



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No.5888/2025



1. Nurul Islam Son Of Shri Abdul Jabbarar, Resident Of Ithari Printing Paasha, Ps Kulara, Molvi Bazar, Bangladesh, Haal Prison District Jail Gurugram, Hariyana (At Present Bandi, Central Jail, Jaipur)
2. M.d. Ahsaanul Kobir Son Of M.d. Fajlur Rahman, Resident Of Baargoriya, Ps Sadar Sherpur, Rampur Bazar, Bangladesh Haal Prison District Jail Gurugram, Hariyana (At Present Bandi, Central Jail, Jaipur)

----Petitioners

Versus

Rajasthan Govt., Through Public Prosecutor.

----Respondent

For Petitioner(s)	:	Mr. K.C. Sharma
For Respondent(s)	:	Mr. Rajesh Choudhary, GA-cum-AAG

JUSTICE ANOOP KUMAR DHAND

Order

24/11/2025

Reportable

1. By way of filing this criminal misc. petition, a prayer has been made for releasing the petitioner on bail in connection with the FIR No.319/2024 registered with Police Station Jawahar Circle, District Jaipur City (East) under Sections 419, 420, 471 & 120-B IPC.
2. Learned counsel for the petitioners submits that an FIR was registered against certain accused persons with regard to illegal kidney transplantation and human trafficking wherein petitioners along-with co-accused persons were arrested on 23.04.2024. Learned counsel submits that the petitioners became approver



and on the basis of their police statement, the other co-accused persons were arrested. Learned counsel submits that now all the co-accused persons, against whom charge-sheet has been submitted, have been granted benefit of regular bail under Section 439 Cr.P.C., but the petitioners have not been released on bail as they have become approver. Learned counsel submits that inspite of submission of charge-sheet against the petitioners and co-accused persons, till date the charges have not been framed and statement of the petitioners as well as other witnesses have not been recorded because of the submission of several applications by the principal accused with intention to delay the conclusion of trial and in the meantime, more than one and half year has passed and still the petitioners are in custody. Learned counsel submits that the petitioners are foreign nationals and resident of Bangladesh, but their right of speedy trial and personal liberty, contained under Article 21 of the Constitution of India, has been grossly violated, hence, interference of this Court is warranted and the petitioners are liable to be released on bail, till conclusion of the trial.

3. *Per contra*, learned GA-cum-AAG opposes the prayer and submits that the FIR was registered with the Police Station Jawahar Circle, Jaipur City (East), wherein a fact came into notice of the Police that a racket is involved in illegal kidney transplantation and the patients and the donors were not in blood relationship or near relatives, but making forged documents, the foreign nationals came from Bangladesh to Jaipur and get the benefit of kidney transplantation. Learned counsel submits that a thorough investigation was conducted and thereafter the



petitioners along-with other co-accused persons were arrested & during the course of investigation, the petitioners became approver. Learned counsel submits that as per the provisions contained under Section 306(4) Cr.P.C., the approver is required to be detained in jail and should not be released on bail, unless and until their statements are recorded or the trial is completed. Learned counsel submits that reasons for incorporating this provision is if in case, after release of such person, he becomes hostile then it would be difficult to apprehend him again because he is liable to be prosecuted under Section 307 Cr.P.C. Learned counsel submits that the issue involved in this petition has already been set at rest by the Larger Bench of this Court in the case of Noor Taki alias Mammu Vs. The State of Rajasthan while deciding reference arising out of Criminal Misc. Bail Application No.1687/1985. Hence, under these circumstances, the petitioners are not entitled to get the benefit of bail, as per the rider contained under Section 306(4) Cr.P.C. and the instant misc. petition is liable to be rejected.

4. At this stage, learned counsel for the parties apprised this Court that till date charges have not been framed against any of the accused persons by the Trial Court and the next date fixed before the Trial Court is 25.11.2025. Hence, considering these facts, appropriate directions be issued to the Trial Court to frame the charges against the accused persons and record the statements of the petitioners, on priority basis as the witness Nos.1 & 2.

5. Heard and considered the submissions made at the Bar and perused the material available on the record.



6. Perusal of the record indicates that when the investigation came into motion after registration of the FIR, the petitioners became approver and on the basis of their statements, recorded during the course of trial, the co-accused persons were apprehended and arrested. Thereafter, all the accused persons including the petitioners were charge-sheeted with the above stated offences. This fact is not in dispute that main and principal accused persons, who were involved in the racket of kidney transplantation, have been granted benefit of regular bail. This fact is also not in dispute that the petitioners are in custody since 23.04.2024 and the trial has not commenced as yet and the case is at the initial stage of framing of charges and the question for determination of this Court is whether benefit of bail can be granted to an approver unless and until his statements are recorded before the Trial Court?

7. The provisions in this regard are clear and specific, as contained under Section 306(4) Cr.P.C., which lay down that every person accepting a tender of pardon shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent such trial, if any, but such person shall not be granted benefit of bail and should be detained in custody until the termination of the trial.

8. The aforesaid provision was however interpreted by the Larger Bench of this Court in the case of **Noor Taki alias Mammu** (supra), wherein similar question was dealt with as to whether an accused, who has been declared as approver can be released on bail before recording of his statement, during the course of trial. The provisions of law and several judgments



passed by the Hon'ble Apex Court and other High Courts were taken into consideration by the Larger Bench of this Court and finally it has been held in Para 15 to 19, as under:-



15. Taking the second point first, there is no question of holding whether Section 306(4)(b) is directory or mandatory as there is no specific provision in the entire Criminal Procedure Code which gives a right to the approver to apply for bail. As mentioned above Section 439 Cr. P.C. does not apply to an approver. It applies only to a person accused of an offence. An approver when once granted pardon, no more remains an accused unless he violates the conditions of pardon and sub-sequently tried for the offence. Hence as an approver his status is that of witness and not that of the accused. That being so, Section 439 Cr. P.C. would not apply and consequently the discussion on the point whether Section 306(4)(b) is directory or mandatory, is merely on academic exercise and that too in futility. So far as the provision of Sec. 439 Cr. P.C. being violative of Art. 21 of the Constitution of India, suffice it to say that argument has been advanced only to be rejected. Approver, as a matter of right, cannot claim bail and as mentioned above there is no provision granting him bail. We have already discussed above the reasons which appear to us persuaded the Legislature not to make a provision for granting bail to an approver. But Article 21 of the Constitution of India can be looked into for seeking an aid to the contention that the scope of inherent powers of this Court should be so explained so as to cover the cases of an approver for consideration of bail in proper cases. In *Francis Coralia Mullin's case*(supra), their Lordships of the Supreme Court defined the scope of Article 21 of the Constitution of India. In that case the petitioner had challenged his detention under COFPOSA Act and an argument was advanced challenging the constitutional validity of certain clauses of the detention order. Their Lordships held,



"It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This court expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights ...

The position now is that Article 21 as interpreted in *Maneka Gandhi's case* (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise."

16. In *Kadra Pahadiya's case* (supra), Hon'ble Mr. P.N. Bhagwati, J. (as he then was) sitting with Hon'ble A.P. Sen, J. considered a letter dated November 28, 1980 addressed by one Dr. Vasudha Dhagamwar, a Researcher and Social Scientist working in the Santhal Praganas of the State of Bihar. It represents one more instance of the utter callousness and indifference of our legal and judicial system to the under trial prisoners languishing in the jails. Their Lordships before issuing the notice passed a detailed order and considered the scope of Article 21 of the Constitution of India and held "we fail to understand why our justice system has become so dehumanised that lawyers and Judges do not feel a sense of revolt at caging people in jail for years without a trial. It is difficult to comprehend how the Sessions Judge could have forgotten that he had called the petitioners to the court for commencement of the trial on 30th August, 1977 and thereafter done nothing in the matter."



17. Their Lordships referred to *Hussainara-Khatoon's case* (supra) wherein it has been held that speedy trial is a fundamental right of an accused implicit in Article 21 of the Constitution. *Hussainara Khatoon's case*, which has been reported in (1980) 1 SCC 108 : AIR 1979 SC 1377 is a land mark in judicial history of this country. Cases of several under trial prisoners, who are languishing in jail for years together, were considered. Some of them were such where the under-trial prisoners had remained in jail without trial for periods which are longer than the maximum term for which they would have been convicted. They were directed to be released even without obtaining a bail bond. His Lordship Mr. Justice Bhagwati speaking for the Court, said,

"We fail to see what moral or ethical justification could the State have to detain these unfortunate persons for such unreasonably long periods of time without trial. We feel a sense of relief that they should once again be able to breathe the air of freedom. But we find that there are still many more under trial prisoners who fall within this category of persons who have been in detention for periods longer than the maximum term without their trial having been commenced."

There are 59 under-trial prisoners whose names and particulars are set out in this chart and we direct that they should be released forthwith as their continued detention is clearly illegal and in violation of Article 21 of the Constitution.

18. A perusal of the aforesaid cases coupled with that of many other cases, like that of *Sunil Batra v. Delhi Administration* (15) and yet another case of *Hussainara Khatoon* reported in (1980) 1 SCC 81 : AIR 1979 SC 1360, we have no hesitation in holding that detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount violation of Article 21 of the Constitution of India. Reasonable expeditious trial is warranted by the provisions of the Criminal Procedure Code and in case this is not done and an approver is detained for a period which is



longer than what can be considered to be reasonable in the circumstances of each case, the Court has always power to declare his detention either illegal or enlarge him to bail while exercising its inherent powers. Section 482 Cr. P.C. gives wide power to this Court in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of the Court. Secondly—if there is an abuse of the process of the Court and thirdly, in order to secure the ends of justice. There may be occasions where a case of approver may fall within latter two categories. For example in a case where there are large number of witnesses a long period is taken in trial where irregularities and illegalities have been committed by the Court and a re-trial is ordered and while doing at the accused persons are released on bail, the release of the approver will be occasioned for securing the ends of justice. Similarly, there may be cases that there may be an abuse of the process of the court and the accused might be trying to delay the proceedings by absconding one after another, the approver may approach this Court for seeking indulgence. But this too will depend upon the facts and circumstances of each case. Broadly, the parameters may be given but no hard and fast rule can be laid down. For instance, an approver, who has already been examined and has supported the prosecution version, and has also not violated the terras of pardon coupled with the fact that no early end of the trial is visible, then he may be released by invoking the powers under Section 482, Cr. P.C. Sec. 482 Cr. P.C. gives only power to the High Court. Sessions Judge cannot invoke the provisions of the same. High Court therefore in suitable cases can examine the expediency of the release of an approver. We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under Section 306(4) (b), Cr. P.C., Section 482 Cr. P.C., should not be made applicable. Their Lordships of the Supreme Court has said it in terms without number, that there is nothing in the Code to fetter the powers of the High Court under Sec. 482 Cr. P.C. Even if



there is a bar in different provisions for the three purposes mentioned in Sec. 482 Cr. P.C., and one glaring example quoted is that though Sec. 397 gives a bar for interference with interlocutory orders yet Sec. 482 Cr. P.C. has been made applicable in exceptional cases. Second revision by the same petitioner is barred yet this Court in exceptional cases invoke the provisions of Sec. 482 Cr. P.C. Therefore, Sec. 482 Cr. P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, and we answer the question that according to Section 306(4)(b) Cr. P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases this Court has power under Section 482 Cr. P.C., to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise out-live the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Article 21 of the Constitution.

19. Having answered the reference as above, we have perused the facts of this case. The occurrence relates to July, 1983, and the accused was arrested on March 12, 1984. He moved an application before the Chief Judicial Magistrate seeking pardon on April 27, 1984 and his application was allowed by the learned Chief Judicial Magistrate and he was declared as an approver. The petitioner's statement as an approver has been recorded in the court of Sessions during trial as is apparent from the order of the Additional Sessions Judge No. 4, Jaipur City, Jaipur. It is not denied that he has fulfilled all the conditions on which pardon was granted to him. He is in detention for more than 22 months now. Accused persons have been released on bail, and we feel in these circumstances approver have been put in the circumstances worse than those who are facing the charge sheet. The end of the trial is not insight as more than 20 witnesses are yet to be examined as stated before us. In these circumstances, we confirm the order of interim





bail granted by Hon'ble Mehta, J. by his order dated Oct. 28, 1985 and direct that the approver shall continue to remain on bail during the pendency of the trial on entering into a personal bond in the sum of Rs. 5,000/- (Rs. Five thousand) to the satisfaction of the Deputy Registrar (Judicial), Rajasthan High Court, Jaipur Bench, Jaipur."



9. The answer of the reference by the Larger Bench is clear and specific that the approver should be detained in custody until his statement is recorded.

10. Here, in the instant case also, till date the petitioners, who have been declared as approver and their statements have not been recorded as yet, have not been granted the benefit of bail, as per the rider, contained under Section 306(4) Cr.P.C.

11. But, this Court cannot lose the sight of the material aspect of the matter that the petitioners are in custody since 23.04.2024 and they have been charge-sheeted along-with other co-accused persons long back and till date, inspite of passing of more than one and a half year the charges have not been framed against the accused persons and the trial has not commenced as yet.

12. This Court does not appreciate such act of the Trial Court. The Trial Court cannot defer the matter from one day to another unnecessarily, by entertaining the unwanted requests made by any of the parties and thereby cause unnecessary delay in framing the charges. The Trial Court is expected to consider their material aspect of the matter that some of the accused persons like the petitioners are in custody, for last more than one and a half year.

13. The petitioners are foreign Nationals and they are resident of Bangladesh and presently, they are in judicial custody since April, 2024 in a criminal case. The trial has not commenced as yet and



even charges have not been framed in spite of passing of one and half year of their judicial custody. They have the fundamental right to speedy trial under Article 21 of the Indian Constitution. The protection under Article 21, which guarantees the right of life and personal liberty, extends to all persons and this right is not confined to Indian Citizens alone and it is available to the foreign Nationals as well, who are not the citizens of India. This right to life and dignity guaranteed under Article 21 is available to all human beings, including foreigners.

14. As per Article 21 of the Constitution of India "No person shall be deprived of his life or personal liberty except according to procedure established by law. Fair and speedy trial is integral part of Article 21. A fair procedure in criminal trial is an essential component of Article 21 and it does not differentiate between Indian Citizens and foreign Nationals."

15. Foreign Nationals, including the petitioners facing trial in India are also entitled to Right to Life and Dignity under Article 21 of the Constitution of India. This right has been established as a powerful shield of protection, ensuring that right to life and dignity extends beyond borders, safeguarding all human beings.

16. The Hon'ble Apex Court in the case of **Sunil Batra v. Delhi Administration** reported in **1980 (3) SCC 488** has held that even a convicted individual holds a right to dignified life, which Article 21 recognizes, as inherent right in every human being including foreigners.

Even in **K. S. Puttaswamy & Anr. Vs. Union of India & Ors.** reported in **2017 (10) SCC 1**, the Hon'ble Apex Court has held that anything personal is part of one's privacy and unless it is



enabled by law, it cannot be invaded even if an accused person is a foreign National.

17. Prolonged detention without trial can be a violation of Article 21 of Constitution of India. Hence, looking to entire facts and circumstances of the instant case, it is necessary to issue directions to the Trial Court to speed up the pending proceedings.

18. Accordingly, this Court directs the Trial Court to pass appropriate orders on charge/discharge, after hearing the arguments of all the sides and pass appropriate orders by fixing a fixed date for this purpose, within a period of four weeks from the date of receipt of certified copy of this order.

19. In case, the charges are framed against the accused persons, the Trial Court is directed to record the statement of the petitioners, who are approver on priority basis as witness Nos.1 & 2.

20. With the aforesaid observations, the criminal misc. petition stands disposed of.

21. Before parting with this order, liberty is granted to the petitioners to move appropriate application before this Court seeking bail, after recording of their statements before the Trial Court and the same would be decided in accordance with law.

(ANOOP KUMAR DHAND),J

Karan/256