

HIGH COURT OF DELHI: NEW DELHI

+ BAIL APPLICATION NO. 1988/2009

% Judgment reserved on: 9th November, 2009
Judgment delivered on: 11th November, 2009

PRAMOD KUMAR Petitioner
Through: Mr. R.N. Mittal, Sr. Adv. with
Mr. Manoj Kumar, Adv.
Versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J.

1. By this application under Section 439 of Code of Criminal Procedure, 1973 petitioner seeks his release on bail in the case arising out of FIR No. 113/2002 registered at Police Station, New Usmanpur under Sections 302/201 IPC.
2. As per the prosecution, petitioner had murdered his

wife and while he was disposing of the dead body, by burying the same in the jungle on 4th May, 2002 at about 12:45 pm, PW2 Satbir Singh, PW3 Satbir and PW4 Satpal saw him doing so when they confronted him he started running away from there.

3. Trial is in progress. Fifteen witnesses out of twenty nine witnesses have already been examined. Earlier also, petitioner had filed a Bail Application No. 83/2009, which was dismissed as withdrawn on 28th January, 2009. While dismissing the aforesaid bail application, this Court directed the trial court to complete trial, as expeditiously as possible, preferably within a period of eight months.

4. Learned senior counsel for the petitioner has vehemently contended that PWs, namely, Satbir Singh, Satbir and Satpal have already been examined as PW2 to PW4 respectively. They have not supported the prosecution case, therefore, petitioner is entitled to be enlarged on bail. I am of the view that testimonies of PW2 to PW4 cannot be scrutinized by this Court at this stage in order to find the

veracity of their version. It is well settled that even testimony of a hostile witness can be read against an accused with regard to portion which supports the prosecution case. It is for the trial court to scrutinize the testimonies of the witnesses to render a finding in this regard, at the time of final disposal of the case. Merely on this ground petitioner is not entitled to bail more so, when other material witnesses also have to be examined.

5. Learned senior counsel has vehemently contended that in spite of the directions for expeditious trial, not much progress has been made. The completion of trial may take a long time. Petitioner is in judicial custody for about seven years. He cannot remain incarcerated pending trial for an indefinite period and is entitled to bail. Reliance has been placed on following judgements:

- i) ***Virsa Singh vs. State through CBI*** reported in ***1991 JCC 169***
- ii) ***Ajay & Anr. vs. State of NCT of Delhi*** reported in ***133 (2006) DLT 315 (DB)***

iii) ***Hussainara Khatoon vs. Home Secretary, State of Bihar reported in AIR 1979 SC 1369***

and

iv) ***Mohinder Singh Oberoi & anr. vs. State (Delhi) reported in 1988(2), Delhi High Court, 783.***

6. Learned counsel for the respondent has contended that efforts are being made by the learned trial court to expedite the trial. However, on few dates trial could not take place on account of the absence of the Presiding Officer, being on leave or having gone on deputation. Adjournments were also taken by the learned counsel for the accused on 12th March, 2009 and 6th July, 2009. In nutshell, he has contended that petitioner cannot be released on bail, merely because trial could not be concluded, for the reasons beyond the control of trial court.

7. I have considered the rival contentions of both the parties on this point. I am of the view that petitioner is not entitled to concession of bail merely on the ground that he

has remained in judicial custody for about seven years and completion of trial may take some time. Judgments relied upon by the learned senior counsel for the petitioner are in different facts and are distinguishable. In Virsa Singh's case (*supra*), even the charge could not be framed by the trial court during a period of seven years while the accused continued to remain in judicial custody. One of the accused in the said case was lodged in Central Jail, Amritsar and was ordered not to be released from the said jail, by an order passed by the President of India. Hundred witnesses were to be examined by the prosecution and it was not known as to when the trial in said case would commence. In these facts accused in the said case was enlarged on bail.

8. In Mohinder Singh Oberoi's case (*supra*) also, accused was released on bail keeping in mind the facts involved in the said case more particularly that the charge had not been framed during the period of incarceration of the accused while he was in the jail for a period of three years.

9. In Hussainara Khatton 's case (*supra*) it had been observed that under-trial prisoners had remained in jail for periods longer than the maximum period for which they could have been sentenced, if convicted. In these circumstances, it was observed that their detention in jail would be totally unjustifiable and in violation of the fundamental right of personal liberty as enshrined under Article 21 of the Constitution. In this case, petitioner is facing trial, for one of the offences, which attracts life imprisonment.

10. Keeping in mind the gravity of offence, I am not inclined to enlarge the petitioner on bail. It is hoped that learned trial court will make an endeavour to conclude the trial expeditiously in terms of the order passed earlier in the bail application.

11. Dismissed.

A.K. PATHAK, J.

November 11, 2009
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