

104+212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-35722-2023 in/and
CRM-M-35772-2023
Date of Decision: 05.09.2023

Narender

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vikas Bishnoi, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J. (Oral)**CRM-35722-2023**

1. For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Annexures P-3 to P-5 are taken on record.

CRM-M-35772-2023

1. Reply by way of affidavit of Deputy Superintendent of Police, Law and Order, Hisar has been filed on behalf of the respondent-State and the same is taken on record.

2. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail to him in case FIR No.680 dated 19.09.2020 registered under Sections 302, 323, 452 and 34 of IPC (Section 325 IPC added later on) at Police Station Sadar Hisar, District Hisar.

3. The FIR in the present case was registered on the basis of the statement made by Sunil Kumar son of Sant Lal. As per him, after taking dinner on 18.09.2020, he went to the house of his uncle Jagdish and they were

talking to each other. At about 11.30 p.m., he stood up to go to his house and there was some noise at the gate of house of his uncle Jagdish. Someone had forcibly opened the main door of the house of my uncle Jagdish and Sandeep son of Krishan, Narender son of Karan Singh and Sonu son of Ram Kishan, entered the house and were carrying wooden sticks in their hands and after reaching there, they exhorted and caused injuries to my uncle Jagdish, who was lying on the cot and thereafter, they brought him down from the cot and again caused injuries to him with sticks. The complainant hid himself and all the three accused dragged his uncle in the street behind his house and again caused injuries to him with the wooden sticks. When his aunt Papla Devi tried to save his uncle, all the three accused caused injuries to her also. After causing injuries, they fled from there with their respective weapons. The cause of enmity was that few days back, Jagdish had asked Sandeep, Narender and Sonu not to sell the liquor in the street. After arranging the conveyance, Jagdish and Papla Devi were shifted to Government Hospital, Hisar, where Jagdish was declared dead and Papla Devi was admitted for treatment. With these allegations, the FIR in the present case was got registered by the complainant.

4. Learned counsel for the petitioner submits that the petitioner was arrested in the present case on 19.09.2020 and is in custody for about 3 years. Learned counsel further submits that the entire prosecution story was false and concocted. In reality, Jagdish (since deceased) was a drunkard and after taking liquor, he used to enter the houses of certain villagers. On the date of incident also, he had entered the house of someone and was caused injuries by the villagers and finally, succumbed to the injuries. Still further, it was contended that there was no motive on the part of the present petitioner to commit the

crime as he never indulged in the sale of liquor. Learned counsel further contends that during the course of trial, the statement of the complainant has already been recorded as PW-3 and there were material contradictions in the statements of the said witnesses. Learned counsel further contends that the prosecution has made every possible effort to delay the trial, so as to ensure protracted incarceration of the present petitioner and the petitioner is entitled to bail.

5. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the petitioner was specifically named in the present case and had been attributed a specific role. She further contends that out of total 20 witnesses, 12 prosecution witnesses have already been examined. However, she admits that the material witnesses including the complainant have already been examined and the petitioner is in custody for the last about 03 years. She also submits that no other criminal case was registered against the petitioner.

6. It has been held by the Hon'ble Supreme Court in the matter of **“Ranjan Dwivedi Vs. CBI, through the Director General, 2012(8) SCC 495; 2012 (4) RCR (Criminal) 880”** as follows:-

“14. In *Kartar Singh v. State of Punjab*, (supra), another Constitution Bench considered the right to speedy trial and opined that the delay is dependent on the circumstances of each case, because reasons for delay will vary. This Court held :

"84. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In

all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...". It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. [See Black's Law Dictionary, 6th Edn. page 1400].

85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon v. Home Secretary*, AIR 1979 Supreme Court 1360, State of Bihar while dealing

with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5)

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

See also (1) Sunil Batra v. Delhi Administration (I), (2) Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (3) Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna, (4) Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna, (5) Kadra Pahadia v. State of Bihar (II), (6) T.V. Vatheeswaran v. State of T.N., and (7) Abdul Rehman Antulay v. R.S. Nayak. 88. Thus this Court by a line of judicial pronouncements has emphasised and re-emphasised that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in Maneka Gandhi."

The Court further observed :

"92. Of course, no length of time is per se too long to pass

scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

7. Hon'ble the Supreme Court in **Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429** has held as under:-

"Bail or Jail"- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russell who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of

the prisoner at trial. According to V.R. Krishna Iyer, J., the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.

8. **In Gurbaksh Singh Sibbia etc Vs The State of Punjab, AIR**

1980 SC 1632, Hon'ble the Supreme Court has observed as under:-

*“Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Vs. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in **K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504**, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was*

*established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in **Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356**, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :*

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

9. At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Hon'ble the Supreme Court has observed

in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

10. From the allegations levelled in the present FIR, it is apparent that serious allegations have been levelled against the petitioner in the present case, however, the petitioner cannot be kept behind bars for an indefinite period. The petitioner was arrested in the present case on 19.09.2020 and it was the duty of the prosecution to complete the prosecution evidence expeditiously. Any delay in conducting the trial on the part of the prosecution violates the right to life, which is guaranteed to every citizen under Article 21 of the Constitution of India. Even the learned State counsel has failed to prove on record that the trial proceedings have been delayed by the present petitioner in any manner.

11. Without commenting any further on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned subject to the following conditions:-

- (i) *The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
- (ii) *The petitioner shall remain present before the Court on the*

dates fixed for hearing of the case.

- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.*
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.*
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.*
- (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.*
- (vii) The concerned Court may insist on two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.*
- (viii) The petitioner shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.*

05.09.2023

hemlata

(N.S.SHEKHAWAT)
JUDGE

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