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

CRR-1173-2007

Date of Decision: 11.11.2022

SUNIL KUMAR

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Anurag Chopra, Advocate for the petitioner.

Mr. Digvijay Singh, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking quashing of judgment and order dated 13.07.2007 whereby learned Additional Sessions Judge (ad hoc), Fast Track Court, Gurdaspur has upheld sentence of rigorous imprisonment of 6 months and fine of Rs.2,000/- imposed by learned JMIC, Pathankot vide judgment and order dated 23.08.2005.

2. The brief facts emerging from the record and which are necessary for the adjudication of present petition are that on 09.04.1999, police officials while on patrolling duty from Dhar Chowk to Dunera noticed one Maruti car without number plate. On account of suspicion, they chased the car and found one clean shaven person driving the same. The driver of the car was apprehended who disclosed his identity as Sunil Kumar r/o Mahesh Nagar, Ambala Cantt. The police conducted search of the car and found liquor in excess of the minimum quantity

prescribed under Punjab Excise Act, 1914 (for short 'Excise Act').

3. The police after completing investigation filed challan, alleging violation of Section 61(1)(a) of Excise Act. Learned Trial Court vide judgment and order dated 23.08.2005 found the petitioner guilty and awarded sentence of rigorous imprisonment of 6 months besides imposing fine of Rs.2,000/-.

4. The petitioner preferred an appeal before Sessions Court which came up for consideration before Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur, who vide impugned judgment and order dated 13.07.2007 dismissed the appeal.

5. Leaned Counsel for the petitioner submits that he does not want to primarily press on merits, however, prays that period of sentence may be reduced from sentenced awarded to sentence undergone. The petitioner was working with Income Tax Department and on account of conviction, he has been terminated from services and since then he is not in service. Even though, he is not contesting on merits, still he submits that recovery of alleged liquor bottles has been shown in a populated area but there is no independent witness as per panchnama drawn at the time of search. The alleged offence was committed on 09.04.1999 and petitioner is facing protracted trial. The total sentence awarded by courts below is 6 months and he has already undergone 1 month and 11 days. No other case either before the commission of alleged offence or after the date of commission of alleged offence has been registered against the petitioner.

6. Learned State counsel submitted custody certificate dated 08.11.2022 disclosing that petitioner has suffered incarceration of 1

month and 11 days and no other case was ever registered against the petitioner. The custody certificate is taken on record. Learned State counsel further submitted that police at the time of recovery of liquor attempted to join independent witnesses, however, as a normal tendency nobody joined the proceedings. He does not dispute the fact that petitioner has already suffered a protracted trial.

7. I have heard the arguments of both sides and perused the record.

8. A Constitution bench of the Hon'ble Supreme Court recognising the right of speedy trial as part of fundamental right of life and personal liberty guaranteed by Article 21 in **Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225** has expounded following principles and held:

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of

investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, “delay is a known defence tactic”. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights

and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker [33 L Ed 2d 101] “it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate”. The same idea has been stated by White, J. in U.S.v.Ewell [15 L Ed 2d 627] in the following words:

‘... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in

completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker[33 L Ed 2d 101] and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that

quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

9. A seven judge bench of the Apex court approving the principles laid down in A.R. Antulay (Supra) in **P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578** has expounded:

29. *For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (1996) 4 SCC*

33 [as modified in Common Cause (II)(1996) 6 SCC 775 and Raj Deo Sharma (I)(1998) 7 SCC 507 and (II)(1999) 7 SCC 604 the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case (1992) 1 SCC 225 adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case (1992) 1 SCC 225 are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I)(1996) 4 SCC 33, Raj Deo Sharma (I)(1998) 7 SCC 507 and Raj Deo Sharma (II)(1999) 7 SCC 604 could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of

time, as prescribed by the directions made in Common Cause case (I)(1996) 4 SCC 33, Raj Deo Sharma case (I)(1998) 7 SCC 507 and (II)(1999) 7 SCC 604. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case (1992) 1 SCC 225 and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively—by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms.

10. A three judge of the Apex Court in **Anversinh v. State of Gujarat, (2021) 3 SCC 12** while dealing question of reduction or increase of quantum of sentence at the level of appellate court has held:

22. True it is that there cannot be any mechanical reduction of sentence unless all relevant factors have been weighed and whereupon the Court finds it to be a case of gross injustice, hardship, or palpably capricious award of an unreasonable sentence. It would thus depend upon the facts and circumstances of each case whether a superior court should interfere with, and resultantly enhance or reduce the sentence. Applying such considerations to the peculiar facts and findings returned in the case in hand, we are of the considered opinion that the quantum of sentence awarded to the appellant deserves to be revisited.

23. We say so for the following reasons: first, it is apparent that no force had been used in the act of kidnapping. There was no pre-planning, use of any weapon or any vulgar motive. Although the offence as defined under Sections 359 and 361 IPC has no ingredient necessitating any use of force or establishing any oblique intentions, nevertheless the mildness of the crime ought to be taken into account at the stage of sentencing.

24. Second, although not a determinative factor, the young age of the accused at the time of the incident cannot be overlooked. As mentioned earlier, the appellant was at the precipice of majority himself. He was no older than about eighteen or nineteen

years at the time of the offence and admittedly it was a case of a love affair. His actions at such a young and impressionable age, therefore, ought to be treated with hope for reform, and not punitively.

25. Third, owing to a protracted trial and delays at different levels, more than twenty-two years have passed since the incident. Both the victim and the appellant are now in their forties; are productive members of society and have settled down in life with their respective spouses and families. It, therefore, might not further the ends of justice to relegate the appellant back to jail at this stage.

26. Fourth, the present crime was one of passion. No other charges, antecedents, or crimes either before 1998 or since then, have been brought to our notice. The appellant has been rehabilitated and is now leading a normal life. The possibility of recidivism is therefore extremely low.

27. Fifth, unlike in State of Haryana v. Raja Ram, (1973) 1 SCC 544 : 1973 SCC (Cri) 428 and Thakorlal D. Vadgama v. State of Gujarat, (1973) 2 SCC 413 : 1973 SCC (Cri) 835, there is no grotesque misuse of power, wealth, status or age which needs to be guarded against. Both the prosecutrix and the appellant belonged to a similar social class and lived in geographical and cultural vicinity to each other. Far from there being an imbalance of power; if not for the age of the prosecutrix, the two could have been happily married and cohabiting today. Indeed, the present instance is an offence: mala prohibita, and not mala in se. Accordingly, a more equitable sentence ought to be awarded.

28. Given these multiple unique circumstances, we are of the opinion that the sentence of five years'

rigorous imprisonment awarded by the courts below is disproportionate to the facts of the this case. The concerns of both the society and the victim can be respected, and the twin principles of deterrence and correction would be served by reducing the appellant's sentence to the period of incarceration already undergone by him.

Conclusion

29. In light of the above discussion, we are of the view that the prosecution has established the appellant's guilt beyond reasonable doubt and that no case of acquittal under Sections 363 and 366 IPC is made out. However, the quantum of sentence is reduced to the period of imprisonment already undergone. The appeal is, therefore, partly allowed in the above terms and the appellant is consequently set free. The bail bonds are discharged.”

11. In the case in hand:

(i) The alleged offence was committed on 09.04.1999 and the petitioner at present is more than 58 years old.

(ii) The Trial Court convicted the petitioner on 23.08.2005, the Appellate Court dismissed appeal of the petitioner on 13.07.2007 and revision petition is pending in this Court since July, 2007. In other words, the petitioner is facing trial since 1999.

(iii) The sentence awarded by Trial Court and upheld by Appellate Court is 6 months and as per custody certificate dated 08.11.2022, the petitioner has already suffered incarceration of 41 days during July-August, 2007.

(iv) The case of prosecution before Trial Court as well Appellate Court was that petitioner was carrying liquor bottles more than

permissible under Excise Act. No bottle was found adulterated or spurious. The petitioner was not found involved in smuggling of liquor. He was just found carrying liquor more than permissible limit and without permit under Excise Act.

(iv) The alleged offence was committed and punishable under Excise Act. The State Government had appointed different officers as Excise Officers to investigate and prosecute offences punishable under Excise Act. The police did not join Excise Officials. This Court in '**Basti Ram Vs. State of Haryana' (1984) 2 RCR (Cri) 514** has held that Magistrate is not competent to take cognizance of an offence under Section 61 of Excise Act, on the basis of police report submitted under Section 173 Cr.P.C.

(v) The petitioner has already paid fine imposed by Trial Court and upheld by Appellate Court.

(vi) The petitioner was neither involved in any other offence prior to alleged offence nor was found subsequently involved in any other offence.

(vii) The petitioner at the time of commission of alleged offence was in service with Income Tax Department and on account of conviction, he has lost his Central Government job.

(viii) The recovery was made in a populated area, however, no independent witness was joined. This Court in '**Jeet Singh Vs. State of Punjab' 1998 (3) RCR (Cri) 274** has acquitted accused therein on the ground that no independent witness was joined.

12. Keeping in mind the nature of allegations & evidence on

record; findings recorded by trial court and first appellate court; quantum of sentence awarded & period of sentence undergone; age & antecedents of the petitioner; a quite long period of trial followed by appellate proceedings during which petitioner has certainly suffered immense trauma, mental incarceration & agony, I am of the considered opinion that ends of justice would be met if the sentence of imprisonment imposed upon the petitioner is reduced to the period already undergone.

Ordered accordingly.

(JAGMOHAN BANSAL)
JUDGE

11.11.2022
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>