



246

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

CRM-M-14347-2025

Date of Decision: 24.04.2025

Kuldeep Singh alias Channi

...Petitioner

vs.

State of Haryana

...Respondent

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

Present : Mr. Gaurav Datta, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the sixth petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to grant regular bail in case FIR No.119 dated 29.05.2020 under Sections 148, 149, 302, 307, 341, 506, 120-B of IPC, registered at Police Station Pinjore, District Panchkula.

2. At the outset, learned counsel for the petitioner contends that the last bail application filed by the present petitioner was ordered to be dismissed by a Co-ordinate Bench of this Court on 03.04.2024, vide order (Annexure P-20). He further contends that the petitioner is in custody for the last more than 04 years and 10 months in the present case and the prosecution has been able to examine only 13 witnesses, out of total 30 witnesses and this long period of custody serves as an additional ground for grant of concession of bail to him.

3. The FIR in the present case was registered on the basis of the statement made by Gurjit Singh son of Pal Singh and the same has been reproduced below:-



“State of Gurjit Singh son of Sh. Pal Singh, resident of village Manakpur Thakur Dass, Police Station Pinjore, District Panchkula, aged about 30 years, Mobile No. 8199819924. State that I am residing at above noted address and is agriculturist by profession. Yesterday, on 28.05.2020, I alongwith my cousin brother (taya's son) Gurvinder Singh son of Shyam Sing, resident of Village Manakpur Thakur Dass were coming from Pinjore towards our village on our respective motorcycles. At about 7:30 P.M., as we arrived little ahead of Gugga Marhi, Village Manakpur Devi Lal, at that time, an Alto car colour white, in which five youngsters were travelling, followed by 4-5 motorcycles, on which about 10-12 youngsters were riding, came from front side. The car driver obstructed our way with the help of his car. As our motorcycles stopped, the youngsters travelling in the said car and motorcycles attacked on us with their swords and gandasas, Channi @ Kuldip gave blow of his gandasas on right elbow of Gurvinder, while Happu gave blow of his sword on left leg of Gurvinder. Gurmit @ Gummi gave blows of his sword on my left shoulder and forehead, while Kichu gave blow of danda on my right leg. Their other associates namely Kuldip, Ran Pal, Lovely @ Jagga, Sattu, Achhar, Pillu, Gunga and other associates attacked us with swords, gandasas. Then I and my cousin brother Gurvinder Singh became unconscious and collapsed on ground. All the said assailants fled away from the spot on their respective car and motorcycles, by giving threats that though today you are saved, but whenever we found an appropriate opportunity, we will surely kill you. Thereafter, Amrinder Singh son of Ranjit Singh, resident of Village Manakpur Thakur Dass brought us in injured condition to General Hospital, Sector 6, Panchkula. On arriving at Hospital, I came to know that my cousin brother Gurvinder Singh has succumbed to the injuries, sustained in said attack, made on us. Said Channi etc. have attacked on us due to some previous



grudge by hatching conspiracy and inflicted injuries on me, due to which reason, my cousin brother Gurvinder Singh has passed away. They also inflicted injuries on my person with a motive to kill me. Hence stern legal action may be taken against said accused. I can identify all accused, if appeared before me. Statement got recorded with you, heard, gone through, it is correct. Sd/- Gurjit Singh.”

4. Learned counsel for the petitioner contends that as per the case set up by the prosecution, the petitioner was allegedly armed with a *gandasa* and had caused an injury on the right elbow of Gurvinder (since deceased). He further contends that the complainant named several persons in the present case, without any justification, just to involve a large number of persons in the present case. As per petitioner, Happu, co-accused had also given a blow with sword on the left leg of Gurvinder (since deceased), however, the said co-accused has already been exonerated during the course of investigation by the police. Learned counsel further contends that on the one hand, the petitioner is continuing in custody for the last more than 04 years and 10 months, whereas, on the other hand, the prosecution is trying to delay the trial before the trial Court and only 13 witnesses have been examined so far. Even the complainant-Gurjit Singh has already been examined by the prosecution in the present case. Learned counsel further submits that even a cross version was also recorded with regard to the occurrence in question and Jitender Singh @ Billu and Gurmukh Singh, on the side of the petitioner were also seriously injured in the present case and also places reliance on the MLRs of both the injured (Annexures P-8 and P-9 respectively). He further contends that since the material witnesses have already been examined by the prosecution, the



petitioner would not be in a position to tamper with the prosecution evidence in the present case. Learned counsel has further placed reliance on the orders (Annexures P-23 to P-26) to contend that other co-accused, namely, Jitender @ billu, Gurmukh @ Gummi @ Gurmit, Kulvir Chand, Sukhvinder @ Ravi, Ram Gopal, Acchar Singh have already been granted the concession of bail by the trial Court.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner is one of the main accused and had caused a blow with *gandasa* on the right elbow of Gurvinder Singh, since deceased. He further contends that the deceased had died due to the injuries caused by the present petitioner and his co-accused and the petition is liable to be dismissed by this Court. He further submits that two more cases i.e. under Section 325 IPC and prisoners Act were registered against the petitioner.

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

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 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.*

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 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 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 in spite 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. No doubt, the petitioner is involved in a serious crime and there is a specific attribution to the present petitioner, but this Court is also aware of the fact that the petitioner is now in custody for the last more than 04 years and 10 months. The prosecution has been able to examine only 13 witnesses so far and



the trial is not likely to conclude in near future. Moreover, the other co-accused, namely, Jitender @ billu, Gurmukh @ Gummi @ Gurmit, Kulvir Chand, Sukhvinder @ Ravi, Ram Gopal, Acchar Singh have already been granted the concession of bail by the trial Court itself.

10. At this stage, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned, 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 involves 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.

24.04.2025
hemlata

(N.S.SHEKHAWAT)
JUDGE

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