



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

CRM-M-46826-2024

Date of Decision: 13.12.2024

Jagir Singh @ Ghola

...Petitioner

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Anmol Rattan Sidhu, Sr. Advocate with
 Ms. Mandeep Kaur, Advocate
 for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the second petition under Section 483 of B.N.S.S with a prayer to grant regular bail to him in case FIR No. 84, dated 17.06.2021, registered under Sections 346, 201, 302, 506, 120-B of IPC, registered at Police Station Mullanpur Garibdass, District SAS Nagar (Annexure P-1).

2. Learned counsel for the petitioner contends that the petitioner is in custody for the last more than three years and six months and there has been no substantial progress in the trial, consequently, the petitioner has approached again to this Court with a prayer to grant the concession of regular bail to him. Learned counsel for the petitioner further contends that the FIR in the present case was registered on the basis of the statement made by Sunita Devi wife of Sucha Singh (since deceased) by alleging that at about 12:00 PM on



12.06.2021, her husband Sucha Singh had gone to the nearby place with Budh Ram to graze the sheep. However, till evening, when Sucha Singh (since deceased) did not return home, the complainant along with her son Sandeep and many other villagers went to search him, but they could not trace him. Ultimately, the FIR in the present case was registered under Section 346 IPC on 17.06.2021. On 20.06.2021, the complainant made a supplementary statement to the effect that on 20.06.2021, she along with her brother Devi Dayal and other persons went to the farm of the petitioner to search her husband and she had brought a dog of the deceased. The dog stopped near a pit, near the wall of the farm and the clothes of the deceased were visible there. Thereafter, the complainant along with other persons called the police. Even the complainant alleged that her husband had been murdered by Satnam Singh @ Satta, Desh Raj and the present petitioner and her husband was buried in a pit. Even on 22.06.2021, the police further recorded the statement of Budh Ram and Hakam Singh just to involve the petitioner and his co-accused. Still further, during the course of investigation, the police allegedly recorded the disclosure statement of the petitioner, wherein, he stated that he and Satnam Singh had caught hold of arms of Sucha Singh (since deceased) and Bahudur had beheaded him by using the dattar and all the three persons had thrown the dead body in a pit.

3. Learned counsel further contends that the petitioner was neither named in the FIR nor any overt act was attributed to him. He has been falsely involved in the present case only on the basis of suspicion. Even the



supplementary statement made by the complainant after three days of the FIR and even the said statement was made to falsely involve the petitioner in the present case. Learned counsel further contends that co-accused Des Raj @ Desa, who was also named by the complainant in her supplementary statement has been granted the concession of regular bail by this Court vide order dated 31.08.2023 (Annexure P-12). The petitioner was arrested in the present case on 23.06.2021 and only nine witnesses out of total 28 witnesses have been examined so far. Thus, the conclusion of the trial may take quite a long time.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the serious and specific allegations have been levelled against the present petitioner and he does not deserve the concession of bail by this Court.

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

6. 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 consequence 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.

7. 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 un-constitutional 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 timelimit 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”.

8. In the present case, no doubt, the petitioner is charged with a serious offence, however, as per the case of the prosecution, the petitioner had



caught hold of Sucha Singh, since deceased, while Bahadur had attacked the deceased with a *dattar*. Apart from that, no overt act has been attributed to the petitioner. However, the petitioner is in custody for the last about 3 years and six months and the trial is progressing at snails pace. Even though three more cases were ordered to be registered against the petitioner earlier, but the petitioner is on bail in all the said cases. Still further, the trial in the present case is not likely to conclude in near future.

9. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.*
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.*
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.*
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number,*



he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner is involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report on every 1st Monday of English calender month to the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha.

10. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

13.12.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No