

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CrMP(M) No. : 814 of 2025****Reserved on : 06.05.2025****Decided on : 09.05.2025**

Hom Dei @Shallu

...Applicant

Versus

State of Himachal Pradesh

...Respondent

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?¹ Yes*

For the applicant : Mr. Ranveer Singh, Advocate, vice
Mr. Ritesh Bhardwaj, Advocate.

For the respondent : Mr. H.S. Rawat, Additional Advocate
General.

Virender Singh, Judge

By way of the present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), applicant-Hom Dei @Shallu has sought her release, on bail, during the pendency of trial, in case FIR No.57 of 2021, dated 22.02.2021, registered under Sections 302, 120B and 201 of the Indian Penal Code (hereinafter referred to as 'IPC'),

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

with Police Station Nalagarh, District Solan, Himachal Pradesh.

2. According to the applicant, she is resident of the address, as mentioned in the application and is having deep roots in the society.

3. As per the applicant, she has falsely been implicated, by the police, in the present case, as, there is no evidence, connecting her, with the crime, in question. The applicant is stated to be in judicial custody since 22.02.2021.

4. As per applicant, she had earlier tried her luck by moving similar bail application, before the learned Additional Sessions Judge, Nalagarh, District Solan, H.P. However, the same was rejected vide order dated 16.06.2022.

5. It is the case of the applicant that despite such a long period in the judicial custody, trial against her has not been concluded.

6. In order to buttress her contention, it has also been pleaded in the application that there are total 51 prosecution witnesses, out of which, only 15 prosecution witnesses have been examined and on the basis of above

fact, it has been pleaded that inordinate delay, in conclusion of the trial, violates her precious right, under Article 21 of the Constitution of India.

7. The applicant has put forward her young age of 25 years, as one of the grounds, seeking the relief of bail.

8. Learned counsel appearing for the applicant has submitted that even, on the ground of parity, the applicant is entitled to be released on bail, as her co-accused, namely Sanjay Sharma, has already been released on bail, by this Court, vide order dated 08.11.2024, passed in CrMP(M) No.2212 of 2024, titled as 'Sanjay Sharma Vs. State of Himachal Pradesh'.

9. Apart from this, learned counsel, appearing for the applicant, has given certain undertakings, for which, the applicant is ready to abide by, in case, ordered to be released on bail, during the pendency of the trial.

10. On the basis of the above facts, a prayer has been made to allow the bail application.

11. When put to notice, the police has filed the status report, disclosing therein, that on 22.02.2021, an information was given by Pradhan GP Saned, over

telephone, which has been entered as Rapat No.14, at 08:17am.

11.1. As per the said information, near Cow Shelter at Bhagwania, dead body of a boy, aged about 12-13 years, is lying there, upon which, SI Babu Ram, along with other police officials, reached there. At the spot, they noticed that the dead body was in a jute sack. Photography of the dead body was done and efforts to get the said dead body identified were made, but, no one could identify the same.

11.2. It is the further case of the prosecution that at the spot, complainant-Mehar Chand got recorded his statement to the police, under Section 154 Code of Criminal Procedure (hereinafter referred to as the 'CrPC'), disclosing therein that he is resident of Village Handa Khundi, Nalagarh, District Solan and is a contractor. His wife is Pradhan of Gram Panchayat, Saned.

11.3. As per the statement, on 22.02.2021, at about 08:00 am, when, complainant was present at his house, some unknown person had informed him that a dead body of a boy, aged about 12-13 years, is found lying, upon which, he has informed the police and also reached at the spot and found that the dead body was lying in the bushes.

When, the dead body was inspected, then, the same was found to be dead body of a person, aged between 20-25 years. There was a black coloured cloth around the neck and other body wounds were also noticed. On the waist of the dead body, there was amulet.

11.4. On the basis of above facts, police has registered the FIR and criminal machinery swung into motion.

11.5. Thereafter, dead body was sent to hospital for post-mortem examination. However, a direction was given to the Medical Officer to conduct the post-mortem after 72 hours, as, no one has identified the dead body. Physical evidence from the spot was taken into possession. Statements of the witnesses were recorded, under Section 161 of CrPC.

11.6. Subsequently, efforts were made to get the dead body identified, including issuance of hue and cry notice. The team of FSL, Junga also visited and inspected the spot. On 23.02.2021, Naresh Kumar S/o Chanalu Ram and Uttam Chand S/o Hans Raj, both residents of Village Thisla, Tehsil Saluni, District Chamba, have identified the dead body, as Narender Kumar @Vicky, aged about 21

years, S/o Viyaso, R/o Village Thisla Tehsil Saluni, District Chamba, H.P.

11.7. It is the further case of the prosecution that thereafter, a request was made on 24.02.2021 to SMO, Civil Hospital, CHC Nalagarh, for conducting the post-mortem examination of the dead body. CDR of mobile No.78077-58732 was obtained, perusal of which shows that deceased Narender Kumar had contacted from his mobile No.78077-58732 to mobile No.62300-23455. The said number was found to be issued in the name of accused Homdei (applicant). Thereafter, request for Consumer Application Form was made to the service provider and accused were associated in the investigation.

11.8. It is the further case of the prosecution that during investigation, it was found that deceased Narender Kumar used to harass accused Homdei (applicant) and also used to make repeated telephone calls to her. On 07.02.2021, when deceased has called accused Homdei (applicant), then, this fact came to the knowledge of her husband-Sanjay Sharma.

11.9. It is their further case that Sanjay Sharma abused the deceased and thereafter, he and accused

Homdei (applicant) had decided to take revenge from deceased. On 21.02.2021, deceased Narender Kumar had come to the room of Sanjay Sharma and this information was given by accused Homdei (applicant) to Sanjay Sharma. However, Sanjay Sharma did not pick the phone. During daytime, Homdei (applicant) and Sanjay Sharma remained in the residential quarter of one Mandeep. There, accused Sanjay Sharma has also shown his intention to Mandeep regarding finishing a person. Thereafter, he has requested one Amit to provide him his vehicle, upon which, Amit has refused to do so.

11.10. It is the further case of the prosecution that thereafter, Sanjay Sharma had stolen a *danda* from the vehicle of Amit and taken the same to the room of Mandeep. Sanjay Sharma and Mandeep, at about 09:30pm, on that day, went to the room of Sanjay Sharma, where, deceased Narender Kumar and accused Homdei (applicant) were found, upon which, Sanjay Sharma became furious and started beating the deceased. All the three accused had thereafter killed Narender Kumar and thrown away his dead body.

11.11. On the basis of above facts, on 25.02.2021, accused persons were arrested. Subsequently, they were medico legally examined. During investigation, accused persons have made disclosure statement, under Section 27 of the Indian Evidence Act, upon which, weapon of offence was recovered. When, the police found, in the investigation that the Sanjay Sharma has destroyed the mobile phone and Aadhaar Card of the deceased, then, Section 201 of IPC was added, in the present case. The physical evidence, so collected from the spot, was sent to FSL, Junga and after receipt of the report, police has filed the final report (*challan*) on 25.05.2021 and the supplementary *challan* was filed on 28.03.2023, before the competent Court of law.

11.12. It is the further case of the police that out of the total 51 prosecution witnesses, 16 prosecution witnesses have already been examined and 31 prosecution witnesses are yet to be examined and now, the case is stated to be fixed on 29/30.05.2025 for remaining evidence of the prosecution witnesses.

12. On the basis of above facts, a prayer has been made to dismiss the application.

13. The accused (applicant), in the present case, was arrested on 22.02.2021. Till date, out of the total 51 prosecution witnesses, 16 prosecution witnesses have already been examined and 31 witnesses are yet to be examined. The applicant is in judicial custody for about 4 years and 2 months and in near future, chances of conclusion of trial, against the applicant, are not so bright.

14. Considering the fact that the applicant is in judicial custody, since long, this Court is of the view that no useful purpose would be served by keeping the applicant in the judicial custody, that too, for indefinite period.

15. It has rightly been argued by learned counsel, appearing for the applicant, that the fundamental right of the applicant for speedy trial, as envisaged, under Article 21 of the Constitution of India, has been violated.

16. Right to speedy trial has been held to be fundamental right by the Constitution Bench of the Hon'ble Supreme Court, in a case titled as **Abdul Rehman Antulay and others versus R.S. Nayak and another**, reported in **(1992) 1 Supreme Court Cases 225**. In the said case, the Hon'ble Supreme Court has held that the

accused has right to speedy trial, which flows from Article 21 of the Constitution of India.

17. In case, titled as ***Dharmendra Kirthal versus State of Uttar Pradesh and Another***, reported in **(2013) 8 Supreme Court Cases 368**, the Hon'ble Supreme Court has held the right to speedy and fair trial to be an integral part of very soul of Article 21 of the Constitution of India. Relevant paragraphs 30 to 33 of the judgment, is reproduced, as under:

“30. Keeping the aforesaid enunciation in view, we shall presently proceed to deal with the stand and stance of both the sides. The first submission which pertains to the denial of speedy trial has been interpreted to be a facet of Article 21 of the Constitution. In Kartar Singh [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] , the majority, speaking through Pandian, J., has expressed thus: (SCC p. 638, paras 85-86)

“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.

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."

31. Be it noted, the Court also referred to the pronouncements in *Hussainara Khatoon (1) v. State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23], *Sunil Batra v. Delhi Admn.* [(1978) 4 SCC 494 : 1979 SCC (Cri) 155], *Hussainara Khatoon (4) v. State of Bihar* [(1980) 1 SCC 98 : 1980 SCC (Cri) 40], *Hussainara Khatoon (6) v. State of Bihar* [(1980) 1 SCC 115 : 1980 SCC (Cri) 57], *Kadra Pahadiya v. State of Bihar* [(1983) 2 SCC 104 : 1983 SCC (Cri) 361], *T.V. Vatheeswaran v. State of T.N.* [(1983) 2 SCC 68 : 1983 SCC (Cri) 342] and *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93].

32. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial in such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance.

It is apt to note here that “any other case” against the accused in “any other court” does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.

33. As far as fair trial is concerned, needless to emphasise, it is an integral part of the very soul of Article 21 of the Constitution. Fair trial is the quintessentiality of apposite dispensation of criminal justice. In Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] , it has been held as follows: (SCC p. 183, para 33)

“33. The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation—peculiar at times and related to the nature of crime, persons involved— directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.”

(self emphasis supplied)

18. A three Judge Bench of the Hon’ble Supreme Court, in case, titled as **Union of India versus K.A.**

Najeeb, reported in **(2021) 3 Supreme Court Cases 713**, has held that when a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge accused on bail. Relevant paragraphs 11 and 15 of the judgment, are reproduced, as under:

“11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366 , laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622, para 10)

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] , on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover

within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail."

(self-emphasis supplied)

19. Considering the facts of the case, in the light of the above legal proposition of law, this Court is of the view that the chances of conclusion of trial, against the applicant, in near future, are not bright, as such, keeping the applicant in judicial custody, would be nothing, but, pre-trial punishment, which is prohibited under the law. Moreover, the applicant is presumed to be innocent till his guilt is proved by the prosecution, during the trial.

20. Furthermore, the applicant is also entitled for grant of bail on the basis of parity, as, her co-accused, namely Sanjay Sharma, has already been released on bail, by this Court, vide order dated 08.11.2024, passed in CrMP(M) No.2212 of 2024, titled as 'Sanjay Sharma Vs. State of Himachal Pradesh'.

21 Since, applicant is the resident of District Chamba, as such, it cannot be apprehended that in case, she is ordered to be released on bail, she may not be available for the trial. Even otherwise, stringent conditions can be imposed, upon the applicant, in case, she is ordered to be released on bail.

22. In view of the discussions, made hereinabove, this Court is of the view that the applicant is able to make out a case for her release on bail, during the pendency of the trial. Hence, the present bail application is liable to be allowed and is accordingly allowed.

23. Consequently, the applicant is ordered to be released on bail in case FIR No.57 of 2021, dated 22.02.2021, registered under Sections 302, 120B and 201 of the IPC, with Police Station Nalagarh, District Solan, Himachal Pradesh, on her furnishing personal bonds, in

the sum of ₹50,000/-, with two sureties of the like amount, to the satisfaction of the learned trial Court. This order, however, shall be subject to the following conditions:

a) The applicant shall appear before the IO, as and when, directed by the IO to do so and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing the appropriate application;

b) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) The applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and

d) The applicant shall not leave the territory of India without the prior permission of the Court.

24. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

25. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

26. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, Sub-Jail,

Nalagarh, District Solan, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

27. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, Sub-Jail, Nalagarh, District Solan, is directed to inform this fact to the Secretary, DLSA, Solan. The Superintendent of Jail, Sub-Jail, Nalagarh, District Solan, is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

May 09, 2025
(Gaurav Thakur)