

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.210

CRM-M-58837-2022 (O&M)

Date of decision:31.08.2023

Des Raj @ Desa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Amandeep Singh, Advocate,
for the complainant.

N.S. SHEKHAWAT, J.

CRM-48877-2022

Application is allowed, as prayed for. Exemption sought is granted

CRM-9242-2023

Application is allowed, as prayed for. Copies of the statements of Sunita Devi (PW-1) and Budh Ram (PW-2) are permitted to be taken on record.

CRM-35082-2023

Application is allowed, as prayed for. Copies of the statements of Hakam Singh (PW-3) are permitted to be taken on record.

Main case

1. Petitioner prays for grant of bail pending trial in FIR No.84

dated 17.06.2021 registered under Sections 302/201/506/346/120-B IPC at Police Station Mullanpur Garibdass, District SAS Nagar (Mohali).

2. As per the case of the prosecution, the FIR in the present case was initially registered under Section 346 IPC on the basis of the statement made by Sunita wife of Sucha Singh, who alleged that at about 12.00 PM on 12.06.2021, her husband Sucha Singh had gone with Budh Ram to nearby place for grazing their sheep and till evening, her husband Sucha Singh had not returned home. On this, she along with her son and other villagers went to nearby forest to search for Sucha Singh, but could not trace him. Budh Ram told them that Sucha Singh was taken away by Jagir Singh @ Gholia for some work. After this also, she along with her son and villagers again searched him but could not find him. At about 7:20 PM on 12.06.2021, Jagir Singh @ Gholia had a conversation with her son Sandeep Singh on his mobile phone. As per her, Sucha Singh had been confined by some unknown person and the FIR was registered in the present case.

3. On 20.06.2021, again a supplementary statement of Sunita Devi was recorded and she alleged that she alongwith her family members, Sarpanch and other villagers went to the farm of Jagir Singh in order to search her husband Sucha Singh near the farm. Rocky, dog of Sucha Singh, was also with them. After smelling the ground, their dog Rocky stopped near pit near the wall of the farm and started pointing towards that side. Gurmail Singh removed the sand from the pit with the spade and the t-shirt and foot of her husband were visible. Jagdish Singh, Sarpanch of the village, called the police and the dead body of Sucha Singh without his head was discovered. In her statement, the complainant alleged that Such Singh had been murdered by Jagir Singh @ Gholia, Satnam Singh and Des Raj son of

Shyam Lal (petitioner) and they had buried the dead body in the pit to hide his dead body. As per the complainant, the cause of enmity was that her husband had sold four goats and four baby goats to Jagir Singh @ Gholia for a sum of Rs.40,000/- and due to this, they had a dispute with him. Consequently the complainant prayed that the action may be taken against Jagir Singh @ Gholia, Des Raj and Satnam Singh @ Satti, who had murdered her husband Sucha Singh.

4. Learned senior counsel for the petitioner argues that the petitioner had been falsely involved on the basis of suspicion raised by the complainant and there was no direct evidence to prove the complicity of the present petitioner in the alleged crime. He further argues that during the course of investigation, the police had recorded the statements of Budh Ram on 22.06.2021 and Hakam Singh on 10.07.2021 vide Annexures P-3 and P-4, respectively and even from their statements, all the allegations were levelled against Jagir Singh only. Even from their statements, it was evident that general and vague allegations had been levelled against the petitioner and only his presence was shown at the place of alleged occurrence. Learned senior counsel further contends that the police had recorded the disclosure statement of Jagir Singh on 04.07.2021, wherein he alleged that in the evening of 12.06.2021, Jagir Singh, Satnam Singh, Des Raj (petitioner), Sucha Singh and Bahadur were present at his farm and had taken liquor. Thereafter, there was an argument between Jagir Singh and Sucha Singh over some money transaction and Satnam Singh caught hold of arms of Sucha Singh and Bahadur had beheaded him by using a *datar* and then all the three persons had thrown the deceased without head in a pit and hidden the *datar*. To the same effect, the disclosure statement was made by Satnam

Singh, which had been annexed as Annexure P-6 with the petition. Learned senior counsel further contends that even as per the disclosure statements of Jagir Singh and Satnam Singh (Annexure P-5 & P-6 respectively), the petitioner was simply present at the place of alleged occurrence and had no role to play in the murder of Sucha Singh. Even as per statements of all the witnesses, no overt act has been attributed to the present petitioner. Learned senior counsel further contends that the petitioner was arrested in the present case on 20.06.2021 and is a first offender. Learned senior counsel also submits that even the petitioner had no prior enmity with the deceased nor had any financial transaction with the deceased and the prosecution had not been able to prove any motive against the present petitioner. Apart from that, it has been alleged that only Jagir Singh had a financial dispute with the deceased and the occurrence had also taken place at the farm house of Jagir Singh. Even the prosecution had already examined three material witnesses and the petitioner was not in a position to influence the witnesses of the prosecution. Since only 03 witnesses out of 28 prosecution witnesses had been examined, so the trial Court may take considerable long time in concluding the trial and further custody of petitioner will serve no meaningful purpose.

5. On the other hand, learned counsel appearing on behalf of the State of Punjab assisted by learned counsel for the complainant have vehemently opposed the prayer made by the learned senior counsel for the petitioner by submitting that the petitioner had actively participated in the commission of the crime. Even when the crime was committed, the petitioner was present with the principal accused and had participated in the crime.

6. I have heard the learned counsel for the parties and perused the case file minutely.

7. The Hon'ble Supreme Court, while dealing with the scope of speedy trial and emphasizing that the speedy trial is one of the most important facets of the fundamental rights to life and liberty enshrined in Article 21, held in the matter of Kartar Singh Vs. State of Punjab and connect case, 1994(2) RCR 169 as follows:- .

Speedy Trial

89. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.....

90. It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. See Black's Law Dictionary, (Sixth Edition) p. 1400.

91. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

92. *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 stages, namely, the stage of investigation, inquiry, 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. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.*

93. *This Court in Hussainara Khatoon (1) v. Home Secretary, State of Bihar, 1980 (1) SCC 81 at P. 89 while dealing with Article 21 of the Constitution of India has observed thus:*

"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. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequent if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

94. *See also (1) Sunil Batra v. Delhi Administration, 1979 (1) SCR 392; (2) Hussainara Khatoon (1) v. Home Secretary, State of Bihar, 1979 (3) SCR 169; (3) Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, 1979 (3) SCR 532; (4)*

Hussainara Khatoon and others v. Home Secretary, State of Bihar, Govt. of Bihar, Patna 1979 (3) SCR 1276; (5) Kadra Pahadia v. State of Bihar, 1983 (2) SCC 104; (6) T. V. Vatheeswaran v. State of T.N., 1983(2) SCR 348; and (7) Abdul Rehman Antulay v. R. S. Nayak, 1992 (1) SCC 225.

8. Again, the Hon'ble Supreme Court laid down certain propositions, which govern the basic human right to a speedy trial in a criminal prosecution in the matter of **Abdul Rehman Antulay and others Vs. R.S. Nayak and another 1992(2) RCR 634** as follows:-

54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

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 societal 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 retrial. 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 a frivolous. Very often these stays 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 work-load 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 ideal has been stated by White, J. in U.S. v. Ewell, 15 Law Edn. 2nd 627, 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 more 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 prosecution, 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 U.S.A., 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 U.S.A. too as repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates 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”.*

9. I have heard learned counsel for parties and perused the record.

10. In the present case, the petitioner was arrested in the present

case on 20.06.2021 and is in custody for more than last two years and two

months. Even 03 material witnesses of the prosecution have already been examined and the prosecution is yet to examine 25 more witnesses. Thus, the conclusion of the trial may take quite long time. Even in the supplementary statement made by the complainant, no overt act has been attributed to the present petitioner and it has been alleged that the petitioner along with his co-accused had committed the murder of Sucha Singh. Apart from that, even in the disclosure statements of the co-accused Jagir Singh and Satnam Singh (Annexures P-5 & P-6, respectively), only the presence of the petitioner had been shown at the place of occurrence and apparently the petitioner had not caused any injury to the deceased.

11 In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

12. Needless to say that above observations are made only for the limited purpose of deciding the bail application and may not be construed as an expression of opinion on the merits of the case.

31.08.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO