



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 45869 of 2025

Shrish Kumar Malviya

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Ritik Kumar Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Shri Aditya Kumar Rai holding brief of Shri Ritik Kumar Mishra, learned counsel for the applicant and Shri Rabindra Kumar Singh, learned AGA for the State of U.P.

2. Present application has been filed to quash the chargesheet dated 09.09.2005 submitted in case crime no.115 of 2005, under Section 129 of the Representation of People Act, 1951, Police Station Industrial Area District Allahabad (Prayagraj) as well as cognizance/summoning order dated 23.12.2005 passed by the Additional Chief Judicial Magistrate, no.2, Allahabad (Prayagraj) in Case No.4971 of 2025 (State vs. Shrish Kumar Malviya) as well as entire criminal proceedings of the Case No.4971 of 2025 (State vs. Shrish Kumar Malviya) pending in the court of Additional Chief Judicial Magistrate, court no.2, Allahabad (Prayagraj).

3. It is submitted by the learned counsel for the applicant that the applicant is an old person aged about 73 years and a false first information report was lodged against him on 17.08.2005 and after investigation, chargesheet was submitted in this case on 09.09.2005. Thereafter, the trial court took cognizance of offence vide order dated 23.12.2005 and charges were framed in the aforesaid trial after 7 years on 09.09.2012. The applicant denied the charges and pleaded to be tried.

4. Learned counsel for the applicant further submitted that not a single prosecution witness has come to the court to give testimony and he is

regularly appearing before the trial court for the last 13 years. It is also mentioned that Non Bailable Warrants were issued against the witnesses on 06.12.2023 but no witness has turned up in the trial court to give testimony and the trial court is doing nothing except granting unnecessary adjournments on the application/oral prayer of the prosecution.

5. I have perused the records.

6. From perusal of records, it transpires that the chargesheet was submitted in this case on 09.09.2005 and the cognizance was taken by the trial court on 23.12.2005, thereafter the file was forwarded to copying section and the same was received back on 27.03.2010 and summon was issued to the applicant for his appearance vide order dated 27.03.2010 and in pursuance of the summoning order dated 27.03.2010 the applicant-accused had appeared before the trial court on 16.09.2010. Thereafter, charges were framed on 09.02.2012 and summons were issued for appearance of prosecution witnesses. The prosecution sought dates one after another for producing prosecution witnesses and the trial court liberally granted dates in this matter and no action was taken to procure the presence of prosecution witnesses. The applicant is being prosecuted in this case under section 129 of the Representation of People Act, 1951, wherein maximum punishment is upto six months or with fine or with both but the applicant is being harassed for the last 20 years and he is regularly appearing for the last 13 years but the prosecution witnesses have not turned up in the trial court. The trial court after almost 11 years issued Non Bailable Warrants to the persecution witnesses on 06.12.2023 but till date, not a single witness has appeared before the trial court to give evidence.

7. This is a very serious matter, where a senior citizen, aged about 73 years, is being victimized by the trial court and *prima facie*, from perusal of records, it appears that the trial court is lethargic in functioning its duty and doing nothing except granting unnecessary adjournments, sought on behalf of the prosecution. The trial court completely ignored the directions issued by this Court as well as by the Hon'ble Apex Court, wherein, it is directed that old cases should be disposed of/decided at the earliest.

8. The right of speedy trial is a fundamental right of the accused and the Constitution Bench of the Hon'ble Apex Court in the case of **Abdul Rehman Antulay vs. R.S. Nayak, 1992 CrLJ 2717**, has held that the right of speedy trial even includes the period of investigation.

9. In another judgement of **Pankaj Kumar vs. State of Maharashtra and Others, 2008 (16) SCC117**, the Hon'ble Apex Court has held that it is well settled that right of speedy trial in all the criminal prosecutions is an inalienable right under Article 21 of the Constitution of India and this right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigation as well. The Supreme Court further held, the right of speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases.

10. In another case of **Hussainara Khatoon and Others vs. Home Secretary, State of Bihar (1980) 1 SCC 81**, the Hon'ble Apex Court has observed that right of speedy trial is an integral and essential part of the fundamental right to life and liberty.

11. Therefore, from the above judgements of the Hon'ble Apex Court, it is apparent that right of speedy trial is a fundamental right of an accused and right of speedy trial does not confine only to the court proceedings but if there is long delay in concluding the investigation then also fundamental right of speedy trial of accused violates.

12. From the above judgments of the Hon'ble Apex Court, it is also apparent that if right of speedy trial of an accused has been violated then proceedings can be quashed, if the delay is not attributable to the accused.

13. **From perusal of records, it is manifest that the accused is not causing any delay in this matter rather it is the prosecution, who was seeking adjournments in this case and the trial court was very liberal in granting adjournments and did not close prosecution evidence. The act of trial court is not at all appreciable.**

14. A bare perusal of the ordrsheets of the present case brought to the notice of this Court that the concerning presiding officer of the trial court

has been postponing the old cases in a casual and routine manner, fixing long dates, and giving an impression that there is something wrong somewhere. One thing, however, is easily discernible that there is a lack of sense of responsibility and seriousness on the part of presiding officer in taking up the old cases for disposal.

15. The Judiciary, like all other organs of the state, is equally accountable to the people. The presiding officer of the trial court, therefore, has to realize his accountability to the common man. The old cases are to be attended to, on priority basis, unmindful of the various limitations and difficulties. Several directions and circulars were issued by this Court for quick disposal of cases but it appears that the same is not being followed by the presiding officer of the Trial Court.

16. The applicant is not guilty of prolonged trial rather it is the trial court, who is fixing dates, one after another, on the request of prosecution who has failed to bring any evidence against the applicant for last 13 years. The prosecution evidence should have been closed by the trial court who could not bring any evidence whatsoever, for a considerable period. It seems that the trial court is lethargic in functioning its duty. The trial court is duty bound to conclude the trial at the earliest.

17. In view of the above, the trial court is directed to conclude the trial within one month from the date of production of a certified copy of this order and in case, the prosecution fails to produce any evidence on the next date fixed, the opportunity to produce prosecution evidence would be closed.

18. The trial court is also directed to communicate to this Court after one month as to whether the trial of the aforesaid case has been concluded or not. Failing which, this Court would have no option except to proceed against the erring Judicial Officer for not complying with various directions issued by this Court from time to time.

19. Put up this case as fresh on 06.01.2026.

20. The Registrar (Compliance) of this Court is directed to send a copy of this order to the District Judge, Prayagraj for necessary compliance within one week.

21. It is expected that the applicant will not be humiliated or harassed by anybody if he co-operates during the trial.

(Vivek Kumar Singh,J.)

November 20, 2025

Nitendra