
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33120 of 2018

Date of decision : 08.11.2019

Hari Om @ Barola

... Petitioner

Versus

Central Bureau of Investigation

.. Respondent

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Rajat Mor, Advocate for the petitioner.

Mr. Sumeet Goel, Special Prosecutor for the respondent-CBI.

Anupinder Singh Grewal, J. (Oral)

The petitioner has sought regular bail in FIR No.RCCHG5121650014 (Annexure P-7) 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 (Annexure P-2) at Police Station Urban Estate Rohtak.

Learned 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. Similarly situated co-accused have been released on bail by various orders, copies whereof are at Annexures P-3 to P-10. He also contends that no person

was injured in the occurrence. The petitioner is not involved in any other criminal case. He also states that the conclusion of the trial in the instant case 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 29.03.2016. The petitioner is 24 years old student.

Per contra, learned counsel for 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 also contends that the petitioner's participation in the crime was *prima facie* established through CCTV footage, his mobile location and the statements of the witnesses recorded under Section 161 Cr.P.C. 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'.

Heard.

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 Khatoon 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. The petitioner is not involved in any other criminal case.

Therefore, as the petitioner is in custody for over 3 years and 7 months, it is a case of no injury, the petitioner is not involved in any other case and the completion of the trial is likely to take a long 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

November 08, 2019

sonia gugnani

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No