

ITEM NO.301 Court 1 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.699/2016

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(MR. VIJAY HANSARIA, (SR.ADV.) IS AMICUS CURIAE IN THE INSTANT MATTER)

(IA No. 73459/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No.107427/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 39027/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 81287/2018 -CLARIFICATION/DIRECTION, IA No. 2029/2020 - CLARIFICATION/DIRECTION, IA No. 136819/2017 - CLARIFICATION/DIRECTION, IA No. 51586/2021 - CLARIFICATION/DIRECTION, IA No. 54637/2017 - CLARIFICATION/DIRECTION, IA No. 54552/2017 - DIRECTIONS, IA No. 146933/2018 - EXEMPTION FROM FILING O.T., IA No. 130543/2018 - EXEMPTION FROM FILING O.T., IA No. 103522/2019 - EXEMPTION FROM FILING O.T., IA No. 107431/2018 - EXEMPTION FROM FILING O.T., IA No. 61324/2017 - I/A FOR PERMISSION TO AMEND THE PRAYER ON BEHALF OF PET., IA No. 2083/2019 - INTERVENTION APPLICATION, IA No. 81286/2018 - INTERVENTION APPLICATION, IA No. 2027/2020 - INTERVENTION APPLICATION, IA No. 127368/2018 - INTERVENTION APPLICATION, IA No. 58124/2017 - INTERVENTION/IMPLEADMENT, IA No. 57812/2017 - INTERVENTION/IMPLEADMENT, IA No. 127023/2018- INTERVENTION/IMPLEADMENT, IA No. 51582/2021 - INTERVENTION/IMPLEADMENT, IA No. 71929/2019 - INTERVENTION/IMPLEADMENT, IA No. 127553/2020 - INTERVENTION/IMPLEADMENT, IA No. 2085/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 98425/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 72938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 130542/2018 - STAY APPLICATION, IA No. 51587/2021 - STAY APPLICATION, IA NO.101153/2021 - APPLN. SEEKING IMPLEADMENT, IA NO.101157/2021 - APPLN. SEEKING RECALL OF COURT'S ORDER DATED 10-8-2021 & IA NO.103865/2021-APPLN. SEEKING PERMISSION TO TRANSFER SRI. CH. V.R.R. VARA PRASAD, JUDGE)

Date : 25-08-2021 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)

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Mr. Amitabh Sinha, Adv.
Mr. K.V. Girish Chowdary, Adv.

Mr. Shovan Mishra, AOR
Ms. Bipasa Tripathy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

This Order shall be read in continuation of our previous order dated 10th August 2021.

We have heard Mr. Vijay Hansaria (Senior Advocate), learned *Amicus Curiae*, Mr. Tushar Mehta, learned Solicitor General, Mr. Mukul Rohatgi, learned Senior Advocate, Ms. Kamini Jaiswal, learned Advocate appearing on behalf of some of the applicants, Mr. Vikas Singh, learned Senior Advocate for the petitioner and various other learned Senior Counsel/Counsel representing different States in the High Courts, at some length.

It may be mentioned at the outset that the Central Bureau of Investigation (CBI) has filed a Status Report in a sealed cover in compliance with our previous order dated 10th August 2021. The Report reveals that there are 121 cases pending trial before different CBI Courts involving sitting MPs and Ex-MPs and 112 cases involving sitting MLAs and Ex-MLAs.

As per this Report, 37 cases are still at the investigation stage, the oldest being registered on 24th October 2013. The details of cases pending trial unveil that there are several cases in which the charge sheet was filed as far back as the year 2000, but are still pending either for appearance of accused, framing of charges or prosecution evidence. Without going into minute details, we are deeply concerned with the current state of affairs with respect to these cases. The learned Solicitor General assures us that he will take up the matter with the Director, CBI, for providing adequate manpower and infrastructure to the said agency so that pending investigations can be completed at the earliest. The CBI shall also take necessary steps to secure appearance of the accused and provide necessary assistance to the CBI Courts for framing charges and to proceed further to conclude the trials. The CBI shall ensure that there is no lapse on its part in producing the prosecution witnesses. Since we have already requested the Chief Justices of the High Courts to constitute a Special Division Bench to monitor the pending cases, we direct that each High Court shall take necessary steps to expedite the pending trials and conclude the same within the time frame already fixed by previous Orders. We re-

emphasize that there is an urgent need of rationalizing the establishment of Special/CBI Courts, as it may not be humanly possible for one/two Courts in a State to expedite all the trials or take up the same on a day-to-day basis in terms of Section 309, Cr.P.C. The Special/CBI Courts need to be set up in different parts of the State where more than 100 cases are pending to ensure easy accessibility to the witnesses and de-congestion of existing Special/CBI Courts. We, thus, direct the Central Government as well as State Governments to provide necessary infrastructural facilities to the High Courts for the purposes of establishment of additional CBI/Special Courts, as the case may be.

Learned *Amicus Curiae* in his 14th Status Report has rightly pointed out that there are cases relating to the year 2010 for offence(s) punishable with life imprisonment in which the charge sheet was filed way back in the year 2011 and charges were framed in 2012. However, these case(s) are still pending at the stage of prosecution evidence. While it may not be feasible to direct that such cases be taken up on a day-to-day basis for want of necessary manpower and infrastructure, we defer the issue at this stage, in view of the assurance given by the learned Solicitor General that he will take up the matter with the Agency.

The National Investigation Agency (NIA) has also, *vide* its Memo/Letter dated 24th August 2021, placed on record the information sought by this Court. From the details of the cases pending against MPs/MLAs with the NIA, it appears that no effective steps have been taken even in the matters where charges were framed in the year 2018 and the cases are stated to be under trial or further investigation. Mr. Tushar Mehta, learned Solicitor General, assures the Court that he will take up the matter with the Head of the agency to evaluate the need of requisite manpower and other infrastructure as may be required for the speedy trial of these cases.

The learned Solicitor General is also directed to file a response to the submissions of the learned *Amicus* with respect to cases investigated by ED and CBI on pages 12 and 13 of the 14th Status Report, particularly with respect to the constitution of a Monitoring Committee by this Court to evaluate the reasons for delay in investigations.

Interlocutory Application No. 103865 of 2021

This application has been moved by the High Court of Telangana seeking permission to transfer Sri. CH. V.R.R. Vara Prasad, Special Judge for trial of criminal cases relating to elected MPs/MLAs in the State of Telangana, to the Court of Additional CBI Court, Hyderabad and to transfer some of the pending cases to the Principal CBI Judge, keeping in view the heavy pendency in one Court.

The prayer for transfer of Sri. Ch. V.R.R. Vara Prasad, Special Judge is allowed. With respect to the second prayer regarding transfer of cases to the Principal CBI Judge due to high pendency, we allow the High Court to transfer some of the pending cases, if necessary, in line with the directions in our earlier Orders keeping in mind the stage of the trial and any delay in the trial that may be occasioned by the transfer and other relevant considerations.

The application is allowed in the above terms. The High Court may pass necessary administrative orders.

Interlocutory Application Nos. 51582, 51586 and 51587 of 2021

These applications have been filed by one, Mr. Bhikhalal Jethva, the complainant-victim seeking clarification of this Court's Order dated 16th September 2020. The applicant has averred that the aforesaid order of this Court is being mis-construed to

take up and decide criminal appeals of MPs/MLAs who have been convicted for heinous offences out of turn. It is pointed out that the accused, who is an Ex-MP, has been convicted by the Trial Court and his criminal appeal is sought to be taken out of turn by the Gujarat High Court in purported compliance of the Order dated 16th September 2020 passed by this Court.

Cross Interlocutory Applications No. 101153 of 2021 and 101157 of 2021 have been filed by the convict, Dinubhai Boghabhai Solanki. Having heard learned senior counsel for the applicants, we clarify that the order dated 16th September 2020 passed by this Court pertains to expeditious disposal of trials and it has no bearing on criminal appeals pending before High Courts against conviction of MPs/Ex-MPs or MLAs/Ex-MLAs. Such criminal appeals will be taken up as per their turn and need not be given an out of turn hearing on a misunderstanding of our order dated 16th September 2020. However, the convict-accused shall be at liberty to seek suspension of their sentence and release on regular bail. If any such application has been filed/is filed, the same shall be decided as per its own merits, in accordance with law.

Interlocutory Application Nos. 51582, 51586, 51587 of 2021 and Interlocutory Application Nos. 101153 and 101157 of 2021 stand disposed of accordingly.

Status Reports filed by the High Courts

Some of the High Courts have also filed their Status Reports, assuring to take follow-up action for the compliance of directions issued by this Court from time to time. Suffice it to state that the High Courts shall constitute Special/CBI Courts, wherever such additional Courts are required to be set up for expeditious disposal of pending trials. In the event of any non-cooperation by the Central or State Governments, the High Courts shall send Status Reports to this Court for further necessary action. As regards to

the co-operation by the State Police or the prosecuting agency, the Special Bench constituted by the High Court shall ensure that there is no laxity on the part of these agencies. It goes without saying that there should be continuous judicial monitoring, supervision, and vigilance by the High Courts.

Learned *Amicus Curiae* has rightly pointed out that in a State like Madhya Pradesh, establishment of only one Special Court at Bhopal is nothing but a travesty of justice as it is physically impossible for the prosecution and the defence to be present in the Court from different parts of the State. The High Court has, in its Report dated 16th October 2020, undertaken that some more Special Courts in Indore, Jabalpur and Gwalior will be set up. We, therefore, do not deem it necessary to issue further directions in this regard except to remind all the High Courts of their responsibility to set up adequate Courts and ensure meticulous compliance of the directions issued by this Court from time to time.

Adverting to the other issues raised by the learned *Amicus Curiae* in his 14th Status Report, he has pointed out that the States of Uttar Pradesh, Karnataka, Tamil Nadu, Telangana and Kerala have withdrawn cases of heinous offences in purported exercise of their powers under Section 321, Cr.P.C. even after 16th September 2020. Since, we have already issued appropriate directions in respect thereto, *vide* Order dated 10th August 2021, making it obligatory for the State Governments not to withdraw prosecution against sitting or former MPs/MLAs without the leave of the High Court, with a further direction to the High Courts to examine the withdrawals, if any, made by the States on or after 16th September 2020, no further direction is required except to request the High Courts to ask the State Governments to furnish the details of the criminal cases withdrawn after the above-stated cut-off date and examine the legality, propriety and *bona fides* behind the withdrawal of each case. The necessary consequences shall follow, depending upon the

view taken by the High Courts on the judicial side in such cases of withdrawal of prosecution. With respect to the other submissions made by the learned *Amicus* in his 14th Status Report, particularly those pertaining to specific States/High Courts, they will be considered on the next date of hearing.

Mr. Vikas Singh, learned Senior Advocate has reiterated his contention that if an MP/Ex-MP or MLA/Ex-MLA has been convicted for a criminal offence, such person should be disqualified for membership of Parliament or State Legislature and be debarred for his/her entire life to contest any election for membership of Parliament and/or State Legislature, as the case may be. Since the vexed question raised hereinabove has far reaching ramifications and consequences, we deem it necessary to hear the matter at length on an appropriate date, after giving opportunity to all the stakeholders.

Interlocutory Application No. 61324 of 2017

Mr. Vikas Singh and Mr. Gopal Sankaranarayanan, learned Senior Advocates on behalf of the petitioner requested for permission to amend the prayer. The same is allowed. Amended petition is taken on record.

Post this matter for further consideration after three weeks.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)