

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

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**CRM-M-27240-2018 (O&M)
DATE OF DECISION : 28.11.2019**

DILAWAR

... Petitioner

Versus

CENTRAL BUREAU OF INVESTIGATION

... Respondent

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Vinod Ghai, Senior Advocate with
Mr. Jasdev Singh Mehndiratta, Advocate for the petitioner(s).

Mr. Sumeet Goel, Standing counsel for the respondent.

Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate for the complainant.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has sought regular bail in FIR No.RCCHG512016S0014 (Annexure P-1) dated 06.10.2016, under Sections 120-B, 148, 149, 186, 188, 307, 353, 395, 427, 436 and 452 of the Indian Penal Code, 1860, besides Section 25 of the Arms Act, 1959, and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984, registered at Police Station CBI, SCB, Chandigarh, earlier registered as FIR No.118 dated 27.02.2016 at Police Station Urban Estate Rohtak.

Learned Senior counsel for the petitioner contends that the allegations in the FIR are that the petitioner along with other accused during the Jat agitation had attacked the residence and other establishments of the complainant. They are alleged to have indulged in arson and the buildings were set ablaze. The petitioner had incited the crowd to indulge in violence. Prior to the Jat agitation, he was not

involved in any other case except in another case pertaining to the Jat agitation in February, 2016, wherein he was acquitted by the trial Court on 01.08.2019.

He, however, contends that the petitioner was not named in the FIR. The co-accused have been released on bail by various orders, copies whereof are at Annexures P-2 & P-3. No person was injured in the occurrence. The conclusion of the trial is likely to take a long time as charges have not yet been framed while 137 witnesses have been cited in the 'challan'. The petitioner is in custody for over 3 years and 7 months since his arrest on 20.04.2016. The petitioner is 54 years old and has served the Indian Air Force for 20 years as a technical hand. He was later employed in a company in Gujarat and is alleged to have come to Rohtak to participate in the Jat agitation.

Per contra, learned counsel for the respondent-CBI contends that the petitioner was an active participant and one of the main conspirators, who had incited the mob which had set ablaze several establishments including the residence of the complainant. Merely because the petitioner is in custody for a long time, would not entitle him to the benefit of bail. He has relied upon the judgements of the Supreme Court in the cases of State through **CBI Vs. Amaramani Tripathi** reported as **2005 (4) RCR (Criminal) 280**, **Central Bureau of Investigation Vs. V. Vijay Sai Reddy** reported as **2013(3) RCR (Criminal) 252**, **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav** reported as **2004 (2) RCR (Criminal) 254**, **Gobarbhai Naranbhai Singala Vs. State of Gujarat & Ors.** reported as **2008 (1) RCR (Criminal) 903** and **Anil Kumar Yadav Vs. State (NCT) of Delhi and Anr.** reported as **2018 (1) RCR (Criminal) 90** and the judgment of

this Court in the case of **Lakshya @ Pappu Vs. Central Bureau of Investigation** in CRM-M-39567-2017 decided on 04.12.2017. He also states that in case the petitioner is granted bail there is every likelihood of his influencing the witnesses. One of the co-accused namely Pardeep, who has been granted bail by the trial Court, had absconded and has been declared as 'proclaimed offender'. Custody certificate filed by the learned counsel for the respondent –CBI is taken on record which indicates that the petitioner is in custody for over 3 years and 7 months.

Learned Senior counsel for the complainant has contended that the petitioner was the leader of the mob and had incited the agitators to set on fire the residence of the complainant. He had also made an inflammatory speech. His petition bearing CRM No.M-27311 of 2016 for regular bail had been dismissed by the coordinate Bench of this Court on 02.12.2016 wherein it was observed that the offences are serious and there is every likelihood that the petitioner would be in a position to influence the witnesses. The petitioner had preferred Special Leave to Appeal (Crl.) 657 of 2017 which was dismissed by the Supreme Court on 31.01.2017 (Annexure P-4).

Heard.

This is the third petition preferred by the petitioner for regular bail. The first petition was dismissed by the coordinate bench of this Court on 02.12.2016. The Supreme Court, while dismissing the SLP preferred thereagainst by the petitioner on 31.01.2017, had directed the trial Court to conclude the trial as far as possible within a period of six months. Thereafter, the Central Bureau of Investigation had preferred an application for extension of time to conclude the trial. The time to conclude the trial was extended by the order of the Supreme Court dated

01.05.2018. The operative part of the order dated 01.05.2018 reads as under:-

“In the present case, since accused has been in custody for more than two years and investigation is pending with the CBI for more than one and a half years, we are of the view that CBI must complete investigation at the most within next two months so that trial can commence latest by July 10, 2018 and concluded by the end of the year. Since order declining bail was passed on 30th January, 2017 and more than one year has gone by, it will be open to the petitioner, if he is still in custody, to move a bail application before the trial Court in accordance with law.”

The second petition for regular bail bearing CRM No. M-44876 of 2017 was disposed of by the coordinate Bench of this Court on 04.05.2018. The order reads as under:-

“Learned counsel for the Central Bureau of Investigation (CBI) has invited my attention to the order dated 01.05.2018 made by the Apex Court in MA No.267 of 2017 in SLP (Crl.) No.657 of 2017, in which I find that liberty is granted in favour of the petitioner-Dilawar to move a bail application before the trial Court vide para 5 of the order.

In that view of the matter, the petition is disposed of with liberty to the petitioner to apply for bail before the learned trial Court.”

Subsequently, the petitioner had preferred an application for regular bail before the Special Judge, CBI, which was dismissed by the order dated 22.05.2018. The petitioner has, thereafter, preferred the instant petition.

The allegations against the petitioner are that he had incited the mob which had indulged in arson during the Jat agitation. It is not in dispute that the petitioner is in custody for over 3 years and 7 months and the charges are yet to be framed.

The judgments relied upon by the learned counsel for the CBI are distinguishable on facts and are not applicable to the instant case. The judgment in the case of **State through CBI Vs. Amaramani Tripathi (supra)** pertained to the accused who was facing murder trial and was a serving Minister at the time of occurrence. It was also alleged that he had tried to tamper with investigation. His petition for bail had been dismissed a month earlier before the grant of bail by the High Court. It was in such circumstances that the order granting bail to the accused therein was cancelled by the Supreme Court. In the case of **Central Bureau of Investigation Vs. V. Vijay Sai Reddy (supra)**, the accused was facing trial under the Prevention of Corruption Act, 1988. However, there is no denying the proposition laid down therein that long custody is only one of the factors and cannot be the sole ground for grant of bail. In the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav (supra)**, the accused was also facing trial under Section 302 IPC and his several petitions for bail had been rejected earlier and in those circumstances, it was observed by the Supreme Court that *prima facie* case against the accused ought to be taken into account while granting bail. In **Gobarbhai Naranbhai Singala Vs. State of Gujarat and Ors. (supra)**, the accused was also facing trial in a murder case. The bail petition had been dismissed earlier and the High Court while granting bail did not advert to any of the reasons which had been furnished for declining earlier petition and it was found that there was no change in

circumstances. The Supreme Court had also held that merely the fact that the accused was in custody for over 2 years cannot be the sole ground for the grant of bail. The judgment in the case of **Anil Kumar Yadav Vs. State (NCT) of Delhi and Anr. (supra)** also pertains to an accused who was facing murder charges. One of the factors which had weighed with the trial Court for granting bail was that he was in custody for over a year. The bail granted by the trial Court was cancelled by the High Court which was affirmed by the Supreme Court. In the case of **Lakshya @ Pappu Vs. Central Bureau of Investigation (supra)**, this Court had dismissed the bail application of a co-accused on 04.12.2017. Almost two years have elapsed since then and no headway has been made in the trial. Charges are yet to be framed and 137 witnesses have been cited in the 'challan'.

I am also conscious that the right to speedy trial is one of the components of right to life and liberty guaranteed by the Constitution of India under Article 21. It has been held by the Supreme Court in the case of **Hussainara Khatoun and others Vs. Home Secretary, State of Bihar, Patna** reported as **1979 AIR (SC) 1360** that although speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. The right to speedy trial is an integral and essential part of fundamental right to life and liberty. This principle has been reiterated by the Supreme Court in several judgments including **Abdul Rehman Antulay and ors. Vs. R.S. Nayak and anr.** reported as **1992(2) RCR (Criminal) 634**, **Vakil Prasad Singh Vs. State of Bihar** reported as **2009(1) RCR (Criminal) 802** and **Justice K.S. Puttaswamy (Retd.) and another Vs. Union of India and others** reported as **2019 (1) SCC 1**.

It is also true that long custody by itself may not be sufficient to grant bail, especially in heinous offences like murder etc. when the trial has made some headway or is nearing completion. In the instant case, the trial has not made any progress. The charges are yet to be framed while 137 witnesses have been cited in the ‘challan’. The petitioner cannot be kept in custody for an indefinite period. Although arson by a mob has no place in a civilised society governed by rule of law, but it has to be borne in mind that no person was injured in the incident. He was involved in another case of an incident pertaining to this very agitation but he has been acquitted in that case. Prior to the Jat agitation in February 2016, the petitioner was not involved in any criminal case.

The petitioner is 54 years of age and is stated to have served in the Indian Air Force for over 20 years and, thereafter, is stated to have been employed in a company at Gujarat. Aside of the bald assertion of the counsel for the respondents, there is no material to suggest that the petitioner would be in a position to influence the witnesses.

Therefore, as the petitioner is in custody for over 3 years and 7 months and the completion of the trial is likely to take some time, the petitioner would be entitled to regular bail.

Therefore, without expressing any opinion on the merits of the case, the petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

(ANUPINDER SINGH GREWAL)
JUDGE

28.11.2019.
SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No