Mohammad Bilal vs State Of Himachal Pradesh on 5 February, 2025

Neutral Citation No. (2025:HHC:3025) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MP (M) No. 20 of 2025 Reserved on: 03.02.2024 Date of Decision: 5th February 2024.

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Versus

State of Himachal Pradesh ...Resp

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Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge. Whether approved for reporting?1 No For the Petitioner : Mr. Kulwant Singh Gill, Advocate.

For the Respondent/State. : Mr. Sumit Sharma, Deputy Advocate General.

Rakesh Kainthla, Vacation Judge The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested vide F.I.R. No. 90 of 2021, dated 16.09.2021, registered for the commission of offences punishable under Sections 137(2), 87 and 64 of Bhartiya Nyaya Sanhita (BNS) (sic) and Section 6 of Protection of Children from Sexual Offences Act (in short POCSO Act) at Police Station Kala Amb District Sirmaur, H.P. The Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. (2025:HHC:3025) petitioner and the victim were known to each other and they belong to the same religion. The petitioner had married the victim and she asserted this fact in her statement recorded under Section 164 Cr.P.C. The victim remained with the petitioner for almost 18 months. The FIR was lodged at the instance of the victim's parents. The petitioner is a 23-year-old boy who has been behind bars for about three years. The victim has been examined and there is no reason to detain the petitioner in custody. The prosecution has cited 25 witnesses but has not completed the evidence so far even though three years have elapsed since then. The petitioner would abide by all the terms and conditions, which the Court may impose; hence, the petition.

2. The petition is opposed by filing a status report. It was asserted that the victim's father made a complaint that the victim was found missing on the intervening night of 15.09.2021/16.09.2021. The age of the victim was 13 years. The police conducted the investigation. The victim and the petitioner were recovered at Sikhri Palwal (Haryana). The statement of the victim was recorded under Section 164 of Cr.P.C. The victim was born on 11.01.2008 and was aged 13 years 8 months and 5 days at the time of the incident. The police searched for the marriage Neutral Citation No. (2025:HHC:3025) record but could not find any such record. Since the victim was a minor; therefore, an offence punishable under Section 6 of the POCSO Act was added. As per the report of the analysis, the DNA of the victim was found on the Gamcha and used condoms. The DNA of the petitioner matched with the DNA picked from the victim's underwear. As per the Medical Officer, there was nothing to

suggest that sexual intercourse had not taken place. The challan has been filed, which is pending before learned Special Judge, Fast Track Court (Rape and POCSO), Sirmaur, at Nahan. 13 witnesses have been examined and the matter is now listed for the prosecution evidence on 17.03.2025 and 18.03.2025. FIR No. 77 of 2016 for the commission of offences punishable under Sections 363 and 366 of IPC and Section 4 of the POCSO Act was registered against the petitioner in Police Station Sadar, Yamunanagar. The petitioner was acquitted on 19.12.2016 in the proceedings arising out of the said FIR. The petitioner had absconded and he can again abscond in case of his release on bail; therefore, it was prayed that the present petition be dismissed.

3. I have heard Mr. Kulwant Singh Gill, learned counsel for the petitioner and Mr. Sumit Sharma, learned Deputy Advocate General for the respondent/State.

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4. Mr. Kulwant Singh Gill, learned counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. He had married the victim and she had stated this fact before the learned Judicial Magistrate, 1 st Class in her statement recorded under Section 164 of Cr.P.C. The petitioner was acquitted in the proceedings arising out of the FIR No.77 of 2016 and no case is pending against him. The petitioner has been in judicial custody for more than three years and the prosecution has not completed the evidence. His right to speedy trial has been violated and he is entitled to bail. He relied upon the judgment of the Hon'ble Supreme Court in Mohammad Enamul Haque versus Directorate of Enforcement, 2024 SCC Online SC 4069 in support of his submission.

5. Mr Sumit Sharma, learned Deputy Advocate General for the respondent/State submitted that the petitioner was involved in the commission of a heinous offence. There was no delay on the part of the prosecution and the petitioner had sought adjournment on three occasions, therefore, he prayed that the present petition be dismissed.

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6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in Manik Madhukar Sarve v. Vitthal Damuji Meher, 2024 SCC OnLine SC 2271, wherein it was observed as under: -

> "19. Courts, while granting bail, are required to consider relevant factors such as the nature of the accusation, the role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk, et al. Speaking through Hima Kohli, J., the present coram in Ajwar v. Waseem, 2024 SCC OnLine SC 974, apropos relevant parameters for granting bail, observed:

> "26. While considering whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer: Chaman Lal v. State of U.P. (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra) (2004) 7 SCC 528; Masroor v. State of Uttar Pradesh (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) Neutral Citation No. (2025:HHC:3025) (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia (supra) (2020) 2 SCC 118.

27. It is equally well settled that bail, once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the Superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh (supra) (2022), 15 SCR 211 decided by a three- judge bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must be weighed with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

> "24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail, but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court." (emphasis supplied)
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> 20. In State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

Neutral Citation No. (2025:HHC:3025) "7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail." (emphasis supplied)

8. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

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9. It is undisputed that the petitioner had earlier filed a bail petition bearing Cr.MP(M) No.2482 of 2023, which was dismissed by this Court on 06.12.2023. It was held in the State of Maharashtra Vs. Captain Buddhikota Subha Rao (1989) Suppl. 2 SCC 605 that once a bail application has been dismissed, subsequent bail application can only be considered if there is a change of circumstances. It was observed:

"Once that application was rejected, there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change

in the fact situation. And when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. 'Between the two orders, there was a gap of only two days, and it is nobody's case that during these two days, drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed, reversing all earlier orders, including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact situation. In such cases, it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him.

10. Similar is the judgment delivered in State of M.P. v.

Kajad, (2001) 7 SCC 673, wherein it was observed: -

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8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second application would be deemed to be seeking a review of the earlier judgment, which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169: 2001 SCC (Cri) 113] and various other judgments.

11. Similarly, it was held in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528 that where an earlier bail application has been rejected, the Court has to consider the rejection of the earlier bail application and then consider why the subsequent bail application should be allowed. It was held:

"11. In regard to cases where earlier bail applications have been rejected, there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration, if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent bail application should be granted."

12. A similar view was taken in State of T.N. v. S.A. Raja, (2005) 8 SCC 380, wherein it was observed:

> 9. When a learned Single Judge of the same court had denied bail to the respondent for certain reasons, and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with Neutral Citation No. (2025:HHC:3025) within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of bail applications without there being any change of circumstances would lead to bad precedents."
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> 13. This position was reiterated in Prasad Shrikant Purohit v.

State of Maharashtra (2018) 11 SCC 458, wherein it was observed:

> "30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds, which persuade it to take a view different from the one taken in the earlier applications."

14. It was held in Ajay Rajaram Hinge v. State of Maharashtra, 2023 SCC OnLine Bom 1551 that successive bail application can be filed if there is a material change in the circumstance, which means the change in the facts or the law. It was observed:

> "7. It needs to be noted that the right to file successive bail applications accrues to the applicant only on the existence of a material change in circumstances. The sine qua non for filing subsequent bail applications is a material change in circumstance. A material change in circumstances settled by law is a change in the fact situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, change in circumstance has no bearing on the salutatory principle of judicial propriety that successive bail application needs to be decided by the same Judge on merits, if available at the place of sitting. There needs to be clarity between the power of a judge to consider the application and a person's right based on a Neutral Citation No. (2025:HHC:3025) material change in circumstances. A material change in circumstance creates in a person accused of an offence the right to file a fresh bail application. But, the power to decide such subsequent application operates in a completely different sphere unconnected with the facts of a case. Such power is based on the well-settled and judicially recognized principle that if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders, and the litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time and that judicial discipline requires that such matter must be placed before the same Judge, if he is available, for orders. The

> satisfaction of material change in circumstances needs to be adjudicated by the same Judge who had earlier decided the application. Therefore, the same Judge needs to adjudicate whether there is a change in circumstance as claimed by the applicant, which entitles him to file a subsequent bail application."

15. Therefore, the present bail petition can only be considered on the basis of the change in the circumstances, and it is not permissible to review the order passed by the Court.

16. The Court had held while deciding the earlier bail petition that the marriage between the victim and the petitioner or the relationship being consensual will not help him in any manner because a minor is incapable of giving consent. This circumstance has not changed.

17. It was submitted that there is a delay in the progress of the trial and the petitioner is entitled to bail on this ground. A Neutral Citation No. (2025:HHC:3025) perusal of the record shows that the petitioner had sought adjournment on 24.03.2023 to engage a counsel. Learned counsel for the petitioner sought adjournments on 02.05.2023 and 17.05.2023 for checking the copies of the challan. This shows that the trial could not commence till 30.05.2023 due to the adjournments being sought by the petitioner or on his behalf.

18. The record further shows that no witnesses were present on 28.07.2023, 17.10.2023, 06.04.2024, and 20.04.2024. The matter could not be taken up on 27.04.2024, 15.07.2024, 16.07.2024, and 10.12.2024, due to the absence of the learned Presiding Officer. Statement of one witness each was recorded on 08.04.2024, and 26.04.2024. Statements of two witnesses each were recorded on 01.05.2024, 09.07.2024, 11.07.2024 and 12.07.2024. Statements of three witnesses were recorded on 10.07.2024. Now, the matter is listed for recording the statements of witnesses on 17.03.2025 and 18.03.2025, respectively.

19. The record shows that the prosecution had not produced the witnesses who were ordered to be produced by the Court. The learned Presiding Officer also remained absent on four occasions, which led to the delay.

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20. Hon'ble Supreme Court directed in Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291: (2019) 4 SCC (Cri) 184: 2018 SCC OnLine SC 478 that the trial of cases registered under POCSO Act be conducted expeditiously. It was observed:

> "25.3. The instructions should be issued to the Special Courts to fast-track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time-frame under the Act."

21. In the present case, the direction of the Hon'ble Supreme Court has not been complied with.

22. It was laid down in Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352 that the right of speedy trial is a constitutional right of an accused. The right of bail is curtailed on the premise that the trial would be concluded expeditiously. It was observed: -

> "13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan, [2008] 17 SCR 369: (2009) 2 SCC 281 ('the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....'). They are, at the same time, upheld on the Neutral Citation No. (2025:HHC:3025) condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab, [1994] 2 SCR 375: (1994) 3 SCC 569 made observations to this effect. In Shaheen Welfare Association v. Union of India, [1996] 2 SCR 1123: (1996) 2 SCC 616 again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:
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> a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

23. The Court highlighted the effects of pre-trial detention and the importance of speedy trial as under:

> "22. Before parting, it would be important to reflect that laws which impose stringent conditions for the grant of bail, may be necessary in the public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as of 31 st December 2021, over 5,54,034 prisoners were lodged in jails against a total capacity of 4,25,069 lakhs in the country[National Crime Records Bureau, Prison Statistics in India https://ncrb. gov.

> Neutral Citation No. (2025:HHC:3025) in/sites/default/files/P SI-202 1/Executive ncrb Summary- 2021.pdf]. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.
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> 23. The danger of unjust imprisonment, is that inmates are at risk of 'prisonisation' a term described by the Kerala High Court in A Convict Prisoner v. State, 1993 Cri LJ 3242 as a radical transformation ' whereby the prisoner:
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> 'loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes. '

24. There is a further danger of the prisoner turning to crime, 'as crime not only turns admirable but the more professional the crime, more honour is paid to the criminal'[Working Papers - Group on Prisons & Borstals - 1966 U.K.] (also see Donald Clemmer's 'The Prison Community' published in 1940[Donald Clemmer, The Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, 'Donald Clemmer's Concept of Prisonisation', available at:

> https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sk lad.pdf (accessed on 23rd March 2023).]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts, therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."
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> 24. It was held in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366 that a person cannot be kept Neutral Citation No. (2025:HHC:3025) behind the bars when there is no prospect of trial being concluded expeditiously. It was observed at page 621:
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> "8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary."

25. Similarly, it was laid down by the Hon'ble Supreme Court in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321: (2022) 3 SCC (Cri) 560: 2022 SCC OnLine SC 453 that no accused can be subjected to unending detention pending trial. It was observed at page 335:

> "40. Having held so, we cannot be oblivious to what has been urged on behalf of the respondent-accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has Neutral Citation No. (2025:HHC:3025) expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (see Union of India v. K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713, paras 15 and 17])."

26. It was laid down by the Hon'ble Supreme Court recently in Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813:

> 2024 SCC OnLine SC 1693 that the right to speedy trial of the offenders facing criminal charges is an important facet of Article 21 of the Constitution of India and inordinate delay in the conclusion of the trial entitles the accused to grant of bail, it was observed at page 817: -
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> "10. Long back, in Hussainara Khatoon (1) v. State of Bihar [Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23], this Court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that : (SCC p. 89, para 5) "5. ... Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. 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
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> 21. The question which would, however, arise is as to what Neutral Citation No. (2025:HHC:3025) would be the consequence if a person accused of an offence is denied a 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."

11. The aforesaid observations have resonated, time and again, in several judgments, such as Kadra Pahadiya v. State of Bihar [Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671:

> 1981 SCC (Cri) 791] and Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225:
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> 1992 SCC (Cri) 93]. In the latter, the court re-emphasised the right to a speedy trial and further held that an accused, facing prolonged trial, has no option: (Abdul Rehman Antulay case [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93], SCC p. 269, para 84) "84. ... The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands a speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to a speedy trial on the ground that he did not ask for or insist upon a speedy trial."
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> 27. It was further held that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide the right of speedy trial to the accused, then the bail should not be opposed on the ground that crime is serious. It was observed at page 820:
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> Neutral Citation No. (2025:HHC:3025)
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> 17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious.

Article 21 of the Constitution applies irrespective of the nature of the crime.

18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

19. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

28. In the present case, the fact that the prosecution had failed to produce the witnesses and the Court was also unable to examine the witnesses on four occasions shows that the trial is not likely to be concluded within the period stipulated by the legislature. The petitioner was arrested on 05.12.2022 as per the status report and two years have elapsed since then. Therefore, there is a force in the submission made by learned counsel for the petitioner that there is a delay in the conclusion of the trial and the petitioner is entitled to bail because of a violation of his right to speedy trial.

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29. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of 50,000/- with one surety in the like amount, to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following conditions:

(i) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever.

(ii) The petitioner shall attend the trial and will not seek unnecessary adjournments.

(iii) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the concerned Police Station and the Court.

(iv) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

30. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move the Court for cancellation of the bail.

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31. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the case's merits.

32. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, Modern Central Jail, Nahan, District Sirmaur, H.P., and the learned Trial Court by FASTER.

33. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioner, and in case said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, same may be ascertained from the official website of this Court.

(Rakesh Kainthla)
Vacation Judge

5th February,2024

(Saurav Pathania)