



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 1969/2026

Chimna Ram S/o Shri Roopa Ram, Aged About 70 Years,
Resident Of Village Post Dhadhar Tehsil District Churu

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Harlal Singh S/o Shri Mohanlal, Resident Of Khasoli Tehsil
And District Churu

----Respondents

For Petitioner(s) : Mr. Shaitan Singh
Mr. S.S. Gour
Mr. J.K. Suthar
Mr. Raj Vishnoi
Mr. Rakesh Dhaka for
Mr. R.S. Choudhary

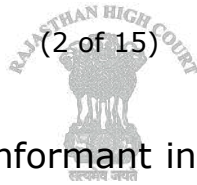
For Respondent(s) : Mr. Rajednra Prasad (A.G.) Asst. by
Mr. Mr. Deepak Choudhary AAG
Mr. Sachin Acharya (Sr. Adv.) Asst. by
Mr. Harshvardhan Singh Rathore

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

07/04/2026

1. The present criminal misc. petition has been filed by the petitioner under Section 528 BNSS against the order dated 06.03.2026 passed by the learned Additional Chief Judicial Magistrate, whereby the evidence of two witnesses, who were summoned under Section 311 Cr.P.C., namely Vinod Prakash Simalti and Dr. D.K. Mathela, has been closed.



2. The petitioner is the informant in the present case, at whose instance the FIR came to be registered. The case pertains to an alleged forged mark-sheet of the 10th standard filed by the respondent-accused, who was a candidate in the Zila Parishad election in the year 2015.

3. After investigation, the charge-sheet came to be filed against the accused. Upon framing of charges, the prosecution evidence was concluded. Thereafter, the petitioner moved an application under Section 311 Cr. P.C. seeking to summon two witnesses, namely Vinod Kumar and Dr. D.K. Mathela. It was stated that Vinod Kumar had furnished information under the Right to Information Act, and Dr. D.K. Mathela had filed an affidavit in Civil Writ Petition No. 4546/2015 concerning the mark-sheet in question. It was contended that the said witnesses were necessary for proving the documents already placed on record by the petitioner.

4. The application filed by the petitioner was allowed by the learned trial Court vide order dated 16.01.2026. Both these witnesses were not in the list of the prosecution and were called as additional witnesses by the Court on the application of the petitioner.

5. The record reveals that after the application was allowed, summons were issued to the said witnesses on 21.01.2026 and 30.01.2026, however the same remained unserved. Thereafter,ailable warrants were issued, but they too could not be executed. Reports indicated that the witnesses were not available at their given addresses. Consequently, arrest warrants were issued on





13.02.2026, however, the same were also not served due to the reason that the witnesses are not found at the given address.

6. Thereafter, on 27.02.2026 again the warrants were issued. But, despite all such efforts, the witnesses could not be served. In these circumstances, the learned trial Court, vide the impugned order, closed the evidence of the said witnesses, observing that all reasonable efforts had been made to secure their presence, and further noting that the matter pertains to MP/MLA cases requiring expeditious disposal in terms of the directions issued by the Hon'ble High Court.

7. Learned counsel for the petitioner submitted that since the prosecution was initiated at his instance, the said witnesses were material, having furnished information under the Right to Information Act and filed an affidavit relevant to the case. It was contended that once the application under Section 311 Cr.P.C. had been allowed, the learned trial Court ought not to have closed their evidence in such a manner.

8. It was further submitted that adequate steps were not taken to secure the presence of the witnesses. Reliance was placed on **Natasha Singh v. CBI1**, **State¹ v. T.N. Seenivasagan²**, and **Zahira Habibulla H. Sheikh v. State of Gujarat³** to contend that such evidence was necessary for a just adjudication of the case, and its closure would result in denial of a fair trial.

9. Learned Advocate General for the State of Rajasthan has stated that since this matter pertains to the MP/MLA cases their

1 (2013) 5 SCC 741

2 AIR 2021 SC 2441

3 (2004) 4 SCC 158





trial is being monitored in light of the Judgment of the Apex Court passed in the case of **Ashwini Kumar Upadhyay vs. Union of India⁴**, wherein the learned Apex Court looking to the gravity of the issue regarding the pendency of the criminal case against the MPs and MLAs, who are public representatives, issued direction in the nature of continuing mandamus and has directed that the monitoring of the said cases be done by the respective High Courts. In pursuance thereto several directions have been issued by the Division Bench for expeditious disposal of such pending trials.

10. Learned Advocate General further submitted, placing reliance on **Rekha Murarka v. State of West Bengal⁵**, that the role of the victim or informant is limited to assisting the Public Prosecutor, and such person does not have any indefeasible or vested right to conduct or control the prosecution. It was contended that the petitioner is not even a victim and, at best is an informant, and therefore has no right to seek indefinite continuation of proceedings for summoning witnesses.

11. It is stated that in the entire material that has been collected, and all the witnesses that were found to be relevant and connected with the evidence have been produced before the learned trial Court and primary evidence has already been recorded. He further submits that although there was no right available with the petitioner to file an application, but nevertheless the learned trial court has used its discretion while calling for the

4 2023 INSC 991

5 (2020) 2 SCC 474





additional evidence, and even the order dated 16.01.2026 itself states that it is a conditional order and the petitioner was required to submit the details and otherwise upon failure of the petitioner to submit necessary details the trial was to proceed further.

12. It was further submitted that the learned trial Court had exercised its discretion judiciously. It was argued that where, despite best efforts, the presence of witnesses cannot be secured and the trial is being unnecessarily delayed, the Court is well within its powers to close the evidence. Learned Advocate General, taking this Court through the order-sheets, submitted that sufficient efforts had been made on each date to secure the presence of the witnesses. It was further submitted that final arguments have already been heard.

13. It was also submitted that the petitioner is misusing the liberty granted by the trial Court and is abusing the process of law. It was pointed out that the petitioner accepted earlier orders when the same were passed in his favor, however upon the passing of the present order, he proceeded to file transfer applications, which came to be dismissed by a detailed order dated 17.03.2026. Thereafter, a petition seeking transfer of the case is stated to be pending consideration before this Hon'ble Court. In such circumstances, it was contended that the petitioner is abusing the process of law and is not entitled to any discretionary relief.



14. Learned senior counsel for the accused Mr. Sachin Acharya submitted that indefinite opportunities to produce witnesses cannot be granted, and where the presence of witnesses cannot be secured despite repeated efforts, such proceedings must necessarily come to an end in the interest of a fair and expeditious trial. The learned Senior Counsel has relied upon the Judgment of the Hon'ble Supreme Court passed in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**⁶ as well as the judgment of the Hon'ble Punjab & Haryana High Court in **Sarup Singh Vs. Pela Ram**⁷.

15. Heard learned counsels for the parties and perused the record.

16. The facts of the case stated above are not disputed. The present case is pending since 2019, and the evidence of the prosecution as well as the statements of the accused have already been recorded. The present case is against the member of legislative assembly.

17. The Hon'ble Supreme Court in **Ashwini Kumar Upahayay vs. Union of India (supra)**, has taken serious note of the pendency of criminal cases against public representatives and has issued directions for their expeditious disposal. The apex court has specifically directed all the High Courts to register Suo Moto cases to monitor criminal cases pending against the members of the Parliament and Legislative Assembly for expeditious disposal of such cases. The High Court was directed to list the matters at

6 (2019) 14 SCC 328

7 (1995) 2 RCR (Cri) 207





regular intervals so that proper monitoring of such cases can be done. In compliance of the same, the Hon'ble High Court of Rajasthan registered a suo moto case being **D.B. Civil Writ Petition No.19198/2023** on 18.01.2024 :-



"This suo-motu case has been registered in compliance of order dated 09.11.2023 passed by the Hon'ble Supreme Court of India in Writ Petition (C) No.699/2016, Ashwini Kumar Upadhyay Vs. UOI and Anr., wherein, the following directions have been issued:-

"20 (I) Learned Chief Justice of the High Courts shall register a suo-motu case with the title, "In Re: designated courts for MPs/MLAs" to monitor early disposal of the criminal cases pending the members of Parliament and Legislative Assemblies. The suo-motu case may be heard by the Special Bench presided by the Learned Chief Justice or a bench assigned by them.

(II) The Special Bench hearing the suo-motu case may list the matter at regular intervals as is felt necessary. The High Court may issue such orders and/or directions as are necessary for expeditious and effective disposal of the subject cases. The Special Bench may consider calling upon the Advocate General or the Public Prosecutor to assist the Court.

(VII) The High Courts shall create an independent tab on their website providing district-wise information about the details of the year of filing, number of subject cases pending and stage of proceedings. We make it clear that while monitoring the subject cases, the Special Bench may pass such orders or give such additional directions as are necessary for early disposal of the subject cases."

In compliance of the directions issued by the Hon'ble Supreme Court, this Bench would be monitoring disposal of criminal cases pending against the Members of Parliament and the Registrar General of the High Court of Rajasthan is directed to collect the information from all the Principal District & Sessions Judges regarding status of criminal cases pending against the Members of Parliament and Legislative Assemblies in various Courts of State and the same may be placed on record of this case on or before 16.02.2024.

The Registry shall also notify the Office of Advocate General also that this Court gets proper assistance. The Advocate General may either appear personally to assist the Court or may depute any other Senior Law Officer.

18. Thereafter, the Division Bench headed by Hon'ble the Chief Justice passed detailed directions on 06.02.2025 for expeditious



disposal of the pending criminal cases. The relevant portion is reproduced hereunder:-

"7. In view of the order passed by the Hon'ble Supreme Court, it is also important to ensure that execution of warrants and service of summons is completed at the earliest by taking special efforts by the State Agencies. Moreover, it is of utmost necessity that necessary infrastructure and technological support is also provided wherever it is necessary.

In order to ensure expeditious disposal of the aforementioned 51 cases, all the courts have to be provided proper assistance from the prosecution side and therefore, the prosecution has to ensure proper and effective representation in all the courts.

8. Taking into consideration the aforesaid aspects of the matter and in order to ensure expeditious disposal of the aforesaid cases, following directions are issued:-

(i) As regards all those cases which are pending for more than 10 years, as on 31.12.2024, we direct the concerned criminal courts to ensure that the proceedings are concluded expeditiously. Where trial has begun, the trial shall be continued on day-to-day basis.

(ii) Where cases have remained pending for more than 5 years, as on 31.12.2024, the trial shall be proceeded expeditiously. Service of summons and execution of warrants will be required to be ensured. For this purpose, the learned Advocate General may ensure that appropriate authorities at the State level issues directions to all the agencies to ensure service of summons and execution of warrants. Responsibility shall be fixed, if summons and warrants are not executed expeditiously.

(iii) The cases which have remained pending for more than 5 years, the concerned trial court shall ensure expeditious conclusion of trial within a period of 6 months from the next date of listing of the case before the concerned courts.

(iv) Once the witnesses of the prosecution or defense appear, none of the parties shall be granted any adjournment and the concerned trial court shall ensure that the evidence is concluded without any adjournment, except on very very exceptional ground, to be recorded in writing.

.....

13. A copy of this order shall be sent to all the Principal District & Sessions Judges for its onward transmission to the concerned criminal courts at the earliest for necessary compliance.

14. A copy of this order shall also be sent to Principal Secretary, Law & Legal Affairs Department, Government of Rajasthan."

19. In view of the same in cases which have remained pending for more than five years, directions were issued to conclude the trial expeditiously within a period of six months. Thereafter, such matters have been under regular monitoring and Division Bench.





20. The present case is of 2019 and directions have already been issued to conclude the trial within a period of six months. However, despite that, the present case is still pending and could not be decided within time frame fixed by this Court. Although, the prosecution evidence was completed and all the witnesses were examined, however thereafter, the present application came to be filed by the informant/complainant under Section 311 Cr.P.C for calling of the two witnesses.

21. The learned trial court showing indulgence to the complainant had allowed the application vide its order dated 16.01.2026, but however in the order itself, referring to the orders of the High Court for expeditious disposal, had directed the complainant to file the complete address of the witnesses, failing which, further proceedings shall be undertaken. Upon examining the order-sheets, it reveals that thereafter on 21.01.2026, the learned trial court issued summons to the witnesses and also issued DO letter to the Superintendent of Police for effecting service upon the witnesses. Thereafter, summons were received unserved as the witnesses were not found at their residence, as Dr. D.K. Mathela had retired and Vinod Prasad had gone for duty for Board examinations. But however request was received from Vinod Prasad for examination through video conferencing but neither point of video conferencing nor any information on e-mail was provided by him. Thereafter, again the summons were issued. On 06.02.2026, as the summons were received unserved,ailable warrants were issued and DO letter was issued to the





Superintendent of Police for effecting service showing urgency in the matter. The warrants were against returned unserved as the house of Dr. D.K. Mathela was found locked and was not traceable after making several efforts, and so far as witness Vinod Prasad was concerned, even he was also not available at his house or at his office.



22. In such circumstances, arrest warrants were issued against them on 13.02.2026, however, the same could not be served as is reflected from the order-sheet dated 20.02.2026. As both the witnesses were not traceable, therefore, a last opportunity was granted to the prosecution by the trial court on 27.02.2026 to get the warrants served and it was clearly ordered that in case of failure, appropriate orders would be passed. Further for effecting the execution of the warrants, DO letter was issued to the I.G. Range Bikaner and the Superintendent of Police, Churu.

23. Although, there were specific directions by the Hon'ble High Court for deciding the present case within a period of six months, but nevertheless the learned trial court, in the interest of justice and fair trial, granted several opportunities to the prosecution to produce the witnesses and issued bailable as well as arrest warrants, but despite that the witnesses were not traceable. Efforts were also made to record the evidence through video conferencing, but the witnesses in fact never intended to appear. Therefore the learned trial court left with no option, looking to the fact that the trial was being unnecessarily lingered on, vide order



dated 06.03.2026 closed the evidence and proceeded further with the trial.

24. The present case, as stated above, is pending from more than six years and is monitored by the Hon'ble Apex Court as well as this High Court and time frame has already been fixed and in such circumstances, the learned trial court has exercised its discretion and has closed the evidence of such witnesses. It is the duty of the Court to ensure a fair trial, which also encompasses the right of the accused to a speedy trial. A criminal trial cannot be permitted to remain pending indefinitely for securing the presence of witnesses who remain untraceable despite repeated efforts.

25. In the present case, the material witnesses had already been examined, and the proposed witnesses were sought to be introduced as additional evidence. Despite grant of a final opportunity, their presence could not be secured. The learned trial court is empowered to undertake means to ensure speedy trial. The complainant states that the efforts should be continuously made as once application under Section 311 Cr.P.C is allowed, the Court should ensure the presence of the witnesses. However, such unending efforts cannot be continued at the cost of keeping the trial pending for an indefinite period. In such circumstances, the learned trial Court was justified in concluding that further efforts would only result in prolonging the trial indefinitely. The learned trial court after having passed a detailed order on





27.02.2026, has passed the present reasoned and speaking order under challenge on 06.03.2026.

26. So far as the reliance placed by learned counsel for the petitioner on **Natasha Singh (supra)** is concerned, the said judgment lays down that the power under Section 311 Cr.P.C. should be exercised where the evidence is essential for a just decision. However, the said principle has already been given effect to by the trial Court while allowing the application. The subsequent inability to secure the presence of the witnesses despite coercive measures distinguishes the present case, as the said judgment does not mandate indefinite adjournments or repeated coercive steps in cases where the witness remains unavailable.

27. Similarly, in **Seenivasagan (supra)**, the Hon'ble Supreme Court permitted additional evidence on the ground that such evidence was available and capable of being produced to clarify material aspects of the prosecution case. At the same time, it was cautioned that the power under Section 311 Cr.P.C. should not be exercised in a manner that results in unnecessary prolongation of the trial. In the present case, however, despite repeated efforts the witnesses could not be secured and remained untraceable. Thus, the ratio of the said judgment may not be applicable in the present facts so as to warrant keeping the proceedings pending for an indefinite period, particularly in the absence of any reasonable certainty regarding the production of such witnesses.





28. The judgment in **Zahira Habibulla H. Sheikh (supra)** emphasizes the concept of a fair trial and the duty of the Court to ensure that material evidence is brought on record. However, the said judgment was rendered in the context of a vitiated trial arising from hostile circumstances and serious lapses in the prosecution. In the present case, no such failure of the prosecuting agency is demonstrated. On the contrary, sufficient opportunities were granted and repeated efforts were made to secure the presence of the witnesses. The inability to examine the said witnesses is not on account of any procedural lapse, but due to their non-availability despite due process.

29. Hence, the judgments relied upon by the learned counsel for the petitioner do not advance his case in the facts of the present matter, where despite due diligence and repeated efforts, the presence of the witnesses could not be secured.

30. On the other hand, the reliance placed by the respondents on **Swapan Kumar Chatterjee (supra)** is well-founded. The Hon'ble Supreme Court has emphasized that the discretionary power under Section 311 Cr.P.C. must be exercised judiciously and cannot be invoked in a manner that results in undue delay in the trial. It has been observed that where sufficient opportunities have already been granted and the witness is not forthcoming despite due efforts, the Court would be justified in declining further attempts to summon such witness.

31. In **Rekha Murarka v. State of West Bengal (supra)**, the Hon'ble Supreme Court has reiterated that a criminal trial is





primarily conducted by the State through the Public Prosecutor, and the role of the victim/informant is limited and circumscribed by statute. While it is open to such person to bring deficiencies in evidence to the notice of the Court, the ultimate control of the proceedings lies with the Court.

32. It has been held that the complainant or victim cannot claim any independent or overriding right to conduct or control the prosecution, and must remain confined to assisting the Public Prosecutor. The discretion to summon, recall, or examine witnesses rests with the Court, which must exercise such power in furtherance of a fair and speedy trial.

33 In the present case, once the application under Section 311 Cr. P.C. was allowed, the learned trial Court made sufficient efforts to secure the presence of the witnesses. However, despite repeated coercive measures, their presence could not be ensured. In such circumstances, the learned trial Court, exercising its sound judicial discretion, rightly closed the evidence. The petitioner cannot be permitted to seek indefinite continuation of proceedings, as the same would be contrary to settled principles governing criminal trials.

34. The impugned order reflects a sound and judicious exercise of discretion by the learned trial Court. Having made sufficient efforts to secure the presence of the witnesses and finding the same unavailing, the Court rightly proceeded to close the evidence





to prevent undue delay in the trial. The order does not suffer from any illegality, arbitrariness, or perversity warranting interference.

35. In view of the above, this Court finds no illegality in the order dated 06.03.2026 passed by the learned trial Court. The present criminal misc. petition being devoid of merit stands dismissed.

All pending application(s), if any, stands disposed of.

(BALJINDER SINGH SANDHU),J

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