

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

210

CRM-M-1966-2022

Date of decision :02.03.2022

Ravinder Singh @ Raja and another

.....Petitioners

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Arnav Sood, Advocate, for the petitioners.

Mr. S. S. Cheema, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed on behalf of accused Ravinder Singh @ Raja aged 30 years and Ravipreet Singh @ Ravi, for grant of regular bail in case FIR No.46 dated 31.05.2018 for the offence under Sections 307, 438, 427, 148, 149 IPC and Sections 121, 121-A, 122, 124-A, 115, 120-B IPC and Sections 11, 12, 13, 17, 18 of the Unlawful Activities (Prevention) Act, 1967 and Sections 25/54/59 of Arms Act, 1959 and Section 66-F of Information and Technology Act, 2000 added later on, registered at Police Station Rangar Nangal, District Batala.

Learned counsel for the petitioners *inter alia* contends that the petitioners are not named in the FIR that was registered at the instance of Sartaj. It is submitted that eventually one Dharminder Singh @ Fauji was arrested by the police and the petitioners were named as accused on the basis of disclosure statement of Dharminder Singh @ Fauji. The allegations against the petitioners are that they were members of the Whatsapp and Facebook group of aforesaid Dharminder @ Fauji. The petitioner No.2 is

2 mobile phones and one country made pistol was effected from him while recovery of 3 cartridges of 539 MET and two cartridges of 08 MM, was effected from the petitioner No.1.

Learned counsel contends that there is no link evidence to associate the petitioners with the commission of the offence in any nature whatsoever and that even though the petitioner No.1 is in custody since June, 2018 and petitioner No.2 is in custody since 14.09.2018, the trial has not progressed. No witness has been examined so far. It is also submitted that two other co-accused namely Amritpal Singh @ Amrit has been granted concession of regular bail vide order dated 21.12.2021 passed in CRM-M-19292 of 2020 and co-accused Deep Kaur @ Kulvir Kaur has also been granted concession of regular bail by this Court vide order of even date passed in CRM-M-41771 of 2020. Learned counsel also submits that two other co-accused of the petitioners namely Nirmal Singh @ Nimma and Harnam Singh had been granted concession of regular bail by the Court of Additional Sessions Judge, Gurdaspur vide order dated 20.07.2018. It is also argued that the petitioners are not named in any other case and that there is no allegation of any attempt having been made by the petitioners to cause any injury or harm to the complainant. It is apprised that as the trial in the instant case has come to a stand still on account of an order passed by the Co-ordinate Bench of this Court in Criminal Revision No.1798 of 2019 preferred by co-accused Dharminder Singh @ Fauji against the framing of charge wherein, further proceedings have been stayed, there is no likelihood that the trial will be concluded in near future and further delay would

not be attributable on the part of petitioners. It is prayed that in view of the right of an accused to speedy trial and speedy justice under Article 21 of the Constitution of India, the petitioners are entitled to be granted the concession of regular bail in case, the criminal proceedings are not concluded in an expeditious manner.

Learned State counsel on instructions from DSP Jatinderpal Singh contends that the petitioners were in active collusion with main accused Dharminster Singh @ Fauji. A recovery of 5 live cartridges were effected from petitioner-Ravinder Singh @ Raja while a country made pistol recovered from Ravipreet Singh @ Ravi. He however, fails to deny and dispute the other submissions made by learned counsel for the petitioner.

I have heard learned counsel for the parties and have gone through the petition as well as the documents appended with the same.

In the case of **Union of India versus K.A. Najeed decided on 01.02.2021 passed in Criminal Appeal No. 98 of 2021**, the Supreme Court has held that long custody would be an essential factor while granting bail under the UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under the UAPA. It has also been held that the embargo under Section 43-D of the UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India. The relevant extract of the judgement is reproduced hereunder:-

“It is thus clear to us that the presence of statutory restrictions like Section 43 D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of

Part III of the Constitution. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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Instead Section 43D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”

Similarly, in the case of ***Mahender Lal Das Vs. State of Bihar and others (2002) 1 Supreme Court Cases 149***, the Hon'ble Supreme Court observed as under:-

“It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay & Ors Vs. R. S. Nayak & Anr.[1992] 1 SCC 225 while interpreting the scope of Article 21 of the Constitution held that every citizen has a right of speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right

to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice.”

It is held in the matter of ***Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar (1980) 1 SCC 81***, by the Hon'ble Supreme Court as under:

“5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." So also Article 3 of the European Convention on Human Rights provides that:

"every one arrested or detained-shall be entitled to trial within a reasonable time or to release pending trial."

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi Vs. Union of India. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.....”

Perusal of the case shows that there is no allegation of any overt act against the petitioners to incite violence or to cause harm to any individual. The authenticity of the whatsapp conversation and its evidentiary value would be determined at the trial. The petitioners are 30 years & 24 years old respectively and are in custody for over three years and six months. They are not involved in any other criminal case. Besides, the conclusion of the trial is likely to take sometime. The petitioner cannot be kept in continued detention for any length of time. Speedy justice has been recognized as an integral part of Article 21 of the Constitution of India.

un-addressed till the culmination of the proceedings.

It is further not disputed that proceedings before the trial Court have been stayed and that other co-accused already stand enlarged on bail. It is also not disputed that the petitioners have been in custody for more than 3 years and 6 months and the trial is not likely to be concluded soon.

Having considered the judgments and the facts as afore-noticed, the petition is allowed and the petitioners are ordered to be released on regular bail on their furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

At the time of release of the petitioners, the SHO, Police Station City Tarn Taran shall be informed. The petitioners shall furnish their mobile number to the SHO concerned and shall also keep the location of their phone switched on till the conclusion of the trial.

Petitioners shall appear before the concerned SHO every alternate Monday till the conclusion of the trial.

However, it is clarified that the observations made hereinabove would not have any bearing on the merits of the case.

02.03.2022
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(VINOD S. BHARDWAJ)
JUDGE

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