Ranjan Dwivedi vs C.B.I Tr.Director General on 17 August, 2012

Author: H. L. Dattu

Bench: H.L. Dattu, Chandramauli Kr. Prasad

In the Supreme Court of India
Criminal WRIT Jurisdiction

Writ Petition (Crl.) No. 200 OF 2011

Ranjan Dwivedi ...Petitioner(s)

Versus

C.B.I., Through the Director General ...Respondent(s)

With

Writ Petition (Crl.) No. 205 OF 2011

Ac. Sudevananda Avadhuta ...Petitioner(s)

Versus

C.B.I., Through the Director General ...Respondent(s)

J U D G M E N T

H. L. DATTU, J.

1. Reliefs sought in both the Writ Petitions are one and the same; therefore, they are disposed of by this common judgment.

2. These Criminal Writ Petitions, filed under Article 32 of the Constitution of India, seek for the enforcement of petitioner's fundamental right of "speedy trial" and for "quashing of Sessions Trial No. SC1/06", pending on the file of learned Additional Sessions Judge (East), Kakardooma Courts, Delhi.

3. The petitioners herein are the accused and tried for the assassination of Shri. L.N. Mishra, the then Union Railway Minister. It is the case of the prosecution that Shri. L.N. Mishra was injured in a bomb- blast at the Railway Station, Samastipur on 2.01.1975 and later succumbed to his injuries on 3.01.1975. The initial investigation was conducted by the Bihar C.I.D. and subsequently it was

transferred to the Central Bureau of Investigation (for short, 'C.B.I.') who filed charge sheet on 10.11.1975. Thereafter, this case was transferred by this Court to Delhi vide its order dated 17.12.1979 due to interference by the then Bihar Government. Learned Additional Sessions Judge, Karkardooma, Delhi, after framing the charges, initiated trial against the accused persons but, unfortunately, the trial is still pending for the past 37 years. In 1987, the Petitioner(s) had preferred a Writ Petition (Crl.) No. 268/87 before this Court for quashing of the charges and proceedings in view of pending trial for over 12 years. This Court had disposed of the writ petitions vide its Order dated 10.12.1991 with a direction to the trial court to expeditiously complete the trial on day to day basis. However, the trial is still pending before the Learned Additional Sessions Judge despite the direction of this Court to expeditiously complete the trial. As of now, the statements of accused under Section 313 of the Criminal Procedure Core (for short, 'Cr. P.C.') have been recorded, the Court witnesses have been examined as well as the recording of statements of defence witness is also complete and at the time of hearing of these petitions, we are informed by the learned counsel that the matter is now posted for arguments.

4. In view of delay in completion of trial for more than 37 years from date of the trial till date, the Petitioners have preferred the present Writ Petitions praying for quashing of the charges and trial.

5. Shri. T.R. Andhyarujina, learned Senior Counsel submits that the trial in the present case has been dragged on for more than 37 years and is still continuing and this amounts to violation of fundamental right of the accused to get speedy trial. He would submit that this Court has declared that right to speedy trial is a requirement under Article 21 of the Constitution guaranteeing right to life and liberty of a citizen. He would submit that better part of the life of the accused-petitioner has already been spent in the jail during trial and still, his fate is hanging in balance. He would contend that whether the accused would get convicted or acquitted is immaterial. The question here is; whether any judicial system would tolerate such as inordinate delay? Should the Supreme Court allow it to continue any more? He would further contend that this is a unique case for two reasons. Firstly, the prolongation of criminal trial is as long as 37 years and petitioners have spent better part of their human life in the jail. Secondly, this Court in the year 1991 while disposing of the petitioners writ petition, had issued specific directions to the trial court to expeditiously complete the trial, which mandate has been conveniently ignored by the trial court, which amounts to total ignorance and indifference to the directions issued by this Court. He would further contend that the fact that the judicial system works in a particular way cannot be a justification for its failure to complete the trial. He would submit that Article 21 not only protects the accused but also takes into consideration the sufferings faced by his family members. He would submit systemic failure has sufficiently punished the petitioners and the very fact of delay shows prejudice caused to the petitioners. He would further submit that this is the ideal case where this Court can correct the short- fallings in the criminal justice delivery system by limiting the time for the completion of the trial. He would point out that this Court, on the earlier occasion, had issued direction to the trial court to expeditiously complete the trial on day to day basis, but even after two decades, the trial is still not complete in the year 2012. He would submit that this Court may quash the excruciatingly long trial on the ground that it is a unique case which has not only seriously prejudiced petitioners but also brutally violated their right to speedy trial, which is a part of their right to life. He would contend that in a case of delay of 10 to 15 years, this Court can order for expeditious completion of the trial, but not in a case

where the delay is for more than 37 years, and therefore, this Court should certainly intervene and give quietus to the trial.

6. The Petitioner in W.P. (Crl.) No. 205 of 2011 is represented by Shri. Arvind Kumar, learned Counsel. He adopts the arguments canvassed by Shri. T.R. Andhyarujina, learned Senior Counsel.

7. Shri Raval, learned ASG submits that this Court has once rejected the plea of petitioners for quashing the trial on the ground of delay in December, 1991. Therefore, the petitioners are not entitled for the same relief which was once negatived by this Court. He would then submit, that, the prosecution is not responsible in any manner for the delay caused in the trial from December 1991 till date. He would read out a detailed list of dates pertaining to the proceedings and orders of the trial Court. He would further submit that prosecution has sought for adjournments only on three or four occasions for good and valid reasons and there is no deliberate intention on the part of the prosecution to postpone the trial. The learned ASG relies on the decision of this Court in State v. Narayan Waman Nerukar (Dr), (2002) 7 SCC 6. In the said case, the accused was charged with the offences punishable under Sections 3 and 5 of the Official Secret Act and Section 120-B of the IPC. The Magistrate had taken cognizance vide its order dated 16.08.1999 and issued process. The accused approached the High Court for quashing of the criminal proceedings on the ground of delay. The High Court quashed the proceedings on the ground of unnecessary delay of 12 years. The prosecution approached this Court against the order of the High Court. This Court while setting aside the order of the High Court remanded the matter to the High Court for fresh disposal after considering all the relevant factors including that criminal courts are not obliged to terminate trial of criminal proceedings merely on account of lapse of time. This Court has observed, that, while considering the issue of delay in trial there are some relevant factors which ought to be taken into consideration by the court such as, whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay, number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features, if any. No generalization is possible and should be done.

8. He would further rely on the decision of this Court in Vakil Prasad Singh v. State of Bihar (2009) 3 SCC 355, wherein the charge sheet was filed after the completion of investigation and subsequently, the learned Magistrate took cognizance vide its orders dated 20.02.1982, but nothing substantial did happen till 1987. Thereafter, the accused approached the High Court for fresh investigation as the Investigating Officer had no jurisdiction to investigate. The High Court vide its order dated 07.12.1990 quashed the order of cognizance taken by the Magistrate and ordered fresh investigation. Nothing was done till 1988. The accused again approached the High Court for quashing of entire criminal proceedings on the ground that re-investigation has not been initiated by the prosecuting agency. Subsequently, the re-investigation was ordered only in the year 2007 and fresh charge-sheet was filed. The High Court dismissed such petition filed by the accused. However, this Court found that there is inordinate delay and has quashed the proceeding. This Court has observed that the speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes

within its sweep the preceding police investigations as well. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act by taking into consideration all the attendant circumstances, and determine in each case as to whether the right to speedy trial has been actually denied in a given case.

9. Shri Raval further relied on the decision of this Court in Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394, in support of his argument that the general rule of criminal justice is that "a crime never dies". This Court noted that this principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). This Court further observed that the Limitation Act, 1963 (for short the 'Act') does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself, afford a ground for dismissing the case, though it may be a relevant circumstance in reaching a final verdict.

10. Shri Raval also relied on the decision of this Court in P. Vijayan v. State of Kerala, (2010) 2 SCC 398, where one naxalite extremist was killed in a police encounter in 1970. However, in 1988, a newspaper article was published that the encounter in which the said naxalite was killed, was a fake one and some Senior Police Officers were responsible for it. On the basis of these reports, writ petitions were filed before the High Court of Kerala, wherein, one Constable filed a counter affidavit, making a confessional statement that he shot the said naxalite on the instructions of his Senior Officer. The High Court vide its order dated 27.01.1999, directed the CBI to register the F.I.R. for killing of the naxalite in a fake encounter. The accused preferred a petition under Section 227 of the Cr.P.C. before the trial court. The same was dismissed. Thereafter, the accused filed a Criminal Revision Petition before the High Court. The same was also dismissed. Being aggrieved, the accused approached this Court. This Court, while dismissing his appeal, has observed that at this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only course open. Further, whether the trial will end in conviction or acquittal is also immaterial. It is also observed that the question whether the materials at the hands of the prosecution are sufficient or not are matters for trial.

11. Shri Raval would conclude his submission by stating that the real purpose of the criminal proceedings is to find out the truth which can only be done after the conclusion of the trial.

12. We preface our decision by extracting certain observations made by this Court in Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225, Kartar Singh v. State of Punjab, (1994) 3 SCC 569 and P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.

13. The Constitution Bench, in Abdul Rehman Antulay v. R.S. Nayak, (supra), has formulated certain propositions, 11 in number, meant to serve as guidelines. They are :

"86. 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 social 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 re-trial. 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 frivolous. Very often these stays are 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 workload 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 idea has been stated by White, J. in U.S. v. Ewell 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 mere 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 persecution, 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 USA, 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 USA too has 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 ineffectuates 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."

14. In Kartar Singh v. State of Punjab, (supra), another Constitution Bench considered the right to speedy trial and opined that the delay is dependent on the circumstances of each case, because reasons for delay will vary. This Court held:

> "84. 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...". 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, 6th Edn. page 1400].
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> 85. 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.
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> 86. 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.
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> 87. This Court in Hussainara Khatoon (I) v. Home Secretary, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5) "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 levelled 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." See also (1) Sunil Batra v. Delhi Administration (I), (2) Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (3) Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna, (4) Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna, (5) Kadra Pahadia v. State of Bihar (II), (6) T.V.

Vatheeswaran v. State of T.N., and (7) Abdul Rehman Antulay v. R.S. Nayak.

88. Thus this Court by a line of judicial pronouncements has emphasised and re-emphasised that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in Maneka Gandhi." The Court further observed :

> "92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon the show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed

network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

15. Seven learned Judges of this Court in the case of P. Ramachandra Rao v. State of Karnataka, (supra), after an exhaustive consideration of the authorities on the subject, has observed:-

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [as modified in Common Cause (II)] and Raj Deo Sharma (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.
(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court

> under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.
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> (6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act."
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> 16. The criminal case involving assassination of L. N. Misra, the then Union Minister for Railways, on January 02, 1975 is still pending in 2012, i.e. even after a lapse of thirty seven years. As a result, two of the accused has moved these petitions for acquittal. We have given our consideration to the submissions made by learned Senior Counsel, Shri Andhyarujina, who repeatedly emphasised that this case is the unique case and this Court has not seen such a case earlier and may not see in future.

We do not intend to comment on this statement. We can only observe, that, our legal system has made life too easy for criminals and too difficult for law abiding citizens.

17. Our Constitution does not expressly declare that right to speedy trial as a fundamental right. The right to a speedy trial was first recognised in the Hussainara Khatoon's case, AIR 1979 SC 1360, wherein, the court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. Subsequently, in a series of judgments, this Court has held that 'reasonably' expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21 of the Constitution of India.

18. 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 three fold 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.

19. The reasons for the delay is one of the factors which courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which occasioned by action or inaction of the prosecution is one of the main factors which will be taken note by the courts while interjecting a criminal trial. A deliberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution. However, unintentional and unavoidable delays or administrative factors over which prosecution has no control, such as, over- crowded court dockets, absence of the presiding officers, strike by the lawyers, delay by the superior forum in notifying the designated

Judge, (in the present case only), the matter pending before the other forums, including High Courts and Supreme Courts and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trail within a reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be violative of accused's right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trial requirement focuses on only one factor i.e. the reason for the delay and the attending circumstances bear on the inquiry only to the extent to the sufficiency of the reason itself. Keeping this settled position in view, we have perused the note prepared by Shri Raval, learned ASG. Though, the note produced is not certified with copies of the order sheets maintained by the trial court, since they are not disputed by the other side, we have taken the information furnished therein as authentic. The note reveals that prosecution, apart from seeking 4-5 adjournments, right from 1991 till 2012, is not responsible for delay in any manner whatsoever. Therefore, in our opinion the delay in trial of the petitioners from 1991 to 2012 is solely attributable to petitioners and other accused persons.

20. Second limb of the argument of the learned Senior Counsel Shri Andhyarujina is that the of failure of completion of trial has not only caused great prejudice to the petitioners but also their family members. Presumptive prejudice is not an alone dispositive of speedy trial claim and must be balanced against other factors. The accused has the burden to make some showing of prejudice, although a showing of actual prejudice is not required. When the accused makes a prima-facie showing of prejudice, the burden shifts on the prosecution to show that the accused suffered no serious prejudice. The question of how great lapse it is, consistent with the guarantee of a speedy trial, will depend on the facts and circumstances of each case. There is no basis for holding that the right to speedy trial can be quantified into specified number of days, months or years. The mere passage of time is not sufficient to establish denial of a right to a speedy trial, but a lengthy delay, which is presumptively prejudicial, triggers the examination of other factors to determine whether the rights have been violated.

21. The length of the delay is not sufficient in itself to warrant a finding that the accused was deprived of the right to a speedy trial. Rather, it is only one of the factors to be considered, and must be weighed against other factors. Moreover, among factors to be considered in determining whether the right to speedy trial of the accused is violated, the length of delay is least conclusive. While there is authority that even very lengthy delays do not give rise to a per se conclusion of violation of constitutional rights, there is also authority that long enough delay could constitute per se violation of right to speedy trial. In our considered view, the delay tolerated varies with the complexity of the case, the manner of proof as well as gravity of the alleged crime. This, again, depends on case to case basis. There cannot be universal rule in this regard. It is a balancing process while determining as to whether the accused's right to speedy trial has been violated or not. The length of delay in and itself, is not a weighty factor.

22. In the present case, the delay is occasional by exceptional circumstances. It may not be due to failure of the prosecution or by the systemic failure but we can only say that there is a good cause for the failure to complete the trial and in our view, such delay is not violative of the right of the accused for speedy trial.

23. Prescribing a time limit for the trial court to terminate the proceedings or, at the end thereof, to acquit or discharge the accused in all cases will amount to legislation, which cannot be done by judicial directives within the arena of judicial law making power available to constitutional courts; however, liberally the courts may interpret Articles 21, 32, 141 and 142. (Ramchandra Rao P. v. State of Karnataka, (2002) 4 SCC

578). The Seven Judges Bench overruled four earlier decision of this Court on this point: Raj Deo (II) v. State of Bihar, (1999) 7 SCC 604, Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507; Common Cause, A Registered Society v. Union of India, (1996) 4 SCC 33. The time limit in these four cases was contrary to the observations of the Five Judges Bench in A.R. Antulay (Supra). The Seven Judges Bench in Ramchandra Rao P. v. State of Karnataka, (Supra) has been followed in State through CBI v. Dr. Narayan Waman Nerukar, (2002) 7 SCC 6 and State of Rajasthan v. Ikbal Hussen, (2004) 12 SCC 499. It was further observed that it is neither advisable, feasible nor judicially permissible to prescribe an outer limit for the conclusion of all criminal proceedings. It is for the criminal court to exercise powers under Sections 258, 309 and 311 of the Cr.P.C. to effectuate the right to a speedy trial. In an appropriate case, directions from the High Court under Section 482 Cr.P.C. and Article 226/227 can be invoked to seek appropriate relief.

24. In view of the settled position of law and particularly in the facts of the present case, we are not in agreement with the submissions made by learned Senior Counsel, Shri. T.R. Andhyarujina. Before we conclude, we intend to say, particularly, looking into long adjournments sought by the accused persons, who are seven in number, that accused cannot take advantage or the benefit of the right of speedy trial by causing the delay and then use that delay in order to assert their rights.

25. The learned Senior Counsel would tell us, please don't look who caused the delay in completing the trial but only look at whether there is delay in completion of the trial and if it is there, please put a big "full stop" for the trial. In our view, this submission of the learned Senior Counsel cannot be accepted by us, in view of the observations by this Court in P. Ramachandra's case (supra). Before parting with the case, we should certainly give credit to our judicial officers, who have painstakingly suffered with all the dilatory tactics adopted by the accused in dragging on with the proceedings for nearly thirty seven years. They are not to be blamed at all. In fact, they do deserve appreciation while conducting such trials where one of the accused is not only Bachelor of Laws but also Bachelor of Literature. We certainly say that our system has not failed, but, accused was successful in dragging on the proceedings to a stage where, if it is drawn further, it may snap the Justice Delivery System. We are also conscious of the fact that more than thirty Judges had tried this case at one stage or the other, but, all of them have taken care to see that the trial is completed at the earliest. They are not to be blamed and certainly the system has not to be blamed, but, positively, somebody has succeeded in his or in their attempt. The system has done its best, but, has not achieved the expected result and certainly, will not fit into the category of cases where (late) N.A. Palkhiwala, one of the most outstanding Senior Advocates in the Country had said that "..... the law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails". Therefore, we say, we will not buy this argument of the learned Senior Counsel that there is systemic failure. Therefore, in our view at this stage the one and the only direction that requires to be issued is to direct the learned trial judge to take up the case on

day to day basis and conclude the proceedings as early as possible, without granting unnecessary and unwarranted adjournments.

26. Writ Petitions are, accordingly, dismissed with the aforesaid directions.

.....J. (H. L. DATTU) .....J. (CHANDRAMAULI KR. PRASAD)
NEW DELHI;

AUGUST 17, 2012.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL WRIT JURISDICTION

WRIT PETITION (CRIMINAL) NO. 200 OF 2011

Ranjan Dwivedi … Petitioner(s)

Versus

C.B.I. through Director General … Respondent(s)

WITH

WRIT PETITION (CRIMINAL) NO. 205 OF 2011

AC. Sudevananda Avadhuta … Petitioner(s)

Versus

C.B.I. through Director General … Respondent(s)

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

I agree.
However, I would like to add few words of my own.

The Union Minister for Railways lost his life in a bomb explosion which took place at Samastipur Railway Station in the State of Bihar on 2nd of January, 1975.

Petitioners are facing trial in the said case. Their statements under Section 313 of the Code of Criminal Procedure have been recorded and the trial is at the stage of argument.

At this stage, petitioners have filed these writ petitions under Article 32 of the Constitution of India and their prayer is to quash the prosecution primarily on the ground of violation of their fundamental right of speedy trial guaranteed under Article 21 of the Constitution of India.

Mr. T.R. Andhyarujina, Senior Advocate appears in support of the writ petitions. He submits that delay of 37 years in conclusion of the trial, for whatever reason, is atrocious and a civilized society cannot permit continuance of the trial for such a long period. He appeals to us to rise to the occasion and make history by holding that the system which allows trial for such a long period is barbaric, oppressive and atrocious and, therefore, in the teeth of right of speedy trial guaranteed under Article 21 of the Constitution. Systemic delay cannot be a defence to deny the right of speedy trial, emphasizes Mr. Andhyarujina.

I have given my most anxious consideration to the submission advanced and, at one point of time, in deference to his passionate appeal I was inclined to consider this issue in detail and give a fresh look but, having been confronted with the Five-Judge Constitution Bench decision in the case of Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 and Seven-Judge Constitution Bench judgment of this Court in the case of P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578, this course does not seem to be open to me. Judicial discipline expects us to follow the ratio and prohibits laying down any principle in derogation of the ratio laid down by the earlier decisions of the Constitution Benches of this Court.

In the case of Abdul Rehman Antulay (supra) this Court in paragraph 86 (5) has observed as follows:

> "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 workload 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." The aforesaid decision came up for consideration before a Seven-Judge Constitution Bench of this Court in the case of P. Ramachandra Rao (supra) and while approving the ratio, the Court in Paragraph 29 (1) & (2) observed as follows:
>
> "(1) The dictum in Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 is correct and still holds the field.

> (2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 adequately take care of right to speedy trial. We uphold and reaffirm the said propositions." Hence, in my opinion, the trial cannot be terminated merely on the ground of delay without considering the reasons thereof.

My learned and noble brother has gone into the reasons for delay and I agree with him that the facts of the present case do not justify quashing of the prosecution.

.....J. (CHANDRAMAULI KR PRASAD) New Delhi, August 17, 2012.