NEUTRAL CITATION
2023:GUJHC:43488

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7646 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SANJIV RAJENDRABHAI BHATT
Versus
STATE OF GUJARAT

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Appearance:
SENIOR ADVOCATE MR MIHIR JOSHI with VISHAL K ANANDJIWALA (7798) for the Applicant(s) No. 1
MR YASH K DAVE(10269) for the Applicant(s) No. 1
MR HR PRAJAPATI(674) for the Original Complainant
MR MITESH AMIN, PUBLIC PROSECUTOR with MR J K SHAH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 24/08/2023
CAV JUDGMENT

Rule. Learned advocates appearing for the respective respondents waive service of notice of Rule.

1. By this petition filed under Article 227 of the Constitution of India read with Section 407 of CrPC, the petitioner has challenged

the order dated 08.06.2023 passed by the Principal District and Sessions Judge, Banaskantha at Palanpur in Criminal Misc. Application No. 299 of 2023, seeking transfer of Sessions Case No.3 of 2018 to Court of Senior most Additional Sessions Judge, Banskantha at Palanpur. The prayers made in the instant Special Criminal Application are as under:-

> *a. that the Hon'ble Court be pleased to call for Record & Proceedings of Sessions Case No. 3/2018 as well as Criminal Misc. Application No.229/2023 from the Sessions Court, Banaskantha at Palanpur and also be pleased to call for the Administrative Office Order Nos. 650/2018; 200/2019;155/2020 and 209/2020;*
>
> *b. that the Hon'ble Court be pleased to quash and set aside the order dated 08/06/2023 passed in Criminal Misc. Application No.229/2023 by the learned Principal Session Judge, Banaskantha at Palanpur and further be pleased to transfer Sessions Case No. 3/2018 to the Court of senior-most Additional Sessions Judge, Banaskantha at Palanpur as per the administrative order No.650/2018 passed by the Sessions Judge, Palanpur;*
>
> *c. that pending the hearing and final disposal of the petition, the Hon'ble Court be pleased to stay further proceedings in respect of Special NDPS Case No.3/2018;*
>
> *d. that the affidavit may kindly be dispensed with as the petitioner is in judicial custody;*
>
> *e. for such other and further relief as the circumstances of case may require;*

2. The impugned order dated 08.06.2023 came to be passed by the District and Session Judge Banaskatha at Palanpur in an application filed by the petitioner under Section 408 of CrPC seeking transfer of the aforesaid Sessions Case No.3 of 2018 [Special (NDPS) Case No 3 of 2018] from 3rd Additional Session Judge Palanpur [the 'Presiding Judge'/'Presiding Officer' holding the trial] to another Court.

3. The petitioner has raised allegations of bias against the Sessions Judge who has been conducting the trial under the directions of this Court. The effort on the part of this Court in the present proceedings should be to ensure that if the petitioner is right in his apprehension of bias, every accused is entitled to a fair trial and necessary order needs to be passed. At the same time if the accused is resorting to such applications alleging bias either to delay the trial despite several directions of this Court and merely to bring pressure upon the Sessions Judge conducting the trial, the right of the victim to get justice needs to be protected.

4. The dispute in the present case pertains to an offence allegedly committed in the year 1996 wherein the petitioner [who was a senior police officer] and others are accused. As per the charge-sheet filed, it has been revealed that the petitioner, as a Superintendent of Police, abducted the victim to get a valuable property in the occupation of the victim vacated. The petitioner is alleging to have kept around 3 kg of narcotics substance in a hotel room under his jurisdiction

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which was shown to have been occupied by the victim who happens to be a lawyer from the neighbouring State of Rajasthan. The victim was kept in custody and was pressurized to vacate the premises. After the victim's brother vacated the premises at the behest of the victim, the petitioner and other police officers filed closure report saying that the victim is not identified in test identification parade. The victim who happens to be the practicing advocate took up the issue supported by the Bar Council of Rajasthan and Pali Bar Association where the victim is practicing. It is the because of consistent efforts made by the victim that the said offence committed in the year 1996 came to be investigated, thereto by the judicial order passed by this Court in the year 2018.

5. The victim contends that the petitioner has filed the application alleging bias almost at the fag-end of trial. The prosecution and the victim rely upon several judicial orders passed by this Court and the Supreme Court in this very case in which various benches of this Court has passed strictures against the petitioner holding him guilty of not only abusing the process of court on various occasions but also of adopting dilatory tactics to delay the trial.

6. Considering the aforesaid subject matter of the proceedings and with a view to ensure that neither injustice is meted out either to the petitioner-accused or to the victim, this Court has gone into all the contentions raised by all parties with an object of doing

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complete justice between the parties and to satisfy its conscious that the trial is progressing in accordance with the law.

7. Detailed and erudite arguments were advanced on behalf of the petitioner by Mr. Mihir Joshi, Ld. Senior Advocate assisted by Mr. Vishal K. Anandjiwala, which have been rebutted with equal eloquence by Mr. Mitesh Amin, Ld. Public Prosecutor for the state assisted by Mr, J. K. Shah, APP for the state. On behalf of the victim Ld. H. R. Prajapati has made his detailed arguments and has also placed his affidavit on record.

8. In brief, the primary grounds which have been stated by the petitioner and vehemently pressed before this Court making out his case for transfer are summarized in the written submission filed before this court and reads as under:-

8.1 Petitioner apprehends that he is not receiving fair and impartial trial and presiding judge is biased against him.

8.2 The factum of bias is sought to be established by the Petitioner by referring to some interim orders passed by presiding judge of Sessions Case No.3 of 2018 from time to time, whereby, application preferred by the petitioner seeking adjournment were either rejected with cost or not allowed simplicitor. This has been further buttressed by pressing into service the orders passed by the presiding judge of Sessions Case No.3 of 2018, on two occasions where the presiding judge had imposed cost

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on the petitioner.

8.3 Malafide is sought to be attributed to the presiding judge alleging that taking shelter of the orders passed by this Court to conclude the trial in a time bound period, the presiding judge, demonstrating inexplicable haste, is continuously rejecting the applications filed by the petitioner without appreciating the merits of the said applications. It is the allegation of the petitioner that the haste shown by the presiding judge amounts to violation of natural justice to the petitioner and denial of fair trial to him.

8.4 The specific applications in respect of which the petitioner contends that they are wrongly decided in haste, harboring bias and malafide against the petitioner, are as under:-

(i) Alleged wrong recording of deposition. Wrongful rejection of his application Exh.596 and 597.

(ii) Rejection of petitioner's application to examine all witnesses dropped by the prosecution.

(iii) Rejection of petitioner's application to permit him to further examine defense witnesses.

(iv) Rejection of petitioner's application dated 26.04.2023 for providing him CCTV record and footage copy of the court proceedings during which all the 19 prosecution witnesses were examined for the purpose of submitting the same before this Court.

(v) Rejection of petitioner's application being Exh.728 praying for stay of the trial on the ground that it should only progress when the audio video recording of court proceeding of the present trial is preserved.

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8.5 Factum of malice and bias has further been sought to be alleged that the petitioner's prayer to stay the trial for the purpose of enabling him to challenge certain orders passed by the presiding judge were also not accepted by the presiding judge who rejected such applications where stay of trial was sought.

8.6 In addition to the above, it has also been contended by the petitioner that non grant of adequate opportunity to conduct trial, tantamount to denial of natural justice to him and violation of the most fundamental principle of administration of justice that "*justice should not only be done but must be seen to have been done*".

9. In substance, what has been argued by the petitioner before this Court is that the speed with which the trial court is proceeding with the trial and has rejected some applications filed by the petitioner with cost demonstrates that presiding judge is biased.

10. The chequered history of the present case is a matter of record of this Court. They are admitted fact and has been duly recorded in successive judgments passed by this court as well as the Hon'ble Apex Court in present proceedings only. The same has been duly placed before this court by the victim of the present crime, who has, only on the ground of conduct of the petitioner, who has abused the process of law, has with vehemence prayed for dismissal of the

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present petition. The facts which have again been brought out on record of the present case by the victim are as under:-

10.1 The present offence was committed on 03.04.1996. Almost 27 years have elapsed and thereafter the trial which commenced in the matter, after the intervention of this court, has still not seen its conclusion despite judicial orders of this court specifically directing the presiding judge to conclude the trial in a time specified in such orders, which time limit has also been extended twice in the interest of justice and has now elapsed during the pendency of the present proceedings.

10.2 As per the case of the prosecution and victim/original complainant, the present case pertains to a very demonic conspiracy hatched by the petitioner to oblige one late Shri. R.R.Jain, who was former judge of this Court, whereby, in connivance with and to oblige Shri. R.R.Jain, the petitioner by abusing his official position of senior IPS officer of the Palanpur district planted narcotic drugs in a hotel which was fraudulently shown to be booked in the name of victim of the present case.

10.3 As per the prosecution case the victim who is an advocate practicing in Pali-Rajasthan, was in occupation and possession of a valuable property which was owned by the sister of late Shri. R.R.Jain. At the behest of late Shri. R.R.Jain the

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petitioner in an endeavor to get the said premises vacated from the occupation and possession of the victim, planted narcotic drugs in hotel room at Palanpur-Gujarat, showed the said room to be booked in the name of victim, and thereafter, abducted the victim from Pali-Rajasthan and implicated him in false narcotic case registered at Palanpur-Gujarat. The abduction was shown to be a police custody in what subsequently turned out to be a fabricated NDPS Case.

10.4 Thereafter, while the victim was in custody of the petitioner, the petitioner and other co-accused forced the victim to vacate the premises owned by the relative of late Shri. R.R.Jain and in return, the deal was that after vacating the premises and handing over the keys of the same to the late Shri. R.R.Jain, the victim would be absolved from the false NDPS case foisted on him.

10.5 This bargain was given effect to when succumbing to the coercion of petitioner’s force and torture, the victim, who as in custody, handed over the keys and gave the physical possession of the premises occupied by him as required by the petitioner. As per the investigation a written document was executed for vacating the said property while the victim was still in the police custody of the Palanpur police. In the said written agreement, it was shockingly mentioned that if the said Advocate (Victim) vacates the property, the Palanpur Police

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would release him from Jail in the said narcotic case. The sinister plan as made was executed when after vacating the property a report came to be filed before the Special Judge, Palanpur, under Section 169 of CrPC which was thereafter accepted by the Special Judge, Palanpur, thereby, releasing and discharging the Victim from the false NDPS case.

10.6 Though the case was of 1996, however, till 2018 no progress could take place even on investigative plane i.e. who planted narcotic substance in the hotel room to falsely implicate victim in the matter.

10.7 It was alleged, both by the prosecution, as well as, by the victim that the petitioner in connivance with other co-accused, by filling various vexatious and frivolous proceedings and by abusing all the remedies of the law and by employing various machinations ensured that investigation of the case gets chocked and makes no progress till 2018 i.e. for 22 years.

10.8 However, in the year 2018, this court vide its judgment dated 03.04.2018 passed by this Court [his Lordship Hon'ble Mr. Justice J.B.Pardiwala (as his Lordship then was)] in R/Special Criminal Application No. 680 of 1999**,** after going through the entire material on record, directed the State to constitute SIT in the matter and complete the investigation within a time bound period.

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10.9 The anguish expressed by this Court speaking through Lordship Hon'ble Mr. Justice J.B.Pardiwala (as his Lordship then was) on the way this case progressed was writ large. This court vide the said judgment was pained to express its displeasure with the way in which investigation in the present case had ensued and observed as under:-

> *25. From the shocking facts emerging from the record and the reported judgment placed before this Court in which Shri I.B.Vyas himself was the petitioner and the subject matter being the same, it is clear that it would be a travesty of justice if an independent, detailed and thorough investigation in offence registered being the C.R. No.216/96 at the Palanpur City Police Station is not conducted so as to find out who brought/planted 1½ kg of narcotic drugs based upon which the complainant Advocate Shri Sumer Singh Rajpurohit was allegedly falsely implicated which is apparent from the investigation conducted by the Rajasthan Police referred to above.*
>
> *….*
>
> *29. It is therefore, absolutely necessary and in the interest of justice that the said investigation of the C.R.No.216/96 be conducted by a special team constituted from out of the CID [Crime], State of Gujarat which is a Central agency of Crime detection in the State of Gujarat which should consist of officers of not below the rank of SP and should have an officer of the level of DIG as its Head.*
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> *30. Article 21 of the Constitution of India guarantees fair trial. A fair trial is impossible if there is no fair investigation. In order to be a fair investigation, the investigation must be conducted thoroughly, without bias or prejudice, without any ulterior motive and every fact, surfacing during the course of investigation, which may have a bearing on the outcome of the*

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investigation and, eventually, on the trial, must be recorded contemporaneously by the Investigating Officer at the time of investigation. A manipulated investigation or an investigation, which is motivated, cannot lead to a fair trial. Necessary, therefore, it is that the courts are vigilant, for, it is as much the duty of the court commencing from the level of the Judicial Magistrate to ensure that an investigation conducted is proper and fair as it is the duty of the Investigating Officer to ensure that an investigation conducted is proper and fair. A fair investigation would include a complete investigation. A complete investigation would mean an investigation, which looks into all the aspects of an accusation, be it in favour of the accused or against him.

31. Article 21, undoubtedly, vests in every accused the right to demand a fair trial. This right, which is fundamental in nature, casts a corresponding duty, on the part of the State, to ensure a fair trial. If the State is to ensure a fair trial, it must ensure a fair investigation. Logically extended, this would mean that every victim of offence has the right to demand a fair trial meaning thereby that he or she has the right to demand that the State discharges its Constitutional obligation to conduct a fair investigation so that the investigation culminates into fair trial. The State has, therefore, the duty to ensure that every investigation, conducted by its chosen agency, is not motivated, reckless and that the Investigating Officer acts in due obedience to law. It is only when the State ensures that the investigation is fair, can it (the State) be able to say, when questioned, that the trial conducted was a fair trial. Article 21, therefore, does not vest in only an accused the right to demand fair trial, but it also vests an equally important right, fundamental in nature, in the victim, to demand a fair trial. Article 21 does not, thus, confer fundamental right on the accused alone, but it also confers, on the victim of an offence, the right, fundamental in nature, to demand a fair trial. When the police registers a case, the State assumes the responsibility of conducting an

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> *investigation. Having assumed the responsibility of investigating the truth or veracity of the allegations, which the police receive, the State cannot act, nor can its Investigating agency act, without a sense of impartiality. It is not merely a trial, which has to be impartial. No less important it is that the investigation, too, is impartial. Fairness of trial will carry with it the fairness of investigation and fairness of investigation will carry with it the impartiality in investigation, besides the investigation being efficient, unbiased, not aimed at helping either the prosecution or the defence. In short, an investigation must not suffer from any ulterior motive or hidden agenda to either help a person or harm a person. This is the principle, which Article 21 of the Constitution of India, read with Article 14 thereof enshrines, when we say that our Constitution guarantees fair trial.*
>
> **[**Emphasis In Original**]**

10.10 It was only after passing of the above order by this court the investigation in the case progressed and the petitioner and other co-accused came to be arrested. The said order of this Court dated 03.04.2018 was challenged by the petitioner before the Hon'ble Apex Court in Writ Petition (Criminal) No. 265 of 2018 & other connected SLPs, which came to be dismissed by the Hon'ble Supreme Court vide its order dated 04.10.2018. Thus, the said order and judgment passed by this Court dated 03.04.2018 was given a seal of approval by the Hon'ble Apex Court.

10.11 To ensure that the investigation and trial against the petitioner do not commence, the petitioner once again filed Criminal

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Misc. (Recall) Application No.1 of 2020 in Special Criminal Application No. 680 of 1999, seeking recall of order dated 03.04.2018 passed by this Court. The said recall application was once again dismissed by a detailed order and judgment by his Lordship Hon'ble Mr. Justice J.B.Pardiwala (as his Lordship then was) vide order dated 17.01.2020, wherein, his Lordship was please to pass strictures against the petitioner after observing as under:-

> *"27. I have no hesitation in observing that the filing of the applications of the present type is nothing but last ditched efforts on the part of the applicant to see that the trial does not proceed further. Such attempts needs to be condemned in strong words. Having regard to the developments that have taken place after this Court passed the order, it is too much on the part of the applicant to come to this Court and pray that the order be recalled, and that too, on flimsy grounds as urged. This litigation is now almost more than two decades old. After due consideration of all the relevant aspects of the matter and materials on record, this Court thought fit to pass appropriate directions for the constitution of a Special Investigation Team, so that such team can carry out effective investigation of the F.I.R. In the order passed by this Court, a fine distinction has been drawn between the prosecution instituted within the State of Gujarat and the proceedings, which are pending in the State of Rajasthan. The filing of the 'A' summary report or any other report can hardly be a ground to preclude this Court from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, if the occasion demands in the interest of justice. It is too much on the part of the applicant to say that as the investigation was completed and an 'A' summary report was filed, this Court ought not to have entertained the two writ-applications and pass an order for the*

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constitution of a Special Investigation Team. The facts of this case need not be repeated. The more they are recalled, it is more painful. Unfortunately, the police officers are involved in this crime along with a former Judge of this High Court.

32. In view of the above pronouncement, in order to protect the civil liberties, fundamental rights and more particularly Article 21, this High Courts can very well exercise the power, no doubt, cautiously and in exceptional situations. As noted above, the facts of this case are so gross that this High Court had to exercise its writ jurisdiction and issue appropriate directions for constituting a Special Investigating Team. Ultimately, the Special Investigating Team carried out the investigation and the result of the same is filing of the charge-sheet with incriminating materials against the applicant herein and other co-accused.

33. There is no good reason for this Court to once again look into the order on any of the grounds, which have been put forward. In fact, there was no suppression worth the name of any material fact. I am constrained to observe that if the applicant continues to keep on thwarting the due process of law by adopting such dilatory tactics, then some stern steps may have to be taken against the applicant in accordance with law. No wonder a Division Bench of this Court in the case of the very same applicant while deciding the Criminal Misc. Application (for suspension of sentence) No.1 of 2019 in Criminal Appeal No.1492 of 2019 had to observe as under:-

> *".....Having regard to the said orders, it appears that the applicant has scant respect for the Courts and is in the habit of misusing the process of law and scandalizing the Court...."*

34. The Supreme Court in the case of the very same applicant in a reported decision in (2016) 1 SCC 1

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in Paragraph-65 observed as under:-

> *"65.....Thus the petitioner is guilty of suppressio veri and suggestio falsi. He has suppressed the enclosures which he ought to have filed and ought not to have made false allegations in the writ petition that SIT was exchanging sensitive and confidential information with the then AAG. It is unfortunate that on the one hand petitioner has prayed for appointment of SIT and on the other has not spared SIT appointed by this Court and has made false allegations against it. The conduct of the petitioner cannot be said to be desirable."*
>
> *35. The aforesaid observations of this Court as well as the Supreme Court reflects on the conduct of the applicant. It speaks for itself.*
>
> ***[**Emphasis Added**]***

The said order was never challenged by the petitioner and it has also attained finality.

10.12 It is only because of the aforesaid directions passed by this Court that the investigation against the petitioner could commence after more than 20 years and a charge-sheet against the petitioner and others was filed.

10.13 In the meanwhile, since the petitioner was arrested, he filed a bail application which came to be rejected by this Court by a speaking order dated 7.03.2019. As the offence was of 1996 and investigation pertaining to which could commence in 2018

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only, i.e. after the intervention of this court, therefore, to balance the rights of the accused viz the rights of the victim, this Court expedited the trial by recording as under:

> *38.3 However, while balancing the scale, keeping in mind the offence being of the year 1996, where the trial has not as yet begun, the trial Court is directed to expedite the process of completing the trial sooner as possible bearing in mind the provisions of Section 309 of the Criminal Procedure Code where the applicant shall cooperate. If the trial does not get concluded within the period of six months, the applicant shall be at the liberty to approach this Court once again."*

10.14 A successive bail application was thereafter filed by the petitioner before this court which is stated to have been heard for number of days and after a detailed bipartite hearing this court rejected the said bail application vide speaking order dated 31.01.2020. In the said order this court [Coram: Honble Ms Justice Sonia Gokani (as her Ladyship then was)] was constrained to deprecate the conduct of the petitioner who by employing techniques to abuse the process was not permitting the trial to commence. In the said case this court was constrained to observe as under in a detailed judgment:-

> *" 7.13 Noticing that the applicant is in jail for the period of 16 months, after his arrest by the IO, while NOT ENTERTAINING this application, this Court also requires to reiterate that this the FIR being of the year 1996, it requires to be proceeded with on expeditious basis. <u>It is not only about those, who are involved, but also about the faith of a common man in the system, which should not be permitted to be eroded, only on account of the long drawn litigations in the name of the</u>*

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> *rights of the either side to proceed, in accordance with law. It is, therefore, also being directed that the Court concerned, while undertaking the task of proceeding with the trial, shall expeditiously attempt to conclude the same, keeping in mind the policy, the settled position of speedy trial and also keeping in mind, the provisions of Section 309 of the Code.*
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> *7.14 At this stage, learned Advocate, Mr. Shah, appearing for the applicant has urged that an application for revision has been made by the present applicant, and therefore, the directions for speedy trial, should be subject to the outcome of the same, as, otherwise, it would jeopardize the rights of the applicant.*
>
> *7.14.1 Let all possible attempts be made to proceed with the application for revision, expeditiously. The right of the both the sides, to pursue the legal remedies available to them under the law, is, though, kept open, the same cannot be at the cost of questioning the very credibility and functionality of the criminal justice system."*
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> ***[****Emphasis Added****]***

10.15 This order dated 31.01.2020 was challenged by the petitioner before the Apex court in SLP(Crl) No. 8391 of 2021, which came to be dismissed vide order dated 5.08.2022.

10.16 Thereafter, the petitioner filed a discharge application under Section-227 CrPC, which also came to be rejected and a Criminal Revision Application No. 1650 of 2019 filed against the dismissal of said discharge application also came to be dismissed by this Court [Coram : Hon'ble Mr. Justice B.N. Karia] vide order dated 21.05.2020. In the said judgment also

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the conduct of the petitioner and consistent dilatory practice adopted by him is criticized.

10.17 The matter did not rest here. The observation made by this court in order dated 17.01.2020 that "*filing of the applications of the present type is nothing but last ditched efforts on the part of the applicant to see that the trial does not proceed further*" did come out to be true. Filing of recall application was not the 'last ditched attempt', but as the events unfolded, it appears that it was just the tip of the ice-berg. It was followed by a spate of petitions and objections, some academic and some frivolous. All these litigations were instituted as an expedition to find ways of ensuring that the trial in the matter is halted and delayed indefinitely.

10.18 The petitioner, in another attempt to abuse the process, as alleged by the victim, filed an Application under Section 91 of CrPC bearing Exh. No. 58 on 17.09.2019 before the presiding judge demanding certain documents which allegedly were relied upon by the prosecution but were not included in the charge-sheet. The petitioner thereafter filed another Application being Exh, 63 which was for seeking certain other documents, which were also not made part of the charge-sheet. The trial Court passed judicial orders in these applications.

10.19 Against the said order the petitioner approached this court by filing a Criminal Revision Application bearing No. 301 of 2021. The trial was again stayed.

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10.20 Acknowledging the dilatory tactics adopted by the petitioner, this court as the custodian of Article 21 rights of the victim, did not allow the petitioner to indefinitely delay the trial, and thereby, mandated an outer-limit, a timeline, within which the presiding judge was mandated to conclude the trial. This was in furtherance of the direction passed by this court on 7.03.2019 in the bail application of the petitioner referred above.

In the said Revision Petition this Court vide its order and judgment dated 04.10.2021, while partly allowing the petition, directed that trial to be completed positively within 9 months from the date of the judgment i.e. by 4.07.2022. The operative portion of the said order reads as under:-

> *28. It is required to be noted that since filing of the chargesheet and framing of the charge, the trial could not commence due to various applications filed by the applicant. Initially, he had objected against incorporation of some of the sections of NDPS Act in the draft charge and thereafter, he tendered application for discharge. Both the applications were rejected by the trial Court. The revision against the order of discharge was upheld by this Court. The applicant had challenged the order of pardon given to co-accused No.1 by the trial Court under Section 305/306 of the Code and the same was upheld by the High Court in the revision filed by the applicant. The applicant again filed an application under Section 216 of the Code for amend/alter the charge framed by the trial Court and the same was dismissed by the trial Court and on filing revision by the applicant against the order, this Court*

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has upheld the order passed under Section 216 of the Code. The applicant had moved one Criminal Misc. Application No.997/2020 before the High Court of Rajasthan, praying that the case registered with the Pali Police Station, Rajasthan and the present prosecution registered with Palanpur Police Station, Gujarat are same and therefore, the case of Palanpur Police Station would be stayed. The High Court of Rajasthan vide order dated 28.06.2020, dismissed the application holding that, both the offences are separate and distinct and same was upheld by the Apex Court vide order dated 27.01.2021 passed in Special Leave petition No.6340/2020.

29. In the aforesaid facts, it is relevant to take note of the facts that, there are large number of observations in the judgments/ order in several petitions repeatedly filed by the applicant to prolong the proceedings, depreciating the dilatory tactics and thwarting due process of law. It is a settled law that if the trial against the accused is not concluded within reasonable time, it amounts to a violation of right of speedy trial guaranteed under Article 21 of the constitution of India. If the prosecution is kept pending for a long time, the evidence may be obliterated by more lapse of time with the result that the evidence would not be available at the time of trial. In view of the totality of the facts and striking balance between the right of the prosecution as well as right of the applicant for speedy trial, ***I deem it appropriate to direct the Special Judge, NDPS Court at Palanpur, Dist. Banaskantha to expedite the trial proceedings and complete the same positively within a period of 9 (Nine) months from the date of receipt of this order."***

[Emphasis Added**]**

10.21 Thus, this court, as far back as 04.10.2021, in no uncertain terms directed the trial court to complete the trial positively within 9 Months. While passing the said direction this court had taken special note of the fact that the petitioner was

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habitual of filing several petitions, incessantly and repeatedly to prolong the proceedings and there were large number of observations in the various judgments/ order in several proceedings depreciating the dilatory tactics adopted by the petitioner thereby thwarting due process of law.

10.22 All the proceedings which ensued after the aforesaid order dated 04.10.2021, thus proceeded in a circumstance where the trial court was under a mandatory direction to complete the trial within the time framed by this Court, which is otherwise also the responsibility of a court trying an offence of 1996.

10.23 The matter again did not rest with petitioner's Section 91 CrPC application being partly allowed by this court with a direction that the trial be positively concluded within 9 months. Pursuant to the passing of the aforesaid order, it was expected from the petitioner to co-operate in the trial. However, petitioner's efforts to impede and derail the trial by filing petitions after petitions did not stop.

10.24 The petitioner challenged the order dated 04.10.2021 before the Hon'ble Apex Court by filling SLP (Criminal) No.8615 of 2021. The said SLP came to be dismissed vide order dated 05.08.2022 and the directions passed by this court to conclude the trial within 9 months attained finality. In fact vide order dated 05.08.2022 three petitions filed by the petitioner came to be dismissed by the apex court, the details of which have been provided in the victims affidavit in following tabular manner:-

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Title	Particulars
SLP (Crl.) No(s). 8615/2021 Sanjiv Rajendra Bhatt vs. State Of Gujarat	Against order dated 04-10-2021 in CRLRA No.301/2021 directing trial to be completed within 9 months
SLP(Crl) No. 8391 of 2021 DIARY NUMBER 19815/2021 Sanjiv Rajendra Bhatt vs. The State Of Gujarat	Challenging order dated 31-01-2020 whereby petitioners' Successive bail petition was rejected.
SLP(Crl) No. 1648 of 2022 [Diary No.- 4054 – 2022] Sanjiv Rajendra Bhatt vs. The State of Gujarat	Against orders rejecting Section 216 Application to alter/modify charge framed in respect of offences under Sections 17, 21, 27(A) of NDPS, and S 465 & 471 of IPC.

10.25 Once the direction of this Court to trial court to conclude the trial positively by 9 months got confirmed from by the Hon'ble Supreme Court, the presiding judge was expected to conclude the trial, without fail, within the said period of time. However, as it emerges from the record, due to filing of several other applications by the petitioner, the trial court could not complete the trial.

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This Court after the expiry of 9 months granted further extension of 6 months to the Trial Court to complete the trial vide order dated 10.06.2022. As the trial could not be completed within the extended period of 6 months also. Therefore, on the request of the presiding judge, this Court once again extended the time for completion of trial for further period of 6 months. These extensions also came to an end on 30.07.2023.

10.26 Surprisingly, though the initial order dated 04.10.2021 passed by this Court granting 9 moths time to the Trial Court to complete the trial was challenged before the Apex Court by filling SLP (Crl.) No.8615 of 2021, which came to be dismissed by order dated 05.08.2022 and subsequent orders dated 10.06.2022 and 06.01.2023 extending the time for further period of 6 months and 3 months respectively were passed. The petitioner, suppressing the factum of dismissal of SLP (Crl.) No. 8615 of 2021 by order dated 05.08.2022, once again challenged the consequential order dated 6.01.2023 before Hon'ble Supreme Court by filing SLP (Criminal) No. 2023 of 2023. Such a suppression before the highest court is something which needs to be viewed seriously.

10.27 In the said SLP, the petitioner deliberately did not mention the fact that a challenge to the initial order dated 04.10.2019 passed by this Court granting 9 months' time to the presiding

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judge to complete the trial was already dismissed by the Apex Court vide its order dated 05.08.2022. This suppression was taken note of by the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to dismiss the petitioner's SLP (Crl) No. 2023 of 2023 with a cost of Rs.10,000/- vide order dated 20.02.2023.

It would be noteworthy to refer to the observation of the Apex Court, which in unambiguous words, deprecated the conduct of the petitioner, which graduated from filing frivolous petitions to filing petitions where crucial and fundamental facts were suppressed and concealed. The relevant portion of the order dated 20.02.2023 passed by the Hon'ble Apex court [Coram : Hon'ble Mr. Justice B.R. Gavai and Hon'ble Mr. Justice Aravind Kumar] reads as under:-

> *1. Vide order dated 04.10.2021, the High Court had initially fixed a time frame of nine months in concluding the trial. Thereafter, again by order dated 10.06.2022, the period was extended by six months. It appears that since the trial could not be completed within the said period, the learned Additional Sessions Judge vide letter dated 16.12.2022 requested for extension of six months for disposing of the case.*
>
> *2. The learned Single Judge of the High Court vide order dated 06.01.2023 granted extension till 31.03.2023 i.e. almost by a period of three months.*
>
> *4. Mr. Maninder Singh, learned senior counsel appearing on behalf of the State and Mr. A.N.S. Nadkarni, learned senior counsel appearing for the original complainant, submit that the petitioner has*

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suppressed the fact that the order dated 04.10.2021, which had fixed the time schedule of nine months was challenged before this Court and the special leave petition challenging the same i.e. SLP (Crl) No.8615/2021 was dismissed by this Court vide, order dated 05.08.2022.

5. The parties in a criminal trial should be more interested in expeditious disposal of the trial.

6. When the learned Single Judge of the High Court has granted extension and that too on the second occasion, we do not find that there was any cause for the petitioner to have approached this Court by filing a special leave petition.

7. Though, Shri Devadatt Kamat, submits that non-mentioning of the order passed in the Special Leave Petition (Crl) No.8615/2021 is not deliberate but inadvertent, ***it is difficult to believe that such an important omission was inadvertent and not deliberate****.*

8. Though, it is submitted on behalf of the respondents that the petitioner has been indulging in delaying tactics and strictures have been passed against him on various occasions, we do not find it necessary to go into that aspect of the matter.

10. We find this petition to be totally frivolous and without substance. The same is, accordingly, dismissed with costs quantified at Rs.10,000/- (Rupees Ten Thousand only), to be deposited with the Gujarat State Legal Services Authority, within a period of four weeks.

[Emphasis Added**]**

11. From the aforesaid conspectus what emerges as an undisputed position of fact is:

(i) That the Petitioner since the inception has been indulging in delaying tactics;

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(ii) That the petitioner is in a habit of filing petitions after petitions to prolong and protract the proceedings;

(iii) That in almost every proceedings so filed, strictures have been passed against the petitioner depreciating his conduct in adopting the dilatory tactics with a motive to thwart the due process of law.

(iv) That the presiding judge is under a mandate from this court, confirmed twice by the Hon'ble Apex Court, to conclude the trial within a time frame. Thus, the allegation leveled by the petitioner of haste being shown by the presiding judge; rejection of adjournment applications moved by the petitioner by the presiding judge due to malice and bias; imposition of cost on such applications; and rejection of petitioner's prayer to stay the trial till the time he obtains appropriate directions from the appellate court i.e. this Court, are therefore, required to be examined in light of specific timelines which are required to be adhered to by the presiding judge.

12. Apart from the above, the prosecution and the victim has also pointed out to this court the facts pertaining to another case of murder in police custody where the petitioner has been convicted for life. The prosecution as well as the victim has vehemently argued that this is not an isolated case but the petitioner who was a seasoned IPS officer has been in habit of abusing the process of law in each and every criminal case registered against him.

13. The attention of this court has been drawn on the conduct of the petitioner in the said case under section 302 IPC where the petitioner, by employing completely vexatious and dilatory tactics had thwarted the investigation right from 1990 for almost 30 years

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and has ensured that the trial of the said case does not come to its logical conclusion.

14. It has been pointed out to this court that in a criminal case faced by the petitioner under Section 302 of the IPC for a heinous offence of custodial death committed in the year 1989-90, he has been convicted for life, he exhibited a serious tendency of misusing the process of law for 28 years. It has been stated that it was only because of the intervention of the Hon'ble Apex Court that the trial of the said matter could get concluded. It has been argued that the petitioner is adopting same *modus operandi* in the present case since 1996 and the trial in the present case can only be concluded if similar directions as passed in 302 case is passed.

15. It has further been pointed out to this court that in the said 302 case where the petitioner is convicted for life, attempts were made by the petitioner to abuse the process of law to thwart the proceedings and in the said case also various courts have passed strictures against the petitioners as in the present case.

16. The victim of the present case who himself is an advocate of standing has through his affidavit drawn the attention of this court to list of cases where the petitioner by abusing the process of law has been successfully able to delay the trial and against him. A list of such cases is extracted hereunder:

1	SCR.A/	PRAVINSINH	FOR transfer of	The High

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	422/1996	ZALA	case (in which Sanjiv Bhatt is an accused) outside Jam-Jodhpur on the ground that **he is afraid to go to Jam-Jodhpur.**	Court observed that "this special criminal application is wholly misconceived and the same is dismissed."
2	CRI.MA/ 5050/1997	SANJIV RAJENDRABHAI Vs STATE OF GUJARAT STATE OF RAJASTHAN	Praying for anticipatory bail	Disposed of
3	CRI.MA/ 7034/1997	SANJIV RAJENDRABHAI Vs STATE OF GUJARAT	Pertains to **NDPS offence** in which Sanjiv Bhatt is an accused.	Withdrawn

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		STATE OF RAJASTHAN		
4	SCR.A/6/1998	SANJIV RAJENDRABHAI BHATT Vs STATE OF GUJARAT STATE OF RAJASTHAN SUPERINTENDENT OF POLICE, CID, (C.B.)	AGAINST THE POLICE INQUIRY ORDERED BY CHIEF JUDICIAL MAGISTRATE, PALI (RAJ.) in **NDPS offence** in which Sanjiv Bhatt is an accused.	Writ petition **DISMISSED** by the Gujarat High Court.
5	LPA/906/1998	SANJIV RAJENDRABHAI BHATT Vs STATE OF GUJARAT STATE OF RAJASTHAN SUPERINTENDENT OF	Against the judgment and order passed by the Gujarat High Court in SCR.A/6/1998 dismissing the writ petition. Concerning NDPS offence	Appeal **DISMISSED** by the Gujarat High Court

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		POLICE, CID, (C.B.)		
6	LPA/102/1998	SANJIV RAJENDRA BHATT Vs. STATE OF GUJARAT SUMERSINH C RAJPUROHIT POLICE INSPECTOR	Pertains to **NDPS offence** in which Sanjiv Bhatt is an accused	Appeal **DISMISSED** by the Gujarat High Court
7	SCR.A/ 982/1998	SANJIV R BHATT Vs STATE OF GUJARAT STATE OF RAJASTHAN	Pertains to **NDPS offence** in which Sanjiv Bhatt is an accused.	WITHDRAWN
8	CRI.MA/ 5959/1999 JAMNAGAR	SANJIV RA BHATT,IPS Vs	Re. **offence under Section 302 of IP Code**	PENDING

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		STATE OF GUJARAT MAHESH DAMJIBHAI CHITRODA	in which Sanjiv Bhatt is an accused	
9	SCR.A/ 971/2007 JAMNAGAR	SANJIV R. BHATT, IPS vs.10 STATE OF GUJARAT RAVJIBHAI HARJIBHAI SINOJIA	Re.**offence under Section 302of IPCode** in which Sanjiv Bhatt is an accused	Disposed of by the High Court.
10	SCR.A/ 973/2007 JAMNAGAR	SANJIV R. BHATT, IPS vs. STATE OF GUJARAT CHETANKUMAR PRATAPRAI JANI	Re.**offence under Section 302of IP Code** in which Sanjiv Bhatt is an accused	Disposed of by the High Court.
11	CRI.MA/	SANJIV	FOR	Application

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	15941/2010 PORBANDAR	BHATT, IPS vs. STATE OF GUJARAT NARAN SUDHA@NARAN JADAV	QUASHING AND SETING ASIDE THE CRIMINAL CASE NO. 13129/1998 PENDING BEFORE THE COURT OF LD. JMFC, PORBANDAR **reg. TORTURE IN CUSTODY** in which Sanjiv Bhatt is an accused	**DISMISSED** by the High Court.
12	SLP(CRI)/ 1699/2012	SANJIV BHATT, IPS vs. STATE OF GUJARAT NARAN SUDHA@NARAN JADAV	From the judgement and order dated 14/12/2011 in CRLMA No.15941/2010 of passed by the High Court.	SLP **DISMISSED** by the Supreme Court.

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13	SCR.A/ 2101/2011	SANJIV RAJENDRA BHATT, IPS Vs STATE OF GUJARAT AMRUTLAL MADHAVJI VAISHNANI	FOR QUASHING AND SETING ASIDE THE ORDER PASSED IN CRIMINAL REVISION APPLN. 21/96 PASSED BY THE LD. ADDL. SESSIONS JUDGE, KHAMBHALIA, reg.**offence under Section 302 of IP Code** in which Sanjiv Bhatt is an accused	Petition **REJECTED** by the High Court
14	SLP(CRI)/ 8360/2011	SANJIV RAJENDRA BHATT Vs	FROM THE JUDGMENT AND ORDER OF THE	Since Supreme Court was not inclined,

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		STATE OF GUJARAT AMRUTLAL MADHAVJI VAISHANANI	GUJARAT COURT IN SCR.A/2101/2011	petition was **WITHDRAWN** by the petitioner
15	SCR.A/ 3323/2011	SANJIV RAJENDRA BHATT Vs STATE OF GUJARAT AMRUTLAL MADHAVJI VAISHANANI	FROM THE SPEAKING ORDER DATED 09.12.2011 IN SESSIONS CASE NO. 35/2001. (Re.**offence under Section 302 of IP Code** in which Sanjiv Bhatt is an accused)	Petition **DISMISSED** by the High Court
16	SLP(CRI)/ 355/2012	SANJIV RAJENDRA BHATT Vs STATE OF GUJARAT	FROM THE ORDER PASSED IN SCR.A/3323/2011 BY THE HIGH COURT	Since Supreme Court was not inclined, petition was **WITHDRA**

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		AMRUTLAL MADHAVJI VAISHANANI		**WN** by the petitioner
17	CRI.MA/ 15438/2011	SANJIV RAJENDRABHAI BHATT Vs STATE OF GUJARAT N C PATEL	FOR QUASHING AND SET ASIDING THE COMPLAINT BEING CRI. CASE No. 12123/2011PENDING IN THE Court of Ld. 3rd Addl. Chief Judicial Magistrate, Ahmedabad (Rural).	Disposed of
18	CRI.RA/ 534/2012	SANJIV R BHATT Vs STATE OF GUJARAT	reg. **offence under Section 302 of IP Code** in which Sanjiv Bhatt is an	Since the High Court was not inclined, petition was

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		AMRUTLAL MADHAVJI VAISHNANI	accused.	**WITHDRAWN** by the petitioner.
19	SCR.A/ 1337/2012	SANJIV RAJENDRA BHATT,IPS Vs STATE OF GUJARAT VIJAYSINH BHAVSINH BHATTI	Reg**. offence of TORTURE** in which Sanjiv Bhatt is an accused.	PENDING
20	SCR.A/ 2086/2012	SANJIV R BHATT Vs STATE OF GUJARAT AMRUTLAL MADHAVJI VAISHNANI	FROM THE JUDGMENT AND ORDER DATED 30.06.12 PASSED BY SESSIONS COURT IN CRI.REVISION APPLN. NO. 20/2012. Matter pertains to an **offence under Section 302of IP**	**Dismissed with specific observation and the note that it is a classic case of abuse of process scuttling the judicial process for decades.**

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			Code in which Sanjiv Bhatt is an accused.	
21	WP(PIL)/ 216/2012	PUCL/SANJIV RAJENDRA BHATT Vs STATE OF GUJARAT COMMISSIONER OF INQUIRY	Sanjiv Bhatt, a serving IPS officer then, became a co-petitioner with one NGO.	High Court disposed of the Writ Petition
22	SLP(C)/ 18794/2013	PUCL/SANJIV RAJENDRA BHATT Vs STATE OF GUJARAT COMMISSIONER OF INQUIRY	FROM THE ABOVE JUDGMENT AND ORDER PASSED IN WP(PIL)/216/2012 BY GUJARAT HIGH COURT	Supreme Court **DISMISSED** the petition

”

17. It has been pointed out to this court that all the aforesaid fact also constitutes part of the judgement dated 21.05.2020 rendered by this Court in CRA No 1650 of 2019.

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18. Attention of this court is also drawn towards strictures passed against the petitioner in the said case by this court as well as the Supreme Court. It is noteworthy to quote a few:-

18.1 Strictures passed vide detailed judgment and order dated 24.6.1999 in Special Crl. Application No.422/96:-

> *"3. The second ground which persuades me not to grant relief to the petitioner is that this criminal case has been filed in the year 1992 and* ***though the petitioner has been summoned by non-bailable warrant he has not presented himself in the trial court****. This special criminal application has been filed in the year 1996. So more than four years he has managed not to put appearance in the court.* ***That shows how the Police Officers are taking the court process in the criminal cases****. This conduct of the petitioner deserves to be deprecated and it reflects how the Police Officers are acting biasly and partially in their own case."*
>
> *"4. The third ground for rejection of this special criminal application is that he has at no point of time felt aggrieved of the continuation of the criminal case against him at the said place.* ***This criminal case has been filed in the year 1992 and he has only chosen to file this special criminal application only in the year 1996 before this Court."***
>
> *"5. Taking into consideration the totality of the facts of this case, this special criminal application is wholly misconceived and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated.* ***The petitioner is directed to remain present personally in the court of JMFC, Bhanvad-Jamjodhpur in criminal case no.93/92 on 16th August, 1999,*** *if he is having the apprehension of endanger (****sic****.) to his life he can approach the police department which shall take care of him. In case the petitioner does not put appearance before the court on the said date, then*

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this matter may be reported by the respondents to this court by filing a simple note."

[Emphasis Added**]**

18.2 Strictures passed vide detailed judgment and order passed in Crl. Misc. Application No.1799/96 and Spl. Crl. Application No.422/96:-

> ***"5.1.*** *Perusing the record of the earlier petition of the petitioner, it was seen that an affidavit-in-reply was filed by the original complainant, respondent no.2 herein, to say that in the year 1995, similar applications under Section 408 of the Code for transfer of all the cases were filed by all the three accused in the Court of learned Sessions Judge at Jamnagar which were dismissed by order dated 30.1.1996.* ***It was also stated by him that, that petition was nothing but dilatory tactics by well educated police officers****. It was also stated by him that the other accused were not joined as party-respondents so as to cause further delay, which may also lead to multiplicity of proceedings in the same matter.*
>
> ***6.*** ***The above record of facts clearly show that judicial proceedings and the provisions of the Criminal Procedure Code are prima facie, grossly abused by the petitioner and benefit thereof has also accrued to the other accused persons who are not joined as parties*** *and, therefore, they are not before this Court. Significantly, the petitioner has not made the prayers and obtained the ex-parte interim relief for himself alone and practically succeeded in frustrating the original complaint.* ***The main issue sought to be agitated in the present petition is that the prosecution of the original complaint requires sanction under Section 197 of the Code****. Thus, without disclosing the facts about the progress and proceedings during the period between the first order dated 21.12.1990 and the filing of the present petition in May 1996, the issue of requirement of sanction is sought to be agitated and the*

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proceedings are delayed by ten more years. ***Upon calling for the record & proceedings of Criminal Case No.93 of 1992, it was found that stay of the proceedings was also operating by virtue of the interim orders made in Criminal Misc. Application No.5959 of 1999 and before that evidence of the complainant was partly recorded in the trial court without the issue of sanction being raised before the court.***

7. ***The original complaint clearly alleges gross violation of human rights of a citizen. The enquiry and prosecution prima facie appears to have been scuttled by a series of ingenious proceedings. Such obvious abuse of the process of law by the guardians of law themselves cannot be taken lightly and cannot be countenanced.*** *Necessary orders for the grant of appropriate relief is required to be made after hearing all the parties concerned."*

[Emphasis Added**]**

18.3 Strictures passed vide detailed judgment dated 10.10.2011 passed in Review Application [filed after 16 years to delay the trial] in Criminal Application No.2101/2011:-

"In other words, when the entire judicial process has approved of the decision rejecting the summary report filed by the police and cognizance for the alleged offence was taken by the Magistrate, the next step which should follow would be the trial by the competent court, ***and as could be seen from this, the said trial has not even started even after 21 years. Even though the order of the magistrate has been approved and accepted all throughout, it has remained ineffective for all practical purposes, and on top of that, when the revision application is withdrawn which would allow the trial to proceed, it is sought to be thwarted by the present petitioner in the name of bias and mala fides and rules of natural justice and/or taking away of accrued rights…."***

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> *52. …. **In the present case, the effect or the underlying object of this litigation or revision is that the trial of the sessions case may not proceed.** The trial of Sessions Case No. 35 of 2001 for the alleged offence under sec. 302, etc. referring to the brutality of the police towards the victim – brother of the first informant/complainant based on the material and evidence which prima facie the Magistrate has found sufficient for the purpose of committal, cannot be permitted to be thrown out or scuttled at the threshold without trial. **If that is permitted, it would amount to subverting the judicial process of trial and the conclusion having been arrived without appreciation of evidence by the competent court at the trial. In other words, without appreciation of evidence and the material at the trial when the competent court of magistrate has found prima facie material to issue the process and the same order has remained valid and approved by the higher courts, it has been sought to be negated by such litigation.***
>
> **[**Emphasis Added**]**

18.4 Strictures passed in judgment and order dated 26.11.2011 passed in Special Crl. Application No.3323/2011:

> *"**Present case has a chequered history and number of proceedings have been initiated one after another since 1995-96 by which there is no progress in the trial with respect to the incident which has taken place in they 1990 and even after a period of 21 years, the case is at the stage of framing of the charge."***
>
> *"Despite the fact that the petitioner preferred Revision Application before the Sessions Court against the order passed by the learned Magistrate challenging the order dated 20.12.1995 on 15.07.2011, **the petitioner approached this Court by preferring Special Criminal Application No.2101/2011 challenging the order passed by the learned Sessions Court dated 15.07.2011 permitting the State to withdraw the Criminal Revision Application No.21/1996, without disclosing the fact***

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that petitioner had already preferred Criminal Revision Application before the learned Sessions Court challenging an order passed by the learned Magistrate dated 20.12.1995 *which was impugned in Criminal Revision Application No.21/1996."*

*"**The learned advocate appearing on behalf of the original complainant pointed out the filing of the Revision Application by the petitioner and suppression of material fact before this Court at the time of hearing of Special Criminal Application No.2101/2011. However, despite the same the petitioner continued to proceed with the Special Criminal Application No.2101/2011 challenging the order passed by the learned Sessions Court permitting the State to withdraw the aforesaid Criminal Revision Application No.21/1996 and did not pursue the Criminal Revision Application and the delay condonation application submitted by him before the learnedSession Court."***

"That thereafter Sessions Case No.35/2001 came up for hearing before the learned Sessions Court for framing of charge on 27.12.2011 and at that stage the learned advocate appearing on behalf of the petitioner submitted an application Exh.79 in Sessions Case No.35/2001 requesting deferment of framing of charge till his pending Criminal Revision Application along with application for condonation of delay is decided first before the Court proceeds with the framing of charge. ***At this stage, it is required to be noted that even on that day also, the petitioner did not make any effort to go on with the hearing of the Revision Application and the delay condonation application.*** *The application Exh.79 in Sessions Case No.35/2001 came to be heard by the learned Sessions Court (trial Court), who by its impugned order dated 09.12.2011 has been pleased to dismiss the said application by observing that more than 15 years have been passed and still the charge is not framed and therefore, it will not be appropriate to defer the framing of the charge."*

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*"**On the contrary, to prefer the Special Criminal Application No.422/1996 despite filing the Revision Application, it appears the petitioner was not desirous of pursuing the said Revision Application and wanted to delay the trial and the framing of the charge on any ground."***

*"**Nothing is on record that since July 2011, the petitioner submitted any application before the learned Revisional Court for early disposal of the Revision Application and delay condonation application and the Revisional Court has refused to hear the said Revision Application / delay condonation application**. On the contrary, to prefer the Special Criminal Application No.422/1996 despite filing the Revision Application, it appears the petitioner was not desirous of pursuing the said Revision Application and wanted to delay the trial and the framing of the charge on any ground."*

*"**It is very unfortunate that even after a period of 21 years of the alleged incident and after 16 years of the order passed by the learned Magistrate directing to issue process against the accused persons who are police officers, the case is still at the stage of framing of charge. It is required to be noted that the allegation against the accused persons who are police officers are with respect to violation of human rights also. The original complainant being the victim and brother of the deceased, who has died, has a legitimate expectation of getting justice at the earliest and to see to it that accused persons who are found to be guilty are punished at the earliest. Any attempt on the part of the accused persons to delay the trial should be dealt with iron-handedly and is required to be viewed very seriously, more particularly, when the accused persons are police officers."***

*"**It appears to the Court that this is one another attempt on the part of the petitioner to delay the trial and even framing of the charge."***

[Emphasis Added**]**

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18.5 Directions issued by the Apex Court vide order dated 24-05-2019 passed in SLP [Crl.] No. 4993 of 2019 [302- Murder Trial]:-

> *"In view of the aforesaid, we direct the Trial Court not to delay the case any more in any manner whatsoever and not to entertain unnecessary applications delaying the decision of the case. Let the trial be concluded positively by 20.6.2019.*
>
> *No dilatory tactics be permitted to be adopted by any party in any manner whatsoever."*

19. Attention of this court is also drawn towards the habitual conduct of the petitioner, whereby, allegations are made by him against every judicial officer who has been conducting his case. Be that of lower judiciary or of this court or of the Apex Court.

19.1 The prosecution as well as the victim has pointed out that while the trial in the murder case was pending against the petitioner, the petitioner had made similar scandalous allegations against the District and Sessions Judge, Jamnagar in the said case and had also made a similar application for transfer of his case from the said presiding officer during that trial. It has been emphasized that the petitioner is adopting the same *modus operandi* in the present case also.

19.2 It has been further pointed out that when the attention of this Court was drawn to such allegations, a Division Bench of this Court took strong exception to such scandalous

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allegations which, according to the Division Bench of this Court amounted to scandalising the court proceedings.

19.3 It has been brought to my notice that when such an attempt was made, the ld. Counsel appearing on behalf of the petitioner had to express his regrets before this court and had sought permission to delete such scandalous allegations. All of this forms part of the record of this court.

19.4 It has been pointed out that more shocking is the fact that in a proceeding arising out of the conviction of life recorded against the petitioner in the said Section 302 IPC case, the petitioner filed SLP [Crl.] No.9445 of 2022 before the Apex Court. When the matter was listed before the Bench of Hon'ble Supreme Court, the petitioner filed a letter seeking recusal of the presiding judge of the bench of the Supreme Court only on the ground that the said Judge had passed some orders 13 years back as a High Court judge in some interlocutory proceedings, and therefore, the petitioner apprehends bias. It has been contended that this was a blatant and contemptuous attempt to scandalise even the Hon'ble Supreme Court. This lead to the Hon'ble Supreme Court to take up the matter of recusal as preliminary issue and after a detailed bipartite hearing, the Supreme Court vide a separate judgment and order dated 10.05.2023 rejected the

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contention of the petitioner specifically holding that the petitioner is guilty of forum shopping and bench hunting. It would be worthwhile to quote the observation of the Hon'ble Supreme Court made in the said order as recently as 10.05.2023:-

> *5. Having heard the learned Senior Advocates appearing on behalf of the respective parties at length on the letter circulated, we are of the opinion that the request of recusal is nothing but an attempt to indulge in Forum Shopping and Bench Hunting and to avoid the Bench with mala fide intention. It is to be noted that earlier the Bench headed by one of us heard the special leave petition in a case relating to the very FIR and filed by the very petitioner and at that point of time, no such objection was raised and no such prayer was made. It is also required to be noted that even when the present special leave petition was notified, a number of occasions after the letter dated 09.11.2022, namely, 14.12.2022, 10.01.2023, 27.02.2023, 28.03.2023, 02.05.2023 and the matter was adjourned even at the request of the learned Senior Advocate appearing on behalf of the petitioner. At that time, the letter dated 09.11.2022 was not pressed into service. However, thereafter when the present special leave petition is taken up for further hearing today and actually being heard, the letter is pressed into service, which is nothing but an attempt on the part of the petitioner to avoid the Bench, which is required to be deprecated. Earlier, merely because some proceedings might have been heard by one of us before the High Court in connection with the present matter and/or proceedings and some observations might have been made against the petitioner on the delaying tactics, cannot be a ground to accede to the request made by the petitioner. As the prayer lacks bona fide and seems to have been made with mala fide intention to avoid the Bench for no valid reason, the prayer for recusal is rejected."*

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20. This court is constrained to refer to all of the aforesaid facts, which are matters of record and findings of courts, only because this court is called upon to balance the fundamental right of the accused viz the fundamental rights of the victim. Both these competing rights are at loggerheads before this court. On one hand it's a former IPS officer with 27 years of service knowing the fine details of CrPC at the back of his hand is alleging that a fair trial is denied to him. On the other hand, there is an advocate, equally well versed in law, who is alleging that from past 27 years, his right to get justice in a case where he was made a victim of brutal police atrocity for getting a valuable tenanted property vacated has been denied to him.

21. In this context, the questions posed before this court are not new. It is not this court which is framing the question for the first time but the same has already been framed by the coordinate benches of this court before which matters arising from the instant FIR have come up from time to time. The entire edifice of the judgement dated 03.04.2018 and subsequent orders passed by this court, was that a victim of a crime of alleged false fabrication in a serious NDPS Offence has not seen justice for over 22 years, giving him a ray of hope of getting justice from the system. Four more years have elapsed since the order of this court. This was followed by the observation of this court in order dated 31.01.2020, wherein, this court held that the present case is not only about those who are involved but also about the faith of a common man in the system which should not be permitted to be eroded only on account of long

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drawn litigation in the name of rights of either side to proceed in accordance with law. Filing of petitions, frivolous or academic cannot be at the altar of the very credibility and functionality of the criminal justice system.

22. This Court is constrained to minutely record the chequered history of this case for the reason that constitutional powers of superintendence has been invoked by the Petitioner claiming that his Article 21 rights, rights under Criminal Procedure Code and more particularly his right to receive a fair trial has been impinged. As such, this Court being the custodian and guardian of the fundamental right of the Petitioner, as well as, that of the victim, has to satisfy itself whether the person approaching this Court, invoking its equitous and constitutional jurisdiction, has approached this court with clean hands and has clean antecedents. A person who has scant regard for the judicial process and the majesty of rule of law cannot be permitted to invoke the constitutional powers for protection of his fundamental right when he himself by his conduct has been successively indulging in abusing the procedure prescribed in law for protection of said fundamental rights. The conduct and antecedents of Petitioner in petitions which invoke constitutional powers of this court thus becomes extremely relevant.

23. In light of the aforesaid, I would now proceed to examine the merits of the rival contention made before this court. However,

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before embarking on to the said exercise, this court is conscious of the fact that what has been invoked by the petitioner in this case is only the supervisory jurisdiction vested in this court under Article 227 of the Constitution of India. It is well settled that the said jurisdiction is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. In exercise of its' Article 227 Jurisdiction this Court cannot correct errors of fact by examining the evidence and reappreciating it, which only a superior appellate court can do, in exercise of its statutory power as a court of appeal. This court is also mindful of the fact that while exercising its jurisdiction under Article 227, this Court also cannot convert itself into a court of appeal. This power can be exercised only if this court was satisfied that:- (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. [See *Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 at page 694; Bathutmal Raichand Oswal v. Laxmibai R. Tarta, (1975) 1 SCC 858*]

24. This court has closely examined the judgment dated 8.06.2023 rendered by the Principal District and Session Judge. The Principal District and Session Judge by a detailed order has dealt with all the issues raised by the petitioner in support of his allegations of bias against the presiding judge holding the present trial. In para 2 which

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comprises of para 2.1-2.19 the Principal District and Session Judge has taken note of all the points pleaded by the petitioner in its 408 application. In para 7 which comprises of para 7.1-7.26, the Principal District and Session Judge has recorded the elaborate submissions made by the counsel appearing for the petitioner, Mr. S. B. Thakore. At para 8 the Principal District and Session Judge has recorded the objections of the State and after considering the law at para 9, the Principal District and Session Judge rejected the argument on maintainability of the petition raised by the state. At para 12 & 13 the Principal District and Session Judge considered the argument of the petitioner regarding hearing of the trial by the senior most additional session judge of the division and rejected the same. Thereafter, from para 14 to 56, the Principal District and Session Judge has in forty long pages has dealt with each and every submission, allegation canvassed by the petitioner and after considering the law cited by the contesting parties at para 57 to 60 has concluded as under:-

> *"61. As such, it appears that there does not appear any substance in the present application and it deserves to be rejected but before doing so, this court would refer an observation made by the Hon'ble High Court while deciding Criminal Revision Application No. 534 of 2023 with Criminal Revision Application No. 541 of 2023, on dated 05.05.2023, with regard to the opportunity of fair trial which was provided by the concerned learned Presiding Officer or not, In this connection, it is pertinent to state that order passed by the learned 3rd Additional Sessions Judge & Special Judge (N.D.P.S. Act, B. K. District) in Special (N.D.P.S.) Case No. 3 of 2018, below Exh.648 and Exh.649 dated 13.04.2023 were challenged and while rejecting the aforesaid Criminal*

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Revision Applications, Hon'ble High Court has in Para-9 observed as under:

> *"9. This Court does not find any reason to interfere with the orders impugned, as the object in criminal jurisprudence of granting fair trial does not seem to be hampered, rather, the trial Court Judge, though had the time limit of deciding the matter on 31.03.2023, had administratively prayed for an extension, so as to ensure that the interest of the accused does not get jeopardize…."*

> *62.As such, when Hon'ble High Court has specifically observed that there does not arise any question of hampering of fair trial and also looking to the facts that there does not appear any malafide intention of the learned Presiding Officer and particularly when it appears from the record that trial is being conducted as per settled precedents and every opportunities of being heard are given to protect the principle of natural justice by the learned Presiding Officer, present application deserves to be rejected. Therefore, following order is passed."*

25. This court while exercising its Article 227 Jurisdiction is consciously refraining from making any detailed observation on the reasoning and findings given by the Principal District and Session court while rejecting petitioner's Section 408 CrPC petition as this court is not sitting in appeal over the said findings. Any detailed discussion qua the said findings will result in this Hon'ble court re-appreciating the evidence and entering into merit review of the respective contentions raised by the parties, which is not permissible under the supervisory jurisdiction which this court is exercising in the present case under Article 227 of the Constitution of India.

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Suffice it to say that this court after examining the respective findings recorded by the Principal District and Session judge in para 14 to 56, is of the opinion that from the holistic and conjoint reading of the allegations made and respective findings rendered by Principal District and Session qua each of those allegation it cannot be said that the findings in the impugned order are perverse or patently erroneous on the face of the proceedings or based on clear ignorance or utter disregard of the provisions of law. Certainly, by no stretch of imagination it also cannot be said that the said findings have resulted into grave injustice or gross failure of justice.

26. Though with the limited remit of jurisdiction this court is exercising, the matter ought to have ended here. Once this court was satisfied that the order of Principal District and Session Judge did not suffer from an error which is manifest and apparent on the face of the proceedings and is based on clear ignorance or utter disregard of the provisions of law which has resulted into grave injustice or gross failure of justice no further judicial exercise was required to be undertaken by this court under Article 227 of the Constitution. However, since grave and shocking allegations of malafide and bias have been levelled by the petitioner, which has the tendency of eroding the faith of a common man in the criminal delivery system as it attacks its' very credibility and functionality, therefore, this court, in order to obviate any doubts regarding the impartiality and fairness of the instant trial, has decided to independently examine the

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relevant record of the case, dehors the findings rendered by the Principal District and Session Judge, to ascertain the veracity or falsity of the allegations and counter-allegations.

27. Normally, this court would have avoided a detailed examination of the facts pleaded by the petitioner regarding various applications filed by him and the judicial order/s passed thereon by the trial court, since if the order is bad, it is for the aggrieved party to challenge it in appropriate proceedings. Even if a wrong order is passed, it can never lead to the conclusion of trial judge being bias. However, the petitioner has insistently and vehemently argued all the instances narrated hereunder and therefore this court has examined them on merits to ensure that the petitioner may not have a feeling that his contentions are not dealt with.

28. To independently ascertain the veracity of the allegations and counter allegations this court has examined the following documents. The index of the documents is extracted hereinbelow:-

CONVENIENCE COMPILATION NO.1		
SR. NO.	**PARTICULARS OF DOCUMENT**	**DATE**
1.	List of four defense witnesses received by prosecution. (@ Page-1 and 2)	30.03.2023
2.	Application of accused Exh.735 submitted on 03.05.2023 and endorsed as not pressed for having become infructuous.	09.06.2023

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	(@ Page-3 to 8)	
3.	Application under Section-409 of Criminal Procedure Code submitted by accused against 1st Presiding Officer Shri. P.S.Brahambhatt in NDPS Special Case No.3 of 2018. (@ page-9 to 20)	20.12.2018
4.	Application under Section-409 Criminal Procedure Code and order below it submitted by accused on 16.02.2019 in Sessions Case No.148 of 2016, different case of custodial murder in progress at Jamnagar praying for transfer of case from the court of Principal Sessions Judge to 4th Additional Sessions Judge, Jamnagar. (@page-21 to 30)	19.02.2019
5.	Application of accused Exh.275 submitted by him in NDPS Case No.3 of 2018 seeking adjournment on the ground of death of his advocate's sister in law which came to be granted. (@ page-31)	17.03.2022
6.	Application on behalf of accused submitted at Exh.297 seeking adjournment as his advocate is busy in another court proceedings at Deesa which came to be granted. (@ page-32)	05.04.2022
7.	Application on behalf of accused submitted at Exh.305 seeking adjournment as his advocate is busy in conducting Regular Civil Suit pending	15.04.2022

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	before Additional Civil Judge which came to be granted. (@ page-33)	
8.	During the course of cross examination of PW-9 Mr. I.B.Vyas time was sought for further cross examination which came to be recorded in deposition and court granted time up to 28.04.2022. (@ page-34)	22.04.2022
9.	Application on behalf of accused submitted at Exh.307 seeking adjournment on religious ground which came to be granted. (@ page-35)	28.04.2022
10.	Application submitted by PW-9 Shri. I.B.vyas during the course of his cross examination referring about his various ailment and illness and completing his cross examination as early as possible. (@ page-36)	28.04.2022
11.	During the course of cross examination of PW-9 Shri. I.B.Vyas defense sought adjournment which came to be recorded in deposition and court granted adjournment. (@ page-37)	18.05.2022
12.	Application on behalf of accused submitted at Exh.322 seeking adjournment of 10 days on the ground of marriage of defense advocate's son	20.05.2022

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	which came to be granted. (@ page-38)	
13.	Application on behalf of accused submitted at Exh.325 seeking adjournment for attending post marriage rituals and also on family ground which came to be granted. (@ page-39)	26.05.2022
14.	Application on behalf of accused submitted at Exh.329 seeking adjournment on the ground of defense advocate's illness of diabetes and blood pressure which came to be granted. (@ page-40 and 41)	09.06.2022
15.	During the course of cross examination of PW-9 Shri. I.B.Vyas defense sought adjournment which came to be recorded in deposition. (@ page-42)	17.06.2022
16.	Application on behalf of accused submitted at Exh.336 seeking adjournment as defense wants to inspect case record which came to be granted. (@ page-43)	18.06.2022
17.	Application on behalf of accused submitted at Exh.366 seeking adjournment on the ground of changing advocate which came to be granted for 7 days. (@ page-44 and 45)	21.06.2022
18.	Application on behalf of accused submitted at Exh.434 seeking adjournment for further cross	15.09.2022

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	examination of PW-14 Pravinbhai Parmar on the ground of defense advocate's ill health which came to be granted. (@ Page-46)	
19.	Application on behalf of accused submitted at Exh.457 seeking adjournment on the ground of marriage and social engagement which came to be granted. (@ page-47)	19.10.2020
20.	Application on behalf of accused submitted at Exh.459 seeking adjournment of cross examination of PW-14 Pravinbhai Parmar as defense advocate had gone to his native which came to be granted. (@ page-48 and 49)	02.11.2022
21.	Application on behalf of accused submitted at Exh.594 requesting court for not keeping matter on a particular day as accused wants to attend court proceedings at Ahmedabad which came to be granted. (@ page-50 and 51)	24.02.2023
22.	Application on behalf of accused submitted at Exh.606 seeking adjournment on the ground of religious occasion as well as marriage in the house of relative of defense advocate and not to continue with court proceedings in second half of 07.03.2023 and also between 08.03.2023 to	07.03.2023

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	10.03.2023 which came to be granted. (@ page-52, 53, 54)	
23.	Application on behalf of accused submitted at Exh.95 seeking adjournment to implicate 15 charge-sheet witness as accused under Section-193, 223 read with Section-319 of Criminal Procedure Code. (@ page-55 to 65)	18.02.2020
24.	Prosecution gave pursish Exh.764, praying that petitioner accused has already engaged two advocates even then accused himself is proceeding with the matter hence, defense advocates should proceed with the matter instead of accused, which court disposed off accordingly. (@ page-66 and 67)	15.06.2023
25.	Prosecution gave application Exh.621 narrating details about dropping 50 charge-sheet witnesses. (@ page-68 to 79)	16.03.2023

CONVENIENCE COMPILATION NO.2		
SR. NO.	**PARTICULARS**	**DATE**
1	CAV order in Criminal Revision Application No.107 of 2021 preferred by petitioner accused against application Exh.132, given by him for adjourning the hearing of his application Exh.67 till his application vide Exh.58 and 63 are not	20.02.2021

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	disposed off, which Hon'ble High Court rejected both on law and facts. (@ page-1 to 12)	
2	CAV judgment in Criminal Revision Application No. 296 of 2021 preferred by petitioner accused against rejection of application Exh.139 preferred by him under Section-216 of Criminal Procedure Code, for altering and modifying charge framed against him, which came to be dismissed by Hon'ble High Court. (@ page-13 to 37)	05.08.2021
3	Petitioner accused challenged order of Trial Court tendering pardon to original accused through Criminal Revision Application No.299 of 2021 before this Court which came to be dismissed. (@ page-38 to 69)	05.08.2021
4	Petitioner accused challenged order passed below Exh.508 and Exh.529, regarding deposition of PW-16 Shri. R.P.Patel decided against him by Ld. Trial Court, before this Court through Criminal Revision Application No. 333 of 2023, which came to be rejected. (@ page-70 to 90)	23.03.2023
5	Petitioner accused challenged order of Ld. Trial Court declining him permission to examine further defense witnesses (vide Exh.648, 649 and	05.05.2023

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	725), before this Court in Criminal Revision Application No. 534 of 2023 with Criminal Revision Application No. 541 of 2023, which came to be rejected. (@ page-91 to 102)	

29. This court has further examined the following orders / judgments that have been placed by victim along with his affidavit in reply, which have arisen from the impugned proceedings i.e. NDPS Case No.3 of 2018:-

SR. NO.	**PARTICULARS**	**DATE**
1	Petitioner accused challenged order rejecting his discharge application before this Court through Criminal Revision Application No. 1650 of 2019 which came to be dismissed. (@ page-180 to 243)	21.05.2020
2	Petitioner challenged order of Ld. Trial Court rejecting his application Exh.58 and 63 preferred under Section-91 of Criminal Procedure Code through Criminal Revision Application No. 301 of 2021 which came to be partly allowed.	04.10.2021
2.1	Hon'ble High Court in Para-29 of the CAV judgment directed Special Judge NDPS Court at	

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	Palanpur District, Banaskantha to expedite trial proceedings and complete the same positively within period of (Nine) months from the date of receipt of its order. (@ page-309 to 324)	
2.2	As Ld. Presiding Officer i.e. 3rd Additional Sessions Judge in charge of Special NDPS Case No.3 of 2018 could not complete trial within 9 months, through letter dated 26.05.2022, further extension of six months was requested, which Hon'ble High Court granted with clarification that henceforth, no further extension will be granted. (@ page-325)	10.06.2022
2.3	Another extension of six months was requested by Ld. 3rd Additional Session Judge, Palanpur through office note dated 21.12.2022 which was granted up to 31.03.2023 with a clarification that henceforth no further extension will be granted. (@ page-326)	06.01.2023
2.4	Another extension was sought by Ld. Trial Court through office notes dated 18.03.2023 and 20.04.2023 seeking further three months time to dispose off case which came to be granted till 30.07.2023 with similar clarification. (@ page-327)	24.04.2023
3	Petitioner accused preferred	05.08.2022

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	(1) SLP No. 8391 of 2021 against rejection of bail by this Hon'ble Court, (2) SLP No. 8615 of 2021 against CAV judgment of this Court in Criminal Revision Application No. 301 of 2021, and, (3) SLP No. 1648 of 2022 against CAV judgment of this Court in Criminal Revision Application No. 299 of 2021, which came to be dismissed as withdrawn and dismissed by Hon'ble Supreme Court. (@ page-293 and 294)	
4	Petitioner accused challenged order of this Court passed in Criminal Revision Application No. 301 of 2021 dated 06.01.2023 through SLP No.2023 of 2023 which came to be dismissed with cost quantified at Rs.10,000/-. (@ page-301 to 303)	20.02.2023
5	Petitioner accused challenged order of this Court passed in Special Criminal Application No. 680 of 1999 through Criminal Misc. Application (Recall) No. 1 of 2020 which came to be rejected. (@ page-160 to 179)	17.01.2020

30. After close examination of the aforesaid documents, this court finds that what is writ large in this case is that the trial court since 2021 is proceeding under the strict direction of this court to complete

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the trial within a time bound period. The initial direction of this court was to complete the trial within 9 months which was subsequently extended by this court from time to time. Further the said timeframe has been twice confirmed by the Hon'ble Apex Court and has now expired on 30.07.2023. The entire conspectus of allegations of haste, malafide and bias viz. and the orders passed by the presiding judge in the various applications moved by the petitioner thus needs to be examined from the perspective of the strict timelines which have been granted to the trial court to complete the trial which pertains to an alleged offence which has taken place in 1996.

31. Essentially the petitioner has raised an allegation of bias against the judicial officer conducting the trial on the following broad grounds-

31.1 Some orders passed by the trial judge against the petitioners in the applications filed by the petitioner.

31.2 The instances given by the petitioner whereby the ld. Judge either declined an adjournment or did not grant long adjournment as prayed for on behalf of the petitioner.

31.3 The prosecution, according to the petitioner, is putting 'absurd' and 'unnecessary' questions to the witness and the presiding judge is not preventing this.

31.4 During the examination of one witness, the prayer made by the petitioner vide two applications to delete a part of deposition which, according to the petitioner, amounted to

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confessional statement was not acceded to by the presiding Judge. As per the petitioner, instead of deleting his deposition, the ld. Judge mere recorded the objections raised by the petitioner, bracketed the portion which according to the petitioner, amounted to confessional statement.

31.5 The petitioner cited instances whereupon dismissal of the applications filed by the petitioner the presiding Judge did not adjourn the proceedings to enable the petitioner to approach the higher forum.

32. As against the aforesaid arguments, Sh. Mitesh Amin, ld. Public Prosecutor broadly made the following submissions-

32.1 As per the Public Prosecutor apart from the several judicial orders passed which are passed by various courts which are placed on record of this Court [which are reproduced hereinabove], the petitioner is in the habit of abusing the process of law and once the Principle District and Session Judge having passed a detailed judgment rejecting the ground of bias, this Court should not interfere with the sound jurisdiction exercised by the Principle District and Session Judge.

32.2 The trial commenced somewhere in the year 2019 and proceeded smoothly before the very same learned Judge. The petitioner never raised any allegations of bias against the

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Presiding Judge. After the petitioner's application seeking discharge under section 227 of the Code was dismissed which was affirmed by this Court by a detailed judgment that the petitioner started making frivolous applications.

32.3 Even while making these frivolous applications, the petitioner never raised any ground of either bias or lack of faith against the ld. Presiding Officer who is a Judge of the rank of a Sessions Judge

32.4 It was only after the prosecution evidence was over that suddenly the petitioner raised an unsubstantiated allegation of bias against the ld. Sessions Judge presiding over the trial since all these years. This is done only with a view to bring undue pressure on the presiding judge and to create an atmosphere which makes it impossible for the Court to render justice impartially without fear or favour.

32.5 The conduct of the petitioner in the Court room also is that of intimidating the ld. Presiding Judge who, in a matured way, proceeded with the trial.

32.6 Most importantly, it is submitted that firstly the judicial orders passed by a presiding Trial Judge, even if assumed to be not in accordance with the law, cannot become the basis of holding that Judge is biased against the accused.

Secondly, most of the interlocutory orders which,

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accordingly the petitioners are bad in law, were challenged by the petitioner before this Court and were upheld by reasoned and detailed speaking orders/ judgments of this court. Only one order passed by the ld. Judge in the Application of the petitioner under section 91 of CrPC was partly allowed by this Court while partly upholding the order of the ld. Trial Judge.

32.7 It is contended that in none of the earlier proceedings before this Court, the petitioner has even remotely alleged bias or even an apprehension of not getting fair and impartial trial.

32.8 Shri. Amin has contended that as a matter of fact this Court while deciding the Criminal Revision Application No. 534 of 2023 with Criminal Revision Application No. 541 of 2023 while rejecting petitioner's application had observed that "*this Court does not find any reason to interfere with the orders impugned as the object in criminal jurisprudence of granting fair trial does not seem to be hampered……. So as to ensure that the interest of accused does not get jeopardized*."

32.9 Thus, it is contended by Shri. Amin that wherever, the petitioner felt aggrieved by any adverse order passed by the trial court, he has been afforded full opportunity to pursue his

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appellate/revisional remedy before this court as well as the Apex Court. In all such proceedings, this court after giving full opportunity to the petitioner, has either rejected the contention of the petitioner and wherever, this court found a cause, it intervened and gave partial to the petitioner. Shri Amin in this regard has drawn the attention of this court to the record of the following proceedings which were instituted before this court:-

i) Judgment passed by this court dated 20.02.2021 in Criminal Revision Application No.107 of 2021 preferred by petitioner against application Exh.132, given by him for adjourning the hearing of his application Exh.67 till his application vide Exh.58 and 63 are not disposed off.

ii) Judgment passed by this court dated 05.08.2021 in Criminal Revision Application No. 296 of 2021 preferred by petitioner accused against rejection of his application below Exh.139, preferred under Section-216 of Criminal Procedure Code for altering and modifying charge.

iii) Order passed by this court dated 05.08.2021 in Criminal Revision Application No.299 of 2021 whereby the Petitioner accused challenged the order of Trial Court tendering pardon to original accused [Exh. 67];

iv) Order passed by this court dated 23.03.2023 in Criminal Revision Application No. 333 of 2023 whereby the petitioner had challenged the order passed below Exh.508 and Exh.529, regarding deposition of PW-16 Shri. R.P.Patel;

v) Order passed by this court dated 05.05.2023 in Criminal Revision Application No. 534 of 2023 with Criminal Revision Application No. 541 of 2023, whereby, the Petitioner had challenged the order of Trial Court declining him permission to further examine defense witnesses (vide Exh.648, 649 and 725);

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32.10 Placing reliance on the above orders, Shri Amin has contended that the contention of the petitioner that presiding judge of the present trial is rejecting his applications due to bias is completely imaginary and a deliberately employed tactic to scandalize the court for collateral reasons ie to pressurize the court and the prosecutors.

32.11 Shri Amin has thus contended that all the instances cited by the petitioner to buttress his contention of bias which are based on above proceedings cannot be looked into by this court in view of the detailed judgments and orders passed by this court.

33. Supporting the case of the prosecution, the victim who himself is a lawyer has substantially raised the same arguments and supplemented the same by submitting that the petitioner from day one of commission of the offence has been filling frivolous applications at every stage so as to impede and obfuscate the proceedings, investigation and present trial with an intention to ensure that it never gets concluded and remains entangled in frivolous litigations for all times to come. The victim states that he has obtained the details of all the proceedings filed by or at the behest of the petitioner which forms part of record of the instant trial.

33.1 The victim has by way of his application / affidavit has point out all the cases were strictures have been passed by this Court as well as Hon’ble Apex Court against the petitioner

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depreciating his conduct in protracting the trial.

33.2 The victim has asserted his Article-21 rights of speedy justice and has submitted before this Court that right of fair trial cannot be seen only with the prism of accused but has to be seen and balanced with right of the victim who, despite being a lawyer, has patiently waited for 27 years to see that a heinous offence committed against him is suitably punish in accordance with law as per procedure establish by law.

33.3 It is contention of victim that there has been brazen infractions of his Article-21 rights of speedy justice due to unethical machinations and tactics employed by the petitioner due to which he has been kept away from the justice being meted to him for a wrong done against him for around 27 years. The victim has drawn attention of this Court to the order dated 24.05.2019 passed by the Hon’ble Apex Court in another trial were petitioner has been convicted for life for heinous offence of custodial death and wherein petitioner adopted similar tactics to file various frivolous applications to protract the trial and also made false allegations of bias against the other District Judge of another district and to ensure that same remains entangled and frivolous litigations and does not see its conclusion.

33.4 The victim has contended that the said 302 case abuse perpetrated by the petitioner was stopped by the Hon’ble

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Apex Court vide the order dated 24-05-2019 passed in SLP [Crl.] No. 4993 of 2019, wherein, the Hon'ble Apex Court directed the trial to be completed within the time prescribed therein and directed the court, not to entertain any frivolous applications, which would defeat the timeline provided in the said 302 case. The victim has prayed for passing of similar directions in this case also.

34. I have heard the Counsel for all the parties in great length in the hearing which spread over to few days to ensure that justice does not become the casualty.

I have also minutely gone through various applications and proceedings filed by the petitioner either before the Presiding Judge conducting the trial or before this Court which are placed on record.

I have examined those proceedings and orders passed by the trial court not as an appellate court but just to satisfy the conscience of this Court as to the veracity of serious allegations of bias made by the petitioner against the presiding judge.

34.1 Since the question involved in the present proceedings is limited to the allegations of bias made by the petitioner, it is neither required nor desirable to deal with various orders passed by the trial court on the judicial side, more particularly, when most of them have already been subjected to the judicial scrutiny of this Court and in some cases, by

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the Hon'ble Supreme Court, at the behest of the petitioner on which the petitioner has lost.

34.2 The trial court has jurisdiction to pass orders whenever any litigant files any application before it. In the instance case, the trial judge has precisely done his duty and has exercised his jurisdiction by way of passing judicial orders after giving reasons most of which are subjected to scrutiny and confirmed by the higher courts.

34.3 When a matter where the offence is of the year 1996, the allegations faced by the petitioner are grave and serious in nature and the trial judge is under more than one judicial mandates of two coordinate benches of this Court to conclude the trial in a time bound manner, it is the duty of the trial court to conclude the trial expeditiously. While discharging this duty, if the trial court exercises its judicial discretion in either not granting adjournment or not granting adjournments for long dates, it can never be treated to be a ground on which a serious allegation of bias against the judicial officer can ever be made. There is nothing on record to suggest any kind of bias in the mind of presiding judge who has been conducting the trial strictly as per law and passing reasoned and speaking judicial orders in writing after hearing all the parties. The trial judge is merely discharging his duty to conclude trial within the time stipulated by this court long back [which is confirmed by the Hon'ble Supreme

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Court twice] and now even the extended time limit has elapsed. I found that the trial judge is unable to adhere to the time limit directed by this Court and confirmed by the Hon'ble Supreme Court only because of the approach and attitude adopted by the petitioner at the fag-end of trial i.e. after the prosecution evidence is over.

34.4 The allegation made by the victim that this kind of conduct of the petitioner is nothing but his regular habit which has been criticized in several orders passed in other criminal offences faced by the petitioner clearly appears to be correct.

34.5 I find that in yet another serious offence under section 302 of the Code, similar *modus operandi* was adopted by the petitioner against another trial judge and allegations of bias were made at the fag-end of the trial and were repeated in an appeal before this court which were required to be deleted by the petitioner's advocate after tendering an apology.

34.6 Entertaining allegations of bias against a judicial officer based upon the material which is placed by the petitioner would destroy the very credibility of the criminal justice delivery system. For an effective and efficient justice delivery, it is absolutely essential that the trial judge functions fearlessly and without any pressure of any unscrupulous litigant making scandalous allegations against him.

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In the present case, this Court is fully satisfied that the time at which the allegations are made, the grounds on which the allegations are made and the manner in which the petitioner has conducted himself is a classic example of bringing extraordinary and extraneous pressure on the trial judge to prevent him from discharging his judicial function impartially and fearlessly.

34.7 After closely examining the record and after considering the rival submissions made by the parties at great length, this court finds that the contentions made by the State merits acceptance. This court finds that the gravamen of the challenge made by the petitioner is founded upon certain orders passed by the presiding judge holding the trial in petitioner's application under Section-91 of CrPC [Exh. 58 and Exh. 63], application objecting and challenging tendering of pardon to PW-9 Shri. I.B.Vyas, application under Section-216 of Criminal Procedure Code for altering charge [Exh. 139], application for first deciding petitioner's application under Section-91 of Code of Criminal Procedure [Exh. 132] and only there after hearing another application given by him for objecting tendering of pardon to Shri. I.B.Vyas [Exh. 67], application assailing decline of permission to the petitioner to take on record contradiction arising during recording of deposition of PW-16 Shri. R.P.Patel [Exh.508 and Exh.529], application challenging rejection of request by the petitioner

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to examine further defense witness etc. (vide Exh.648, 649 and 725).

34.8 It is a matter of record that all these orders were challenged by the petitioner before this court in revisional jurisdiction and after considering each matter on merits this court has rejected the contentions raised by the petitioner which are again sought to be raised in the present petition in guise of prayer made under Section 408 CrPC for transfer of the case.

34.8.1 In so far as petitioners' grievance regarding orders passed by presiding judge in his application [Exh.132] made for adjourning the hearing of his application Exh.67 till his application vide Exh.58 and 63 are not disposed off, this court vide a detailed judgment and order dated 20.02.2021 passed in Criminal Revision Application No.107 of 2021 has dealt with the same.

34.8.2 Similarly, in so far as petitioners' grievance regarding rejection of his application below Exh.139, preferred under Section-216 of Criminal Procedure Code for altering and modifying charge is concerned, it can be seen that the said order was challenged before this court and this court vide judgment dated 05.08.2021 passed in Criminal Revision Application No. 296 of 2021 had rejected the said contention. In fact an SLP against the said order passed by

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this court being SLP(Crl) No. 1648 of 2022 also came to be dismissed by the Hon'ble Apex Court.

34.8.3 Likewise, the grievance of the petitioner regarding order of Trial Court tendering pardon to original accused [Exh. 67] was considered by this court vide its judgement dated 05.08.2021 passed in Criminal Revision Application No.299 of 2021 where the order passed below Exh. 67 were challenged.

34.8.4 Also, the grievance of the petitioner on merits of the order passed by the presiding judge below Exh.508 and Exh.529, regarding deposition of PW-16 Shri. R.P.Patel was considered by this court in its judgement dated 23.03.2023 passed in in Criminal Revision Application No. 333 of 2023, whereby, this court after giving full opportunity to the petitioner to make out his case violation of his Article 21 rights, was pleased to dismiss the same.

34.8.5 Same was the fate of petitioners' challenge to the order of presiding judge declining him permission to further examine defense witnesses (vide Exh.648, 649 and 725) whereby this court by order dated 05.05.2023 passed in Criminal Revision Application No. 534 of 2023 with Criminal Revision Application No. 541 of 2023, was pleased to dismiss the

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revision petition filed by the petitioner.

34.9 Similarly, this court finds no merits in the allegations raised, in so far as, the second set of applications is concerned, whereby, the presiding judge has rejected certain applications made by the petitioner and the petitioner has preferred not to challenge the same. These orders have been passed by the presiding judge in applications made on behalf of petitioner's advocate seeking adjournment made on various grounds like attending funeral rituals [Exh. 275], attending marriage as well as post marriage rituals [Exh. 322], attending other criminal as well as civil proceedings [Exh. 305] at competent courts of respective jurisdiction such as Deesa [Exh. 297], personal difficulties like ailments in the nature of diabetes, blood pressure etc [Exh. 329]. Some of these petitions have also been dismissed with cost as noted above.

34.10 What this court finds that under the garb of seeking transfer of the present trial to another court on the ground of bias, at a stage when evidence is over, the petitioner has, in fact, made an attempt to challenge the legality of the various orders passed by the presiding judge by compelling the Principal District and Session Judge to hold a merit review of the said orders, as if, it was exercising its jurisdiction as an Appellate Court. All this is sought to be done in the garb of a 408 CrPC application preferred before Principal District and Session

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Judge. A similar attempt to hold merit review of the order passed by the presiding judge has been made in the instant 407 CrPC application preferred by the petitioner before this court.

34.11 For making out a case of bias something more than just allegations are required to be made out. A bias is either pecuniary interest bias, subject matter bias or personal bias. To substantiate a case of any of the aforesaid specie of bias there must be some kind of evidence. The said evidence must be direct, tangible and ocular, which any reasonable person of ordinary prudence can make out. The word 'Bias' has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but has to be based on the existence of a definite evidence. It is well settled that mere general statements will not be sufficient for the purposes of indication of ill will or bias. There has to be cogent evidence available on record to come to the conclusion as to whether, in fact, there was a bias or a mala fide move which resulted in the miscarriage of justice. It is also well settled that the test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion be drawn therefrom. In the event, it is found that allegations pertain to rather fanciful apprehension

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or are mischeviously made as an attempt to forum shop the question of declaring a judicial officer bias would not arise. [See *Tata Cellular v. Union of India, (1994) 6 SCC 651; Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, (2001) 1 SCC 182 @ para 35; State of Punjab v. V.K. Khanna, (2001) 2 SCC 330 para 8 & 25]*

34.12 The law related to transfer of cases has also been well settled. It would be profitable to refer to the dictum of the Hon'ble apex court rendered in the case of **Usmangani Adambhai Vahora v. State of Gujarat,** reported in *(2016) 3 SCC 370* wherein their lordships were please to hold as under:-

> *5.The High Court, as has been indicated earlier, has referred to the conversation between the parties and the impression of the accused. After narrating the same, the High Court has observed that the petitioner-accused definitely is in dilemma and whether to term his apprehension as reasonable or not, the result of the reaction of a hypersensitive mind is the question. Thereafter, the High Court has proceeded to observe that the learned trial Judge had not examined any witness; that all witnesses examined so far were examined by his predecessor in office; that the Presiding Officer himself had also not indicated his disinclination to hear the matter, and that apart, he had offered quite a stiff resistance to the plea of transfer as the same is revealed from his remarks forwarded to the Principal Sessions Judge. After so stating, the learned Single Judge has held [Chandrkantbhai Bhaichandbhai Sharmav.State of Gujarat, 2015 SCC OnLine Guj 2891] thus :*
>
> *"43. … I am sure that the present Additional*

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> *Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless, to ensure that justice is not only done, but also seems to be done and in the peculiar facts of the case, I feel that it will be appropriate if the Principal Sessions Judge transfers the case to any other Additional Sessions Judge in the same Sessions Division. I make it abundantly clear that the transfer shall not be construed as casting any aspersions on the learned Additional Sessions Judge."*

6.On a careful scrutiny of the order passed by the High Court, it is not clear whether the High Court has been convinced that the accused has any real apprehension or bias against the trial Judge. However, the observations of the learned Single Judge, as it seems to us, are fundamentally based on apprehension and to justify the same, he has referred to the remarks offered by the learned Additional Sessions Judge to the Sessions Judge when explanation was called for. First, we shall refer to the issue of apprehension. The apprehension is based on some kind of conversation between the informant and another that the accused persons shall be convicted. There is also an assertion that the trial Judge is a convicting Judge and that is why, the High Court has observed that he is in dilemma.

7.So far as apprehension is concerned, it has to be one which would establish that justice will not be done. In this context, we may profitably refer to a passage from a three-Judge Bench decision in Gurcharan Das Chadha v.State of Rajasthan

> *"13. … The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A*

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petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

8. This Court in Abdul Nazar Madani v. State of T.N [Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204 : 2000 SCC (Cri) 1048] has ruled that : (SCC pp. 210-11, para 7)

"7. … The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the

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> *witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."*

9.In Amarinder Singh v. Parkash Singh Badal [Amarinder Singh v. Parkash Singh Badal, (2009) 6 SCC 260 : (2009) 2 SCC (Cri) 971] , while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It has also been observed therein that merely an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus : (SCC p. 273, paras 19-20)

> *"19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC.*

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> *20. <u>However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary.</u> Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."*

10. In Lalu Prasad v. State of Jharkhand [Lalu Prasad v. State of Jharkhand, (2013) 8 SCC 593 : (2013) 4 SCC (Civ) 103 : (2013) 4 SCC (Cri) 406 : (2014) 1 SCC (L&S) 137] , the Court, repelling the submission that because some of the distantly related members were in the midst of the Chief Minister, opined that from the said fact it cannot be presumed that the Presiding Judge would conclude against the appellant. From the said decision, we think it appropriate to reproduce the following passage : (SCC p. 600, para 20)

> *"20. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no*

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circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent."

The aforesaid passage, as we perceive, clearly lays emphasis on sustenance of majesty of law by all concerned. Seeking transfer at the drop of a hat is inconceivable. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice. (See Nahar Singh Yadav v. Union of India [Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307 : (2011) 1 SCC (Cri) 39] .)

11 [Ed.: Para 11 corrected vide Official Corrigendum No. F.3/Ed.B.J./1/2016 dated 18-1-2016.] .In the instant case, we are disposed to think that apprehension that has been stated is absolutely mercurial and cannot remotely be stated to be reasonable. The learned Single Judge has taken an exception to the remarks given by the learned trial Judge and also opined about non-examination of any witness by him. As far as the first aspect is concerned, no exception can be taken to it. The learned Sessions Judge, while hearing the application for transfer of the case, called for remarks of the learned trial Judge, and in such a situation, he is required to give a reply and that he has done. He is not expected to accept the allegations made as regards his conduct and more so while nothing has been brought on record to substantiate the same. The High Court could not have deduced that he should have declined to conduct the trial. This kind of observation is absolutely impermissible in law, for there is no acceptable reason on the part of the learned trial Judge to show his

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disinclination. Solely because an accused has filed an application for transfer, he is not required to express his disinclination. He is required under law to do his duty. He has to perform his duty and not succumb to the pressure put by the accused by making callous allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court hunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable. The High Court has gravely erred in this regard.

12.So far as the non-examination of the witnesses is concerned, as the factual score would uncurtain, the matter had travelled to the High Court in revision assailing the order passed under Section 319 CrPC. Be that as it may, the High Court has not adverted to the issue who was seeking adjournment and what was the role of the learned trial Judge. Grant of adjournment could have been dealt with by the High Court in a different manner. It has to be borne in mind that a Judge who discharges his duty is bound to commit errors. The same have to be rectified. The accused has never moved the superior court seeking its intervention for speedy trial. The High Court has innovated a new kind of approach to transfer the case. The High Court should have kept in view the principles stated in K.P. Tiwari v. State of M.P. [K.P. Tiwari v. State of M.P., 1994 Supp (1) SCC 540 : 1994 SCC (Cri) 712] which are to the following effect : (SCC p. 542, para 4)

> *"4. … It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their*

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> *necks—more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive."*
>
> **[**Emphasis Added**]**

34.13 Similar test has been laid down by the Hon'ble supreme court in the judgment rendered in the case of **Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307** wherein their lordships had enunciated the law regarding the transfer of cases as under:-

> *22.It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.*
>
> *24.In Maneka Sanjay Gandhi v. Rani Jethmalani [(1979) 4 SCC 167 : 1979 SCC (Cri) 934] speaking for a Bench of three learned Judges of this Court, V.R. Krishna Iyer, J. said: (SCC p. 169, para 2)*
>
> > *"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the*

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hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

25.In Abdul Nazar Madani v. State of T.N.[(2000) 6 SCC 204 : 2000 SCC (Cri) 1048] dealing with a similar application, this Court had echoed the following views: (SCC pp. 210-11, para 7)

"7. … The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on

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misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

……

30. Having considered the rival claims of both the parties on the touchstone of the aforestated broad parameters, we are of the view that the apprehension entertained by CBI that the trial of the case at Ghaziabad may not be fair, resulting in miscarriage of justice, is misplaced and cannot be accepted. From the material on record, we are unable to draw any inference of a reasonable apprehension of bias nor do we think that an apprehension based on a bald allegation that since the trial Judge and some of the named accused had been close associates at some point of time and that some of the witnesses are judicial officers, the trial at Ghaziabad would be biased and not fair, undermining the confidence of the public in the system. While it is true that Judges are human beings, not automatons, but it is imperative for a judicial officer, in whatever capacity he may be functioning, that he must act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision, which according to his conscience is the right one on the basis of materials placed before him. There is no exception to this imperative. Therefore, we are not disposed to believe that either the witnesses or the Special Judge will get influenced in favour of the accused merely because some of them happen to be their former colleagues. As already stated, acceptance of such allegation, without something more substantial, seriously undermines the credibility and the independence of the entire judiciary of a State. Accordingly, we outrightly reject this ground urged in support of the prayer for transfer of the trial from Ghaziabad.

[Emphasis Added**]**

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34.14 On the above touchstone, the record reveals that the petitioner has cited instances and orders right from the year 2021, were petitioner either chose to challenge the orders passed by the presiding judge before this Court by invoking this court's revisional jurisdiction or were the petitioner accepted the orders and choose not to challenge the same. Nevertheless, this court finds that most of the incidents cited by the petitioner projecting it as instances of bias and malafide are unrelated to the cause espoused by the petitioner in his 407 application.

34.15 It is not the case where the presiding judge holding the trial of the present case has rejected any application preferred by the Petitioner without a reasoned order. On every occasion, the presiding judge holding the trial has applied its mind and after considering the pros and cons of the application preferred by the Petitioner it has decided the same one way or the other. Also, there has been no occasion where any order is passed behind the back of the petitioner violating his right of natural justice. Pursuant to the said orders wherever, the petitioner had deemed it fit, he has challenged the said orders before the revisional court. At times he has not challenged the adverse order but has only sought stay of trial to enable him to challenge the said orders.

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34.16 Considering all the above, this court is of the opinion that arguments made by the state merits acceptance. It is one thing to say that the decision of the trial court is wrong. The remedy against the said grievance, if at all, lies before appellate or revisional forum. However, it cannot be said that the decisions taken by the presiding judge holding the trial, in rejecting allegedly frivolous applications preferred by an accused, with the intention to delay the trial is an exercise infested with malice or bias being harbored by the presiding judge against the accused Petitioner.

34.17 On scrutinizing the entire record, this court finds that nothing substantial, compelling or imperilling, from the point of view of public justice has been placed by the petitioner seeking transfer of his case on the ground of malice and bias. To the contrary this court finds that the said allegations are not fanciful or imaginary but are carefully crafted and engineered at the fag end of trial to delay the trial. The timing of the said allegations when final arguments in the matter has already commenced citing instances of 2021 is also something which needs to be kept in mind. On evaluating the entire circumstances this court is of the opinion that the scandalous allegations made by the petitioner are solely engineered to protract the conclusion of trial and somehow defeat the orders passed by this court.

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34.18 The deplorable facts of the present case clearly remind this court of the prophetic words used by Justice Krishna Iyer in ***Gulam Mustafa v. State of Maharashtra*, (1976) 1 SCC 800** that '*The charge of mala fide against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant.*" In the present case there are only bald averments and scandalous allegations against presiding judge. No requisite material has been placed on record to demonstrate and prove the fact of malafide. The decisions taken by the presiding judge during the conduct of the trial are now sought to be painted with the vice of bias and malafide. This court is of the opinion that mere unfounded assertion, vague averment or bald statement is not enough to hold the proceedings before the presiding judge as being infested with malafide. The onus was on petitioner to establish the factum of bias and malafide on the basis of facts, which the petitioner has miserably failed to discharge. In absence thereof this court is not required to make fishing or roving inquiry as has been sought for by the petitioner during the course of argument.

34.19 This court is also in agreement with the argument canvassed by the state as well as the victim that having not received favorable orders from the Trial Court, the Petitioner turned

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around and started making baseless allegations against the presiding judge himself. All of this was done to ensure that the final arguments in the case do not start. This Court is of the view that this is not the first time the Petitioner has indulged in such kind of practice affecting the very administration of justice. As pointed out by the State that in the other case which pertain to 302 offence, the same *modus operandi* was adopted by the Petitioner, wherein, he made scandalous allegations against the presiding judge of that case in an attempt to impede and protract the trial. Similarly, allegations were made by the Petitioner even against a sitting Hon'ble Supreme Court Judge. All the aforesaid allegations were rejected by the Courts with scathing strictures against the Petitioner that has been quoted in the preceding parts of this judgment. This shows that the Petitioner is a serial abuser of the legal process. He has scant regard for the judicial process. By applying his knowledge of administration of criminal law system in a negative way, he has been trying to cripple down the said system itself when it comes to system deciding the offences committed by the Petitioner through a fair trial. This tendency has a far-reaching effect on the very existence of criminal justice delivery system. If such practices are entertained or ignored the same will become a norm and a precedent which will entail wide scaling ramifications on the administration of

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justice. This Court as a custodian of the fundamental rights of accused as well as the victim cannot permit such practices to go on unchecked. Any such attempt has to be dealt with iron hands. People who invoke the pleas of violation of their Article 21 rights guaranteed under the Constitution of India cannot be permitted to play with the very same constitutional protection guaranteed to the victim. Behind the clock of raising rights issue, people like Petitioner clog and infest the system with frivolous applications and argument to ensure that the very existence of the system cripples down.

34.20 In the opinion of this court 'right to defend' and 'right to fair trial' does not mean that the petitioner would be entitled to raise infinite objections to each and every thing done in pursuance of a trial against him and protract the conclusion of trial for an indefinite period. He cannot be permitted to endlessly file frivolous applications to indefinitely delay the conclusion of the trial. He also cannot be permitted to seek stay for each and every objection raised by him under the garb of exercising his right to challenge the order of rejection before the Appellate Court.

34.21 Requirement of cooperation in the trial does not mean that the accused would intimidate, browbeat, scandalize and

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pressurize either the court or the prosecution to conduct the trial as per his wish and whims.

34.22 In the present case this court, after examination of record has satisfied itself that the petitioner was never prevented from exercising his right to challenge any order passed by the presiding judge holding the trial.

35. At this juncture, this court is of the opinion that two contentions taken by the petitioner are also required to be dealt with specifically.

35.1 The petitioner has vehemently contended that he is already in jail pursuant to an order of life conviction recorded against him in a S. 302 IPC case and as such any delay in trial will not make any substantial difference as he would in any case remain in jail. This argument is repelled by the public prosecutor as misleading. The Petitioner, pursuant to the judgment and conviction for life in the said S.302 IPC case, has been directed to suffer rigorous imprisonment for life. The Ld. PP is right in his contention that the said imprisonment takes place in Central Jail and is administered by a different set of regime. However, as contended by the state the Petitioner has not suffered the said sentence even for a day. To the contrary, in guise of conducting and participating in the present trial the Petitioner is not

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undergoing the rigorous imprisonment which he has to suffer pursuant to his conviction under 302 case but is in district jail only, as an under-trial prisoner. There is a stark difference between suffering a rigorous sentence of life pursuant to an order of conviction in a Central Jail and being an under-trial prisoner. The Petitioner is by-passing the said modalities by participating in the present trial. He is actually benefiting from the delay which is accruing in the present trial both on account of not having a final decision in the present case, and secondly, avoiding rigorous imprisonment for life in a Central Jail pursuant to an order of conviction recorded against him. Thus, the contention of the Petitioner that he has already in jail and no prejudice would be caused if the trial takes some more time in conclusion, is absolutely misleading and is stated to be rejected.

35.2 Another argument have been raised by the petitioner that as per order dated 5.10.2018 passed by the then session judge on administrative side, the present session trial has to be conducted by the senior most Additional District Judge of the division. It has been contended that the said order has been successively followed in 2019 as well as in 2020. He has submitted that at the time when the incumbent presiding officer was given charge of the present case in 2020, he was the senior most Additional District Judge of the division at the relevant point of time. However, with some new transfers

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taking place, the incumbent presiding officer no longer remains as the senior most Additional District Judge of the division. Thus, relying on the order dated 5.10.2018, the petitioner has contended that holding of trial before the incumbent presiding judge when he is no longer the senior most Additional District Judge of the division is illegal and the present trial has to be senior most Additional District Judge of the division.

35.3 In the opinion of this Court and as contended by the prosecution, this contention has been taken by the petitioner only as an afterthought. It has been pointed out by the prosecution that the said point has been duly examined and adjudicated by the Principal District and Session Judge at para 12 of the impugned order. In the said order the Principal District and Session Judge after examining the records has held that initially, in 2018 though the matter was ordered to be dealt with by the Senior most Additional District & Sessions Judge at Palanpur headquarter, however in the subsequent transfer orders it was not specifically mentioned that the same has to be transferred to the Senior most Additional District & Sessions Judge. Further, Principal District and Session Judge has recorded that it was not any specific case which was transferred but all the special NDPS cases were transferred. Looking at the records this court finds

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that the subsequent transfers made were routine transfers and not case specific. Further there is no mention in any of the orders that the matter has to be transferred to the Senior most Additional District & Sessions Judge of the division. That being the factual position, this court is not impressed by the submission made by the petitioner that at the fag end, when the final argument in the matter has started, the trial is required to be transferred. In the opinion of this court such a submission has been made before this court only as a matter of desperation to delay the trial. Challenge to the impugned order dated 8.06.2023 on this ground is thus rejected.

36. In the result, the Special Criminal Application is dismissed holding that the petitioner has failed to establish any case of bias and the proceedings alleging bias is nothing but an attempt to scandalize and pressurize the court. The learned presiding judge is thus again directed to conclude the trial within the time frame as fixed by the coordinated bench in C.R.A. No. 301 of 2021 without giving any opportunity to any party to resort to any dilatory tactics. This attempt of the petitioner deserves to be deprecated strongly so that no litigant resort to such baseless and unfounded allegations against the system of administration of justice and to ensure that every court can function fearlessly and impartially.

37. Lastly, it is clarified that the observations made by this Court in the present judgment are only for the purpose of deciding the

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present application of transfer. The presiding judge will hold final argument and further trial in the matter strictly in accordance with law without being influenced by the observations made in this judgment. Rule is discharged.

38. There shall be no order as to costs.

(SAMIR J. DAVE,J)

RINKU MALI

-:FURTHER ORDER:-

After the pronouncement of the judgment, a request being made by the learned advocate for the petitioner for staying the present order, learned advocate for the original complainant has vehemently opposed for granting stay of the order.

The offence is of the year of 1996 and the direction is given by the Hon'ble Co-ordinate Bench to conclude the trial and as there is no interim relief has been granted earlier by this Court, therefore, request being made by the learned advocate for the petitioner is hereby rejected.

(SAMIR J. DAVE,J)

RINKU MALI