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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 3474/2024**

RAJENDER ALIAS RAJU

.....Petitioner

Through: Mr. Vishesh Wadhwa, Mr. Vikas
Kumar, Ms. Swadha Gupta and Mr.
Ayush Singh Sahni, Advocates

Versus

THE STATE GOVT OF NCT DELHI

.....Respondent

Through: Ms. Nandita Rao, ASC for State with
Insp Sunny Kumar, P.S, Rajinder
Nagar

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

07.11.2024

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CRL.M.A. 33355/2024 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 3474/2024

1. The instant petition under Articles 226 and 227 of the Constitution of India, 1950 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" hereinafter) has been filed on behalf of the petitioner seeking direction to the learned Trial Court to conclude the trial in a time bound manner in SC No. 28633/2016 arising out of the FIR bearing no. 10/2016 dated 10th January, 2016 registered at Police Station- Rajinder



Nagar, Delhi, for the offences punishable under Sections 302/396/120B/412/201 of the Indian Penal Code, 1860 (“IPC” hereinafter).

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has been charged for the commission of triple murder, however, the trial pertaining to the instant matter is pending before the learned Additional Sessions Judge-03, Central District, Tis Hazari Courts, New Delhi and the next date of hearing has been fixed on 22nd November, 2024.

3. It is submitted that the instant FIR was filed on 10th January, 2016 and the chargesheet was filed on 11th April, 2016, however, the charges were framed after a period of six years, i.e., on 18th February, 2022. It is further submitted that the Investigating Officer (“IO” hereinafter) cited a total of 53 witnesses, out of which only 32 have been examined till date.

4. It is submitted that a co-accused namely, Mr. Avnish filed a bail application bearing BAIL APPL. No. 1842/2024 and while dismissing the same *vide* order dated 8th July, 2024, the Coordinate Bench of this Court directed the learned Trial Court to conclude the matter within one year from the next date of hearing. It is submitted that despite the aforesaid direction, not even a single witness has been examined insofar and thus, there is no possibility to conclude the trial within the stipulated time as directed *vide* the aforesaid order.

5. It is submitted that the petitioner is aggrieved by the delay in the trial of the instant matter as the same has been going on for a period of 8 years and 9 months and only 32 witnesses have been examined out of a total of 53 witnesses. Therefore, it is submitted that this inordinate delay is causing injustice to the petitioner herein.



6. Learned counsel appearing on behalf of the petitioner placed reliance upon the judgments passed by the Hon'ble Supreme Court in ***Ranjan Diwedi v. CBI, (2012) 8 SCC 495, Hussainara Khaaton and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc., (1995) 5 SCC 326*** and ***Hussain and Anr vs. Union of India & Ors, 2017 (5) SCC 702*** wherein the Hon'ble Court held that the Right to Speedy Trial falls under the ambit of Fundamental Right as enshrined under Article 21 of the Constitution of India and the same is mandated under the provisions of Section 309(1) of the Code of Criminal Procedure, 1973 ("Cr.P.C." hereinafter), now Section 346 of the BNSS.

7. It is also submitted that the petitioner is a poor person and he has been languishing in jail since the month of January, 2016, and has thus, undergone incarceration for a period of 8 years and 9 months while the trial in the matter has still not been concluded.

8. Therefore, in view of the above facts and circumstances, it is prayed that the instant petition may be allowed and reliefs be granted as prayed for.

9. *Per Contra*, learned APP for the State vehemently submitted that the petitioner herein has been charged for the offence of triple murder, however, he fairly conceded to the fact that out of 53 cited witnesses only 32 have been examined till date, therefore, he has no objection to the instant prayer seeking directions to the learned Trial Court for an expeditious trial.

10. Heard learned counsel appearing on behalf of the parties and perused the contents made in the application as well as the submissions advanced on behalf of the parties.

11. For proper adjudication of the matter, it is apposite for this Court to peruse the provision under Section 346 of the BNSS, which reads as



follows:

“346. (1) In every inquiry or trial the proceedings shall be continued from day-to-day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded....”

12. The aforesaid provision as envisaged under the BNSS mandates that the proceedings in a trial are required to be continued on a day-to-day basis until the examination of all the witnesses stands complete. However, upon perusal of the orders passed by the learned Trial Court in the present matter which is appended as Annexure A-1 to the instant petition, it is noted that despite hearing the instant matter on several dates, the charges were framed six years after the filing of the present FIR, i.e., on 18th February, 2022.

13. Furthermore, it is relevant to note herein that despite the passage of time, i.e., a period of 8 years and 9 months, the learned Trial Court has still not concluded the witness examination as only 32 witnesses out of a total of 53 cited witness have been examined, and thus, 23 witnesses remain unexamined till date.

14. At this stage, this Court deems it necessary to state the law laid down by the Hon’ble Supreme Court in ***Ranjan Dwivedi v. CBI (Supra)***, with respect to the Right to Speedy Trial and held as follows:

“20. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or



memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.”

15. The aforesaid judicial *dictum* serves a three-fold purpose as it emphasises upon the right to reasonably expeditious trial. *Firstly*, it aims at protecting an accused from unreasonable pre-trial imprisonment, *secondly*, it relieves the accused from the stress and anxiety of unresolved criminal charges and *thirdly*, it helps in timely disposal of the matter without the fear of evidence being lost or tampered. Therefore, it was held in the aforesaid judgment that the Right to Speedy Trial is an extension of Right to Life and Liberty as enshrined under Article 21 of the Constitution of India.

16. In the present matter, this Court observes that the petitioner herein was arrested on 12th January, 2016 for the commission of triple murder and has been languishing in judicial custody since then. However, despite the passage of time, i.e., a period of 8 years and 9 months, the trial in the instant matter has still not been concluded and thus, there is an inordinate delay in the determination of the innocence or guilt of the present petitioner. Therefore, being aggrieved of the slow approach of the Court concerned, he has filed the instant petition seeking intervention of this Court in its writ jurisdiction to direct the learned Trial Court to conclude the same in an expeditious manner, in accordance with the law.

17. At this stage, it is pertinent to mention that a writ petition under Article 226 of the Constitution of India is maintainable in cases of violation



of Fundamental Rights and/or principles of natural justice. Moreover, the scope of interference of a Writ Court is warranted where an order or proceeding has been carried out without jurisdiction. Therefore, unless gross misuse of power has been established, intervention of a High Court under a writ jurisdiction is unwarranted.

18. It is also observed that the Coordinate Bench of this Court *vide* order dated 8th July, 2024, directed the learned Trial Court to expedite the trial and conclude the same within the next date of hearing as the present FIR pertains to the year 2016. Despite the said direction, this Court finds that there is an inordinate delay in conclusion of the trial which has hampered with the petitioner's Right to Speedy Trial and a case for interference of this Court under its writ jurisdiction has been duly established by the petitioner.

19. Keeping in view the above discussion on law, taking into consideration the amount of time that has lapsed since the petitioner is in custody and the fact that 23 witnesses remain unexamined till date, this Court is of the considered view that a continuous incarceration with no progress in the trial qualifies as a case where the petitioner's Right to Speedy Trial has been defeated as the same is being infringed.

20. Taking into consideration the submissions made by learned counsel for the parties and above facts and circumstances, this Court is inclined to allow the instant prayer seeking directions to the learned Trial Court for expediting the present matter.

21. Accordingly, the learned Trial Court is directed to conclude the trial in the instant matter, expeditiously, preferably within nine months, in accordance with the law without giving unnecessary adjournments to either party.



22. With the aforesaid directions, the instant petition stands disposed of along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 7, 2024

gs/sm

Click here to check corrigendum, if any