

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

WRIT PETITION (CRL.) NO(s). 310 OF 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(With appln(s) for permission to intervene in the writ petition, c/delay in filing detailed affidavit in pursuance of the direction of this Court, modification of court's order, clarification, c/delay in filing counter affidavit and office report)

WITH

W.P(CRL.) NO. 94 of 2008

(With appln. for recalling the court's order and office report)

W.P(CRL.) NO. 82 of 2010

Date: 06/09/2011      These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM

HON'BLE MR. JUSTICE R.M. LODHA

Counsel for the parties

Mr. Bhim Singh, petitioner-in-person  
Mr. P.V. Yogeswaran, Adv.

Mr. Parag P. Tripathi, ASG  
Mr. Brijender Chahar, Sr. Adv.  
Ms. Binu Tamta, Adv.  
Mr. Shadan Farashat, Adv.  
Mr. Kunal Bahri, Adv.  
Mr. S.N. Terdal, Adv.

Mr. Colin Gonsalves, Sr. Adv.  
Ms. Jyoti Mendiratta, Adv.

State of J&amp;K

Mr. M.I. Qadiri, Advocate General  
Mr. Sunil Fernandes, Adv.  
Mr. Krishanu Adhikary, Adv.  
Ms. Astha Sharma, Adv.

Mr. Tameem Hashmi, Adv. (AC)

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Mr. Kuldip Singh, Adv.  
Mr. R.K. Pandey, Adv.  
Mr. H.S. Sandhu, Adv.  
Mr. K.K. Pandey, Adv.  
Mr. Mohit Mudgil, Adv.

UOI

Mr. S. Wasim A. Qadri, Adv.  
Mr. C.K. Sharma, Adv.  
Mrs. Anil Katiyar, Adv.

State of UP

Mr. Ratnakar Dash, Sr. Adv.  
Mr. Pradeep Misra, Adv.  
Mr. Suraj Singh, Adv.

Ms. Archana Pathak Dave, Adv.  
Mr. Milind Kumar, Adv.

Ms. Kamini Jaiswal, Adv.  
Mr. Anil K. Jha, Adv.  
Mr. Arun K. Sinha, Adv.  
Mr. Anis Suhrawardy, Adv.  
Mr. Praveen Swarup, Adv.  
Mr. Javed Mahmud Rao, Adv.  
Mr. Ratan Kumar Choudhuri, Adv.  
Mr. Chandra Prakash Pandey, Adv.  
Mr. Vipin Kumar Jai, Adv.  
Mr. Arun Kr. Beriwal, Adv.  
Mr. Satish Vig, Adv.

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

In pursuance of the orders dated April 05, and May 4, 2011, the State of Jammu & Kashmir has filed an affidavit enclosing a detailed chart (as Annexure-A to the affidavit) giving the status of all the trials that were transferred out of the State of Jammu & Kashmir following the direction given by this Court on November 10, 2008, in order to

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facilitate and expedite the trial of foreign nationals who figured as accused in those cases.

Mr. M.I. Qadiri, Advocate General for the State of Jammu & Kashmir, is personally present and he explained to us the position of the various cases from the chart.

S.No.	6	-	Case	No.	123/1996 (P.S. Anantnag)
S.No.	8	-	Case	No.	1/1998 (P.S. Nowabad, Jammu)
S.No.	10	-	Case	No.	4/2000 (P.S. Kokernag)
S.No.	11	-	Case	No.	85/2000 (P.S. Anantnag)
S.No.	13	-	Case	No.	174/2003 (P.S. Ram Munshi Bagh)
S.No.	18	-	Case	No.	1/2004 (P.S. Mendhar Poonch)

At serial numbers 6, 8, 10, 11, 13 and 18 in the chart are case Nos.123/1996 (P.S. Anantnag), Case No.1/1998 (P.S. Nowabad, Jammu), Case No.4/2000 (P.S. Kokernag), Case No.85/2000 (P.S. Anantnag), Case No.174/2003 (P.S. Ram Munshi Bagh) and case No.1/2004 (P.S. Mendhar Poonch).

Mr. Advocate General stated that in these cases all the

accused were only foreign nationals.

The trials in all

these cases stand concluded and no further order need be

passed in connection with these cases.

It is expected that after the convicts (the foreign nationals) have completed their respective sentences of imprisonment, they would be repatriated to their country(ies).

S.No. 3 - Case No. 276/2003 (P.S. Kupwara)

S.No. 9 - Case No. 11/1998 (P.S. Hiranagar)

S.No. 19 - Case No. 187/1997 (P.S. Trehgam)

At serial Nos.3, 9 and 19 in the chart are case Nos.

276/2003 (P.S. Kupwara), Case No.11/1998 (P.S. Hiranagar)

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and Case No.187/1997 (P.S. Trehgam).

In these cases the only accused are foreign nationals. Their trials are proceeding at the Sessions

Court, Jodhpur, Rajasthan. The trial shall continue there

with the direction that efforts should be made to conclude

the trials within six months from the date of receipt/production of a copy of this order.

S.No. 2 - Case No. 158/1995 (P.S. Trehgam)

S.No. 7 - Case No. 21/1995 (P.S. Parimpora)

S.No. 16 - Case No. 222/2001 (P.S. Nowabad, Jammu)

S.No. 17 - Case No. 102/2002 (P.S. Pacca Danga, Jammu)

At serial nos. 2,7, 16 and 17 in the chart are case

nos.: 158/1995 (P.S. Trehgam), case No.21/1995 (P.S.

Parimpora), case No.222/2001 (P.S. Nowabad, Jammu) and case

No.102/2002 (P.S. Pacca Danga, Jammu).

In each of these cases, there was a single foreign national as one of the accused, apart from others who are Indian citizens and the trials of the foreign nationals in each of these cases have now been concluded.

The foreign national accused in case No. 158/1995,

P.S. Trehgam (serial No.2), after being convicted was

sentenced to two years rigorous imprisonment. He, however,

continues to be in jail awaiting trial in another case.

The foreign national accused in the other three cases were

similarly convicted but they, having served out their full

sentences, have been repatriated to their respective countries. The rest of the accused in all these four cases are Indian citizens, domicile of Jammu & Kashmir.

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Mr. Advocate General stated that there would be no objection to the transfer of these cases back to the courts from where they were transferred out of the State; rather the State would welcome the transfer of these cases for a speedy trial. We, accordingly, direct that case No.158/1995 (P.S. Trehgam) at serial No.2 in the chart be transferred from the court of Additional Sessions Judge, Agra to the Sessions Court at Kupwara.

Similarly, case No.21/1995 (P.S. Parimpora) at serial No.7 in the chart be transferred back from the Sessions Court at Sangroor, Punjab to the Sessions Judge, Srinagar, who will either proceed with the trial himself or will assign it to any Additional Sessions Judge of competent jurisdiction with a view to conclude the trial speedily.

The remaining two cases, namely, Case No.222/2001 (P.S. Nowabad, Jammu) at serial No.16 and Case No.102/2002 (P.S. Pacca Danga, Jammu) at serial no.17 in the chart are similarly directed to be transferred back from the Sessions Court, Sangroor, Punjab to the Sessions Judge, Jammu, who will either proceed with the trial himself or will assign the cases to some Additional Sessions Judge of competent jurisdiction with a view to conclude the trial speedily.

Let the records of the above mentioned cases be transferred without any delay from the respective courts to the courts to which they are transferred, as directed above. On receipt of the records, the respective courts shall issue notices to the concerned accused without any

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delay.

Prof. Bhim Singh assures us that the accused in these cases shall fully cooperate in the expeditious conclusion

of the trial and shall appear before the respective courts on all dates fixed for the trial.

It is hoped and expected that the trial courts shall conclude the trials expeditiously and preferably within one year from the date of the first appearance of all the accused before the respective courts.

S.No. 1 - Case No. 110/2002 (P.S. Rajbagh)

At serial No.1 in the chart is case number 110/2002 (P.S. Rajbagh). In this case, there were originally three foreign nationals, apart from eight accused who are Indian citizens, domicile of the State of Jammu & Kashmir. Out of the three foreign national accused, two, namely, Tariq Mehmood Mir and Mozeem Sadiq Choudhary, are dead. The remaining one - Hamid Numain Bhat - is now facing trial before the Additional Sessions Court, Sangroor, Punjab.

However, having regard to the fact that the other eight accused are local Kashmiris, the Advocate General agrees for the transfer of this case too to Srinagar. The Advocate General stated that arrangements will be made for transfer of the foreign national accused - Hamid Numain Bhat, from Sangroor Jail where he is currently lodged to the Srinagar Jail.

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Let the records of Case No. 110/2002, P.S. Rajbagh be transferred from the Court of Addl. Sessions, Sangroor, Punjab to the Court of Sessions Judge, Srinagar. The Sessions Judge, Srinagar will either proceed with the trial himself or will assign it to an Additional Sessions Judge of competent jurisdiction with a view to conclude the trial speedily.

Ms. Kamini Jaiswal, learned advocate appearing for eight out of the nine accused who are citizens of this country (one accused is reported to be dead), assured the Court that all the accused shall fully cooperate with the

trial proceedings. They would appear before the Court no sooner they receive a notice from the Court on receipt of the records there. It is hoped and expected that the trial shall conclude within one year from the date the accused appear before the Court.

S.No. 5 - Case No. 136/1995 (P.S. Parimpora)

At serial No.5 in the chart is case No.136/1995 (P.S. Parimpora). The Advocate General on behalf of the State of Jammu & Kashmir and Prof. Bhim Singh, representing the local accused, namely Riyaz Ahmed Hanji, agree for transfer of this case from the Sessions Court, Varanasi to the Sessions Court at Jammu. It is ordered accordingly.

Let the records of the case be transferred to the Sessions Court at Jammu without any delay. It is hoped and

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expected that the trial shall conclude within one year from the date the accused appear before the Court.

The lodgment of the foreign accused - Syed Sajad Ali Bukhari - will be at the discretion of the State.

It is stated that accused No.2 in this case Parvaz Ahmed is absconding and proceedings have been initiated under Section 299 Cr.P.C. The transferee court shall examine the matter and take appropriate actions in accordance with law.

S.No. 12 - Case No. 70/2006 (P.S. Gharota, Jammu)

At serial No.12 in the chart is case No.70/2006 (P.S. Gharota, Jammu). This case is directed to be transferred to the Sessions Court at Jammu from the Court at Tis Hazari, New Delhi.

Let the records of the case be transferred to the Sessions Court at Jammu without any delay. It is hoped and expected that the trial shall conclude within one year from the date the accused appear before the Court.

The lodgment of the foreign accused will be at the discretion of the State.

Those accused against whom there is any warrant of arrest, may make a prayer for bail, which shall be considered and appropriate orders will be passed by the Court.

S.No. 15 - Case No. 134/2002 (P.S. Bahu Fort, Jammu)

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At serial No.15 is case No.134/2002 (P.S. Bahu Fort, Jammu). This case is directed to be transferred from the Court of Additional Sessions, Sangroor, Punjab to the Sessions Court at Samba.

Let the records of the case be transferred without any delay. It is hoped and expected that the trial shall conclude within one year from the date the accused appear before the Court.

S.No. 4 - Case No. 274/1998 (P.S. Kupwara)  
S.No. 14 - Case No. 146/1998 (P.S. Handwara)

At serial No.4 and 14 in the chart are case Nos. 274/1998 (P.S. Kupwara) and 146/1998 (P.S. Handwara).

The appropriate orders in connection with these cases will be passed on the next date.

Put up on October 13, 2011.

(N.S.K. Kamesh)  
Court Master

(S.S.R. Krishna)  
Court Master