IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

130 **CRM M-38744 of 2025**
Date of Decision: 22.07.2025

Col. Sukhwinder Singh Dhillon ...Petitioner

Vs.

State of Punjab ...Respondent

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

Present : Ms. Neha Shukla, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of the B.N.S.S., 2023 with a prayer to issue directions to the respondent to issue directions to the trial Court to expedite the trial of the case and to conclude the trial of the case bearing No. CHI 387/21, REMP 410/21 titled as ***"State Vs. Surajit Gayen"*** arising out of the FIR No. 19 dated 31.03.2021 under Sections 420 and 120-B of IPC & under Sections 66-C and 66-D of the IT Act, 2000 registered at Police Station Cyber Crime Phase IV, S.A.S. Nagar.

2. Learned counsel for the petitioner contends that the petitioner is a decorated Army Officer aged about 76 years, who had served the country throughout his life. However, unfortunately, at this juncture, he was cheated to the tune of Rs.58.68 lakhs by the accused

on the pretext of getting him an insurance policy. Even, the accused are running a gang to play fraud with the innocent persons by using highly advanced techniques and now adopting all delaying tactics before the trial Court to delay the trial.

3. Learned counsel further contends that in the present case, the *challan* was presented before the trial Court on 30.09.2021. Thereafter, the accused are trying to delay the trial in a well planned manner by not appearing before the trial Court. On one date, an accused remains absent whereas on the other date, another accused prays for exemption from personal appearance and are taking unreasonable adjournments on various dates on one pretext or the other. Learned counsel has referred to the zimini orders (Annexures P-1 to P-6), which have been appended with the petition to contend that the trial Court has adopted a very lenient attitude towards the accused and the exemption has been granted to the accused from personal appearance, liberally. Since, 30.09.2021, the case was listed for about 61 dates of hearing, still, only the examination of two witnesses has been completed. Learned counsel further contends that from the record, it was apparent that Khursid Ahmed, was granted the exemption from personal appearance on 30 dates whereas Surajit Gayen, another accused was granted exemption from personal appearance on 10 dates of hearing. Even, Sudipa and Hidayet Ullah, other accused also remained absent on various occasions, but only bailable warrants were issued against them to procure their presence.

Learned counsel further contends that even the petitioner/complainant, who is resident of Amritsar came to the trial Court on 10 dates of hearing to record his statement. It was wrongly recorded that the case was adjourned on the asking of the petitioner. The petitioner is a senior citizen and the trial should have been decided on priority basis, even as per the various judgments passed by this Court as well as Hon'ble Supreme Court.

4. I have heard learned counsel for the petitioner and perused the record carefully.

5. In view of the fact that only limited prayer has been made to issue directions to the trial Court to decide the trial in a time bound manner and any order passed by this Court is not likely to prejudice the accused in any manner, this Court deems it appropriate not to issue notice to the accused, at this stage, which would also save their time, energy and expenses. Even otherwise, this Court always emphasized that the trials where the complainant or the accused are senior citizens has to be disposed off in priority and in a time bound manner.

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 connected 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 2 1. 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 th e 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.

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 loo 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 accussed'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.*
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> *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.*
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> *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, the petitioner/complainant, who is aged about 76 years had lodged the FIR on 31.03.2021. After completion of investigation, the *challan* was presented before the trial court on 30.09.2021. From the record, it is apparent that after presentation of *challan,* the accused were not produced by the jail

authorities on almost 10 consecutive dates of hearing. It is shocking to note that the trial Court was unreasonably lenient with the jail authorities, who had failed to produce the case before the Court. Rather, the orders were passed casually and the case was adjourned repeatedly by the Presiding Officers of the Court. Similarly, in the last almost four years, only two witnesses have been recorded by the Court, even though, the matter was being perused by the retired Army Officer, who travels from Amritsar to Mohali to attend the Court proceedings at the age of 76 years. Still further, it appears that the Presiding Officers of the Court were unreasonably lenient and very kind to the accused in the present case. The applications for exemption from personal appearance were moved before the Court and 30 exemptions from personal appearance were granted to Khurshid Ahmed, accused, whereas 10 exemptions from personal appearance were granted to Surajit Gayen. Sudipa and Hidayet Ullah accused also chose not to appear before the Court but only bailable warrants were issued to procure their presence. This clearly shows that the Court proceedings were held in a very casual manner and it is never expected that the leniency should be shown to the accused in such serious crimes.

9. In view of the above discussion, the trial Court is directed to take up the present case on priority and to decide the trial arising out of FIR No. 19 dated 31.03.2021 under Sections 420 and 120-B of IPC and Sections 66-C and 66-D of the IT Act 2000

registered at Police Station Cyber Crime Phase IV, S.A.S., Nagar, within a period of 08 months from the date of receipt of certified copy of this order.

10. Learned District and Sessions Judge, S.A.S. Nagar, is directed to convene a meeting of all judicial officers of the District within a period of one week on receipt of certified copy of this order and the judicial officers may be advised not to adopt such a casual approach in criminal trials. The exemption from personal appearance should be granted, only when reasonable grounds exists for extending such benefits to the accused. Even, the cases of senior citizens should be decided on priority and the Presiding Officers of the Court must adopt a humane and balanced approach in dealing with the litigants.

11. Learned District and Sessions Judge, S.A.S. Nagar, is also directed to sent the copy of this order to all the presiding officers, who had dealt with the present case since 30.09.2021 and to advise them to be careful in future.

12. A copy of this order may be placed before the Hon'ble Administrative Judge of District S.A.S. Nagar for his kind information.

22.07.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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