

**Baldev Singh Vs. Bhagat Singh****Cr. Revision No. 496/2024**

08.10.2025 Present: Mr. Naveen Kumar Bhardwaj, Advocate,
for the petitioner.

Mr. Harish Kumar, Advocate, vice Mr.
Jagat Pal, Advocate, for the respondent.

Mr. Naveen Kumar Bhardwaj, Advocate,
submits that on the last date of hearing, without the
consent of the petitioner/convict/accused, Secretary H.P.
High Court Legal Service Committee was requested to
appoint a Legal Aid Counsel to argue the matter on behalf
of the petitioner only on the ground that an adjournment
was sought by the counsel for the petitioner to argue the
matter, as such, right of the accused to defend his case
through counsel of his choice as contemplated under
Article 21 of the Constitution of India has been violated.
He further submitted that the petitioner was not given the
privilege of defending his case by engaging a pleader of
his choice as envisaged under Section 340 of BNSS
which provides that any person accused of an offence
before a Criminal Court or against whom proceedings are
instituted under this Code may of right be defended by a
pleader of his choice. He further submits that he is and
was always ready to conduct the case on behalf of the
petitioner.



2. I have heard the learned counsel for the parties and have also gone through the records of the case.

3. At this stage, it would be relevant to reproduce order dated 17.07.2025, which reads as under:-

"Learned counsel for the petitioner prays for further two weeks' time to argues(sic) the matter. However, on the last date of hearing, it was expressly made clear that it will be last opportunity. Therefore, Secretary HP High Court Legal Service Committee, is requested to appoint a Legal Aid Counsel to argue the matter on behalf of the petitioner and list the matter after two weeks."

4. Section 340 of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") has been incorporated recognizing the right of the accused in a criminal case to be defended by a pleader of his choice. Section 340 of BNSS reads as under:

"340. Right of person against whom proceedings are instituted to be defended:-- Any person accused of an offence before a criminal court, or against whom proceedings are instituted under this Code, may of right be defended by a Pleader of his choice."

5. Thus this Section recognizes the right of any person charged with accusation as to commission of any offence to be defended by a lawyer of his choice. Since taking defence through a pleader of the accused's choice



is recognized as his right, a corresponding duty is also cast upon the Court to apprise him that such a legal right is available for him and to see that it was availed by him. In a case wherein, the accused had not engaged a lawyer on his own, it is open to the Court, if found necessary, to adjourn the inquiry or trial to a future date and to proceed with the inquiry or trial after informing the accused of his right to be defended by a Pleader of his choice under Section 340 of BNSS and after getting it accomplished.

6. Section 341 of BNSS provides for free legal aid to the accused in certain cases. Relevant portion of Section 341 of BNSS reads as under:

"341. Legal aid to accused at State expense in certain cases.- (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has no sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the Stage Government, make rule providing for-

(a) the mode of selecting pleaders for defence under sub-section(1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section(1).

x x x "



7. Thus, the perusal of Section 340 of BNSS reveals that if the accused is not represented by a pleader and if it is found that accused has no sufficient means to engage the pleader then it shall be the duty of the Court to engage a pleader on behalf of the accused at the State expenses. However, in the case in hand, the accused has been duly represented by Mr. Naveen K. Bhardwaj, Advocate who had filed a revision petition on behalf of the petitioner before this Court. There is no material on record to suggest that he did not have any sufficient means to engage a counsel.

8. The Parliament in its wisdom has codified the criminal procedural law in such a way as to give effect to the constitutionally recognized right of an accused to consult and defend through a counsel of his choice. This right of an accused stems from the right to fair trial which includes the right to defend effectively through a pleader who is competent in the subject. Such right could be traced to Article 21 of the Constitution of India. Therefore, the prime consideration and the decisive factor would be the right of the accused for a just and fair trial and to defend the case effectively. This right of accused cannot be violated on technical grounds.



9. In the instant case, the accused had engaged Mr. Naveen K. Bhardwaj, as an Advocate of his choice by executing a Power of Attorney (Vakalatnama) in his favour and such Power of Attorney (Vakalatnama) executed by the petitioner has not been determined till date by him. Therefore, it is deemed to be in force till the time it is determined with the leave of the Court by writing signed by the petitioner or his pleader, as the case may be. Moreover, the appointment of a Legal Aid Counsel on behalf of the petitioner will be an unnecessary burden on state exchequer, as the petitioner had sufficient means to engage a Counsel and he had already engaged a Counsel of his choice.

10. Hence, in the opinion of this Court since the petitioner/accused/convict was already duly represented by Mr. Naveen K. Bhardwaj, Advocate and it is not the case of the petitioner that he did not have any sufficient means to engage a counsel, Legal Aid Counsel could not have been appointed on his behalf, as the accused has got the right to defend his case by a pleader of his choice and to defend his case effectively. The Court cannot thrust/impose a Legal Aid Counsel on the petitioner, who has already engaged an Advocate of his own choice. Thus, the appointment of the Legal Aid Counsel without



the consent of the petitioner is in violation of Article 21 of the Constitution of India as well as in contravention of the provision of Section 340 of BNSS and the same is also hit by principles of natural justice as the petitioner will be deprived of adequate opportunity to defend his case effectively by a pleader of his choice.

11. Hence, Ms. Ragini Dogra, Advocate, who was appointed as Legal Aid Counsel, without the consent of the petitioner, is discharged.

At the request of Mr. Naveen K. Bhardwaj, Advocate, list for consideration on **31.10.2025**.

(Sushil Kukreja)
Judge

8th October, 2025
(raman)