

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No. 33067 of 2014(O&M)

Date of Decision : 20.01.2015

Jahid

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.Ajay Kumar Sharma, Advocate
for the petitioner.

Mr.S.P.Singh, DAG, Haryana.

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This is a petition for regular bail filed in case bearing FIR No. 128 dated 04.04.2012, under Sections 392, 302, 455, 120-B IPC, registered at Police Station Mujesar, District Faridabad.

The allegations were that on the fateful day four boys entered the house of the complainant and robbed the house and killed her husband. The petitioner was arrested in August, 2012 and has been in custody for the past 2½ years. As far back as 18.11.2013 the entire prosecution evidence had been led except for the SHO/I.O. and the Government doctor who had

conducted the post mortem examination and the matter was being adjourned to secure their presence. On the last date the following order was passed:-

“ This is a petition for regular bail.

It has been stated that for the past 1½ years the petitioner has had to languish in jail because official witnesses have not appeared. Learned Addl.AG has accepted this fact and states that the Government doctor and the then SHO are the only witnesses who had to appear and the matter is fixed for 19.01.2015 and undertakes that both the witnesses would be duly examined on that date. In the circumstances even while adjourning the matter it is directed that in case the aforementioned above two witnesses do not appear, S.P. Faridabad should be present in person.

Adjourned to 20.01.2015.”

Today Rameshwar Kumar, ACP is present and has informed the Court that on 26.09.2014 one of the co-accused had moved an application for declaring that he was a juvenile on the date of the occurrence and the matter was fixed for 19.01.2015 for orders on that application and had not been fixed for the evidence of prosecution. Moreover the presiding officer was on leave.

Learned counsel for the petitioner states that even if these facts are correct the stark reality is that the petitioner has now been in custody for 2 ½ years and there is no prospect of the speedy conclusion of the prosecution evidence because in case the application for juvenility is allowed again the matter will be segregated and in case the application is not allowed there is a possibility that that accused would further challenge that order. In any case as per learned counsel none of these can be attributed to any act of omission or commission by the petitioner and if on the conclusion of this interminable trial the petitioner is ultimately acquitted he would have lost 2 ½ years of his life.

In my opinion the determinative factor in this case is the period

of incarceration. Though learned DAG has tried to emphasise the horrific nature of the crime, yet keeping in view the period of custody already undergone by the petitioner and the fact that there is no possibility of early conclusion of the trial, I deem, it appropriate to release the petitioner on bail to the satisfaction of the trial Court. Ordered accordingly.

Before parting I am constrained to state that had the SHO/IO and the Government doctor appeared on 18.11.2013 things would not have come to such a pass. It is a common experience that Courts have particular difficulty in getting police officers to appear to give their testimony. No doubt they may have professional preoccupations but the facts of this case reveal that at least from 18.11.2013 till 26.09.2014 the case was delayed only because of the absence of the two official witnesses.

In the circumstances even while granting bail it is directed that a copy of this order be forwarded to the learned Advocate General, Haryana who is requested to personally look into the facts of this case and to work out some solution with the Director General of Police so that these avoidable delays, where either summons are not served on the police officers for a long time or, despite summons having been served upon them they either do not or are not able to appear before the Court, do not recur and the right of speedy trial emphasised by even the Hon'ble Supreme Court in case after case, is effectuated and not frustrated.

Petition stands disposed of.

Since the main case has been decided, the Criminal Misc.Application, if any also stands disposed of.

(AJAY TEWARI)
JUDGE

January 20, 2015

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