the principle that governments prosecute, not persecute those whom it accuses of crime. In the fourth ***Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar***, reported in ***(1980) 1 SCC 98***, Justice Bhawati, speaking for the Bench, held that it is the State's obligation to uphold the constitutional right to provide speedy trial, he ruled :

“... The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional Judges and other measures calculated to ensure speedy trial....”

34. In ***State of Bihar v. Uma Shankar Ketriwal*** reported in ***(1981) 1 SCC 75***, a report was lodged with the police in April,



1960 that the respondents' firm misappropriated large quantity of G.C. sheets meant for distribution of quota holders. After investigation a police report was submitted in 1962 to the Magistrate who took cognizance of the case in January, 1963. Charges were framed against the respondents in September, 1967. Thereafter, the progress of the case was very slow. In 1979, the respondents applied to the High Court for quashing proceeding initiated against them. The High Court quashed the proceedings on the ground that the police report did not disclose any evidence against the respondent. The Court observed that the commencement of the prosecution in the year 1963 and its ongoing nature in the year 1979 is an abuse of the process and should not be allowed. The State appealed against the order of the High Court to the Supreme Court. The Supreme Court was in agreement with the State that the first ground given by the High Court may not be sustainable, but it affirmed the decision of the High Court on the second ground. The Supreme Court observed:

"...we cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by. Such protraction itself means considerable harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in Court, apart from



anxiety. It may well be said that the respondents themselves were responsible in a large measure for the slow pace of the case in as much as quite a few orders made by the trial Magistrate were challenged in higher Courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage..."

35. In ***State of Maharashtra v. Champalal Punjaji Shah***, reported in ***(1981) 3 SCC 610***, the Supreme Court while deciding the question whether there has been a denial of the right to a speedy trial observed that the Court is entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the court's docket or under-staffing of the prosecutors and whether the accused contributed a fair part to the time taken.

36. In ***Kadra Pahadiya v. State of Bihar*** reported in ***(1983) 2 SCC 104***, the Supreme Court reiterated the position of law laid down in ***Maneka Gandhi*** (Supra) and ***Hussainara Khatoon*** (Supra). The Court declared that :

"any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this court in discharge of its constitutional obligation has the power to give necessary



directions to the State Governments and other appropriate authorities for securing this right to the accused."

37. The bench of Justice Chinappa Reddy and Justice M M. Dutt in the decision of ***Raghubir Singh v. State of Bihar*** reported in ***(1986) 4 SCC 481*** held that right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed under Article 21 of the Constitution. They observed as follows :

"... Several questions arise for consideration. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the wilfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused?"



Some of these factors have been identified in Barker v. Wingo. A host of other questions may arise which we may not be able to readily visualise just now. The question whether the right to a speedy trial which forms part of the fundamental right to life and liberty guaranteed by Article 21 has been infringed is ultimately a question of fairness in the administration of criminal justice even as 'acting fairly' is of the essence of the principles of natural justice [In re K.(H.) an infant] and a 'fair and reasonable procedure' is what is contemplated by the expression 'procedure established by law' in Article 21 (Maneka Gandhi)."

38. In **Rakesh Saxena v. State through C.B.I** reported in **AIR 1987 SC 740** the Supreme Court quashed the proceedings on the ground that any further continuance of the prosecution after lapse of more than six years is uncalled for.

39. In **Madhu Mehta v. Union of India** reported in **(1989) 4 SCC 62**, the Supreme Court held that :

"...Article 21 is relevant in all stages. Speedy trial in criminal cases though may not be a fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and personal liberty".



40. In *Mihir Kumar Ghosh v. State of West Bengal* reported in *1990 Cr.L.J. 26*, where a criminal proceeding had been pending for 15 years from the date of the offence, the Supreme Court held that it amounted to violation of the constitutional right to speedy trial of a 'fair, just and reasonable' procedure, hence the accused was entitled to be set free.

41. In *Santosh De v. Archana Guha* reported in *AIR 1994 SC 1229*, the Supreme Court quashed the prosecution on the ground of inordinate delay as the trial for corruption of a government servant was kept pending for 14 years noting that the long delay was caused entirely and exclusively because of the default of the prosecution. The Court held that the unexplained long delay in commencing trial by itself infringed the right of the accused to speedy trial.

42. In *Kartar Singh v. State of Punjab* reported in *(1994) 3 SCC 569*, the Supreme Court has observed:

“The concept of speedy trial is read into Article 21 as an essential part of the Fundamental Right to Life and Liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all the stages, namely, the stage of investigation,



enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.”

43. In **Anil Rai v. State of Bihar** reported in (2001) 7 **SCC 318**, the Supreme Court observed that the justice should not only be done but should also appear to have been done. Similarly whereas justice delayed is justice denied, justice withheld is even worse than that.

44. In **Machander v. State of Hyderabad** reported in **AIR (1955) SC 792**, the Supreme Court observed that while it is incumbent on the Court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. In order to understand the scope and expanse of the right to speedy trial under Article 21, the Supreme Court in **Abdul Rehman Antulay v. R. S. Nayak** (Supra) held that this right encompasses all the stages i.e., the stage of investigation, inquiry, trial, appeal, revision and retrial.

45. The delay in disposal of cases has put immense strain on the working of the judicial system and has also shaken the faith of the people in the judiciary. In order to protect the individual defendant from prejudicial delay while at the same time



preserving society's interest in holding the guilty accountable for their crimes, Justice Jeevan Reddy, speaking for the Bench, laid down a set of non-exhaustive guidelines that can be taken into consideration while deciding future cases arising out of the same issue:

“(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be



subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, “delay is a known defence tactic”. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate



their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker 'it cannot be



said how long a delay is too long in a system where justice is supposed to be swift but deliberate'. The same idea has been stated by White, J. in U.S. v. Ewell, in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial



cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — ‘balancing test’ or ‘balancing process’ — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to



the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.”

46. Having established that the right to speedy trial, though not enumerated as one of the fundamental rights in the Constitution of India, is implicit in Article 21. Justice R. C. Lahoti, speaking for the Supreme Court in ***P. Ramachandra Rao v. State of Karnataka*** (Supra) held that:

“... Life and liberty, the words employed in shaping Article 21, by the founding fathers of



the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. ...”

47. The Court in **P. Ramachandra Rao** (Supra) dealt with the question of the need to prescribe an outer limit for conclusion of criminal proceedings, so as to uphold the constitutional right of speedy trial. The correctness of the decision in two **Raj Deo Sharma**'s cases i.e. **Raj Deo Sharma v. State of Bihar** reported in (1998) 7 SCC 507 and (1999) 7 SCC 604 and that of “**Common Cause**” a **Registered Society v. Union of India & Ors.** reported in (1996) 6 SCC 775 and (1996) 4 SCC 33 was



considered by a seven judge Bench in ***P. Ramachandra Rao v. State of Karnataka*** (Supra). The order of the Constitution Bench reads thus:

“... Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay. ...

For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [as modified in Common Cause (II)] and Raj Deo Sharma (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order



acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions



made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.



(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.”

48. In ***Vakil Prasad Singh v. State of Bihar*** (Supra), the Supreme Court emphasized the need of speedy investigation and trial as under :-

*“Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India* and in *Hussainara Khatoon (1) v. State of Bihar* this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be ‘reasonable, fair and just’; and therefrom flows, without doubt, the right to speedy trial. It was also observed*



that: (Hussainara Khatoon (1) case, SCC p.89, para 5]

“5. ... No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21.”

The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.”

49. The Court held that right to speedy trial is an inalienable right under Article 21 of the Constitution of India and is not only applicable to the actual proceedings but also includes within its sweep proceedings at the stage of investigation. It held as under :-

“It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have



been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time-frame for conclusion of trial.”

50. Tested on the touchstone of the broad principles enumerated above in the pronouncements made by the Supreme Court, I think that in the present case, the petitioner's constitutional right recognized under Article 21 of the Constitution has been violated. Both the cases relate to an offence alleged to have taken place in the night of 3/4.11.1996. In spite of giving sufficient opportunity to the prosecution to produce its witnesses, the prosecution is not in a position to say when it will be able to produce its remaining witnesses. The cases are



prolonging for more than two decades. They cannot be allowed to linger further and that too for an indefinite period. The direction issued by the trial court for producing witnesses in support of its charge seems to have had no effect on the prosecution. The manner in which the two trials have proceeded in the court of Magistrate gives an impression that the prosecution is totally insensitive and uncommitted in holding the trial. It has failed to show that the delay in trials was in any way attributable to the petitioner. Thus, on the facts in hand, in my considered opinion, the delay caused in completion of the trials has clearly violated the constitutional guarantee of speedy trial under Article 21 of the Constitution of India. Thus, further proceedings in **Mushahari P. S. Case No. 100 of 1996** corresponding to Trial No. 429 of 2017 pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-XII, Muzaffarpur and **Mushahari P. S. Case No. 4 of 1997** corresponding to Trial No. 1733 of 2018 pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-VIII, Muzaffarpur cannot be allowed to continue. They deserve to be quashed.

51. Consequently, these applications are allowed and the proceedings pending against the petitioner in **Mushahari P. S. Case No. 100 of 1996** corresponding to Trial No. 429 of 2017



pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-XII, Muzaffarpur and **Mushahari P. S. Case No. 4 of 1997** corresponding to Trial No. 1733 of 2018 pending before the learned Additional Chief Judicial Magistrate-cum-Sub-Judge-VIII, Muzaffarpur are hereby quashed.

(Ashwani Kumar Singh, J.)

Kanchan/-

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