

Before Shalini Singh Nagpal, J.

xxx—Petitioner

versus

STATE OF PUNJAB—Respondents

CRR No. 2249 of 2025

September 10, 2025

Indian Penal Code, 1860—Ss. 302, 307, 341, 323, 376, 354D— Bharatiya Nagarik Suraksha Sanhita, 2023—Ss. 94, 256— Code of Criminal Procedure, 1973—S. 313—Bharatiya Nagarik Suraksha Sanhita, 2023—S. 442—Application filed by accused under Section 94 of BNSS to summon record in defence evidence was dismissed by the trial Court as the record sought had been denied by the police under the RTI Act. Said order challenged in revision.

Can an application under Section 256 of BNSS be rejected for any reason other than those mentioned in the said Section?

The thread of fair trial runs throughout the scheme of BNSS and is manifestly clear in Section 256.

Rejection of an application under Section 256 BNSS is permissible only under the 3 excluding clauses- vexation, delay or defeating the ends of justice. Rejection of the application by the trial Court on the ground that the documents had been refused under the RTI Act was in disregard of statutory provisions, hence not proper. Order set aside being violative of the right of the accused to fair trial.

Held, that the thread of fair trial runs throughout the scheme of Bhartiya Nagarik Suraksha Sanhita, 2023 and is manifested clearly in Section 256 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Under this provision, rejection of an application of the accused is not permissible except on the grounds as mentioned therein. If the application is refused on the grounds which are not covered by the three excluding clauses, the refusal would not be justified. When the accused submits a list of witnesses, it is not open for the court to pick and choose except in one of the contingencies mentioned in Section 256(3) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

Non-compliance of the mandate of Section 256 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, would cause irreparable prejudice to the accused.

(Para 12)

Further held, that in the case in hand, learned trial Judge has

refused the application only on the ground that the application made by the accused to the police authorities, for supply of the documents was refused under Right to Information Act, 2005. The refusal by learned Additional Sessions Judge, does not fall within the four corners of Section 256(3) and is clearly not in consonance with law. There is nothing in the impugned order, to suggest that the application was declined on the ground of vexation or delay or for defeating the ends of justice. Considering the specific defence raised by the accused-petitioner before learned trial court, such a conclusion was not even possible. Thus, rejection of the application in disregard of the statutory provision and defence of the accused was not proper. Petitioner /accused is facing serious charges under Section 302, 307, 341, 323, 376, 354D IPC and considering the gravity of offence, fair opportunity was required to be given to him to substantiate his defence. The order under challenge being violative of the right of the petitioner to fair trial is not sustainable.

(Para 13)

Cases Referred:

Natasha Singh v Central Bureau of Investigation (State),
(2013) 5 SCC 741

(Para 10)

Kalyani Baskar v Mrs. M.S. Sampooram,
(2007) 2 SCC 258

(Para 11)

Anil Kumar Bhardwaj, Advocate, *for the petitioner.*

Kunwarbir Singh, AAG, Punjab.

SHALINI SINGH NAGPAL, J.

(1) Order dated 20.08.2025 of learned Additional Sessions Judge, Hoshiarpur, declining an application under Section 94 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, has been impugned in this revision petition.

(2) Learned counsel for the petitioner *inter-alia* submits that petitioner was facing trial before the court of learned Additional Sessions Judge, Hoshiarpur. The trial was at the fag end and statement under Section 313 Cr.P.C. had been recorded. An application under Section 94 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, was moved by the petitioner for summoning record in defence evidence. While learned trial court allowed the petitioner to summon record of Post Graduate Institute of Medical Education and Research, Chandigarh, pertaining to the deceased, the prayer for summoning DDR record dated 13.05.2023 and 14.05.2023, original record of movement of vehicles, record of duties of police officials, CCTV

footage dated 13.05.2023 and 14.05.2023 was declined only for the reason that the police authorities had denied the record under the Right to Information Act, 2005.

(3) Learned counsel further argued that in his statement under Section 313 Cr.P.C. (Section 351 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, petitioner's plea was that he was arrested from the house of his cousin in the night of 13.05.2023 at 8:00 P.M. and was kept in police custody throughout the night. Later on, his arrest was shown on 14.05.2023. Learned counsel submitted that on the date of alleged commission of offence, petitioner was not even present in village Sibbo Chakk, District Hoshiarpur, where the offence allegedly occurred, but was in Jalandhar and in this context, referred to the statements of complainant Karan Singh, examined as PW1, Inspector Amarjit Kaur, examined as PW8, as also statement of ASI Om Parkash, examined as DW6. The documents sought to be summoned were required to prove defence plea of the petitioner. It was urged that the reasons recorded by learned Additional Sessions Judge, Hoshiarpur, for declining the application were against the statutory provisions and the prayer could not be refused only on the ground that the police authorities had earlier refused to provide the documents. It is, thus, prayed that the order under challenge be set aside in the interest of justice.

(4) Learned State counsel prays for dismissal of the revision petition, arguing that impugned order of learned Additional Sessions Judge, was passed in accordance with law.

(5) Petitioner is facing trial in case vide FIR No.35, dated 14.05.2023, under Section 302, 307, 341, 323, 376, 354D IPC, Police Station Haji Pur, District Hoshiarpur. All prosecution witnesses have been examined in the case. Statement of petitioner under Section 313 Cr.P.C., has also been recorded. His version in defence is as under:-

“I am innocent and have been falsely involved in the present case at the behest of Karan who is resident of my village and who had borrowed a sum of Rs.50,000/- from my father on the pretext of purchasing the plot at Kaluchang village on 13.05.2023. I had gone to Jalandhar, it being Saturday to visit Nakodar Dargah with my cousin Varinder on Sunday morning. I was arrested by one lady Police Inspector and 3-4 other Police Officials from the house of my cousin in a Govt. vehicle on the night of 13.05.2023 at about 08:00 P.M. I was kept in police custody on the intervening night of 13.05.2023 and 14.05.2023. I was not

even told the reason of my arrest. I was tortured at police station and was force to sign on some blank papers and thereafter on 14.05.2023, I was told that I have been arrested in injury case of the sister of Karan. I came to know from my family members that there is rumor in the village that Karan has himself tried to kill his sister due to suspicion of her affair with someone and Karan is trying to include 5-6 persons in the incident by levelling false allegation but all other persons have already used their political influence to save themselves but I was roped in as Karan's family has good relation with some political leaders of AAP party namely Sulakhan Singh Jaggi. They have ruined my life by false allegations against me. I am married and have one child of age three years who is also suffering due to such false allegation upon me.”

(6) With the assistance of the learned counsel for the petitioner, statements of PW1-Karan Singh @ Sahil, PW8-Inspector Amarjit Kaur and DW6-ASI Om Parkash, have been examined, which make it clear that from the very beginning, defence of the petitioner was what he stated in his statement under Section 313 Cr.P.C.

(7) Section 256 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, reads as under:-

“256. Entering upon defence.

(1) Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

(8) From the above, it can be discerned that there is an obligation on the court to compell the attendance of any witness or production of any document or thing, if the accused applies and the trial Judge can refuse the application only on the ground that it is made for the purpose of vexation or delay or defeating the ends of justice.

(9) The object of trial is to give justice, to convict the guilty and protect the innocent. Justice should not only be done but also seem to be done. Fair trial is the fundamental right of an accused, a HUMAN RIGHT.

(10) The concept of 'fair trial' has been expounded by Hon'ble Supreme Court of India in **Natasha Singh versus Central Bureau of Investigation(State)**¹, the court observed thus:-

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: **Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr.**, AIR 1958 SC 376; **Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.**, AIR 2004 SC 3114; **Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.**, AIR 2006 SC 1367; **Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.)**, (2007) 2 SCC 258; **Vijay Kumar v. State of U.P. & Anr.**, (2011) 8 SCC 136; and **Sudevanand v. State through C.B.I.**, (2012) 3 SCC 387).”

(11) Hon'ble Supreme Court of India in **Kalyani Baskar versus Mrs. M.S. Sampoornam**², while elaborating the meaning of fair trial, observed as under:-

“**Fair trial**” includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and, the courts should be jealous in seeing that

¹ (2013) 5 SCC 741

² (2013) 5 SCC 741

there is no breach of them.”

(12) The thread of fair trial runs throughout the scheme of Bhartiya Nagarik Suraksha Sanhita, 2023 and is manifested clearly in Section 256 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Under this provision, rejection of an application of the accused is not permissible except on the grounds as mentioned therein. If the application is refused on the grounds which are not covered by the three excluding clauses, the refusal would not be justified. When the accused submits a list of witnesses, it is not open for the court to pick and choose except in one of the contingencies mentioned in Section 256(3) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Non-compliance of the mandate of Section 256 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, would cause irreparable prejudice to the accused.

(13) In the case in hand, learned trial Judge has refused the application only on the ground that the application made by the accused to the police authorities, for supply of the documents was refused under Right to Information Act, 2005. The refusal by learned Additional Sessions Judge, does not fall within the four corners of Section 256(3) and is clearly not in consonance with law. There is nothing in the impugned order, to suggest that the application was declined on the ground of vexation or delay or for defeating the ends of justice. Considering the specific defence raised by the accused-petitioner before learned trial court, such a conclusion was not even possible. Thus, rejection of the application in disregard of the statutory provision and defence of the accused was not proper. Petitioner/accused is facing serious charges under Section 302, 307, 341, 323, 376, 354D IPC and considering the gravity of offence, fair opportunity was required to be given to him to substantiate his defence. The order under challenge being violative of the right of the petitioner to fair trial is not sustainable.

(14) For the reasons aforesaid, the revision petition is allowed. Order dated 20.08.2025 of learned Additional Sessions Judge, Hoshiarpur, so far as it rejects the prayer of the petitioner for summoning is set aside. Learned Additional Sessions Judge, shall summon the record mentioned in para 2(3) of the application, Annexure P-6 and permit the petitioner to lead evidence in his defence.

(15) Nothing observed hereinabove shall be construed as expression of opinion on merits of the case.

(16) All the miscellaneous applications, if any, stand disposed of.
