

2023:PHHC:139409

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

(1) CRM M-45224 of 2023
Date of Decision: 30.10.2023

Rekhraj Kachchhwah ...Petitioners

Vs.

Union Territory of Chandigarh ...Respondent

(2) CRM M-46900 of 2023

Joginder Kumar ...Petitioner

Vs.

State of UT Chandigarh ...Respondent

(3) CRM M-51457 of 2023

Mukesh Solanki ...Petitioner

Vs.

UT Chandigarh and another ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ankit Chowdhri, Advocate, for the petitioner
in CRM M-45224 of 2023.

Mr. Manjot Singh Gujral, Advocate, for the petitioner
in CRM M-46900 of 2023.

Mr. Rose Gupta, Advocate with
Ms. Garima Modi, Advocate
for the petitioner in CRM M-51457 of 2023.

Mr. Vipul Jindal, Addl. P.P., U.T. Chandigarh.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose of above mentioned three
petitions, whereby, the petitioners have prayed for grant of regular

bail under Section 439 Cr.P.C. in case arising out of FIR No. 45 dated 20.04.2023 under Sections 419, 420, 467, 468, 471 and 120-B IPC registered at Police Station South Sector 34, District Chandigarh.

2. Since the common questions of law and facts arise for consideration by this Court, these cases are being disposed off together.

3. The FIR in the present case was got registered by the Director Principal, Government Medical College and Hospital, Sector 32 Chandigarh. The complainant alleged that the institute had issued an advertisement to fill up 182 vacant posts of staff/nurse/nursing officers in different categories. Further, the Panjab University Chandigarh was directed to conduct the skill/written tests as per the guidelines issued by the Administrative Department. The Panjab University had conducted the skill/written test on 28.08.2022 in various examinations centres in Chandigarh. The Panjab University also videographed the exam and took the signatures and thumb impressions on the attendance sheet of all the candidates, who had appeared in written/skill examination and declared the result on 07.09.2022. Thereafter, the institute called the eligible candidates provisionally for counseling from 16.11.2022 to 18.11.2022. During counseling the candidatures of Rekhraj Kachchhwah were found suspicious and the office of the complainant decided to check and verify the credentials of all the selected candidates by constituting a

Committee. During inquiry, certain candidates did not appear in the stipulated time slot nor they had informed any reasons for their absence. During inquiry, it was found that the photographs and signatures of Rekhraj Kachchhwah and others did not match with the details and particulars of the candidates, who has appeared in the examination.

4. Still further, it was also found that during the course of investigation that Mukesh Solanki accused had arranged/provided Joginder Singh, accused as impersonator for Rekhraj Kachchhwah, accused and persuaded Joginder Singh to appear as Rekhraj Kachchhwah in written examination of nursing officers/staff nurses.

5. Learned counsel appearing on behalf of Rekhraj Kachchhwah in CRM M-45224 of 2023 submitted that the petitioner had been falsely involved in the present case by concocting a false story. He was involved only on the basis of suspicion and there was no documentary evidence to prove his involvement in the crime. He further submitted that in the present case, the entire case was based on documentary evidence, which was already in possession of the Investigating Agency. Apart from that, the petitioner was arrested in the present case on 22.04.2023 and is in custody for the last more than 06 months. Even, he was a young and educated boy whose marriage was also fixed in November 2023. Apart from that, the case was listed on 10.11.2023 for framing of charges and the prosecution had relied

upon 28 witnesses and no witness has been examined so far. Thus, his custody will serve no meaningful purpose.

6. Learned counsel for the petitioner, namely, Joginder Kumar in CRM M-46900-2023 submitted that there was no evidence against him, still, he was wrongly arrested in the present case on 22.04.2023. Even, nothing has been recovered from the possession of the petitioner. Moreover, the entire prosecution case is based on documentary evidence, which has already been taken into possession by the police and after conclusion of the investigation, the final report under Section 173 Cr.P.C. has been presented before the competent Court. Learned counsel further submitted that it had been wrongly alleged that the present petitioner had impersonated as of Rekhraj Kachchhwah as there is not even money transaction between the petitioner and other accused. Still further, the name of the petitioner was no where mentioned during the counseling/interview process nor he had appeared before Medical Examination Board for his medical fitness. Further the petitioner is a bachelor of science in nursing and had obtained degree from Rajashthan Health Sciences University. At present he was working as a Nursing Officer at All India Institute of Medical Sciences, Jodhpur and his further custody will not serve any meaningful purpose.

7. Learned counsel for the petitioner, namely, Mukesh Solanki in CRM M-51457 of 2023 vehemently argued that in the

present case, the allegations were leveled with regard to the impersonation of some candidates by the co-accused. The petitioner had been falsely implicated in the present case on the basis of disclosure statement suffered by the co-accused and he had no concern with his co-accused at all. Apart from that, the petitioner is a brilliant student, who had qualified B.Sc. (Nursing) from Rajasthan University of Health Sciences Jodhpur in the year 2015. Still further, the entire case was based on documentary evidence, which was taken into possession by the police and the final report has already been presented before the Court. He was arrested in the present case on 27.04.2023 and it has been falsely alleged that he had acted as a mediator between both the co-accused.

8. I have heard learned counsel for the parties and perused the record.

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 not 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. 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 Russel 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.

11. 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”.

12. The legal position emerging from the above discussion can be summarised as follows :

“(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) 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. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. 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.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect

process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial

discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends 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.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for

refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other nonbailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

13. Still further, the Hon'ble Supreme Court, while dealing with the scope of speedy trial and emphasizing that the speedy trial is one of the most important facets of the fundamental rights to life and liberty enshrined in Article 21, held in the matter of **Kartar Singh Vs. State of Punjab and connect case, 1994(2) RCR 169** as follows:

89. *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.....*

90. *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, (Sixth Edition) p. 1400.*

91. *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.*

92. *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.

93. This Court in Hussainara Khatoon (1) v. Home Secretary, State of Bihar, 1980 (1) SCC 81 at P. 89 while dealing with Article 21 of the Constitution of India has observed thus:

"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 leveled 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."

94. See also (1) *Sunil Batra v. Delhi Administration*, 1979 (1) SCR 392; (2) *Hussainara Khatoon (1) v. Home Secretary, State of Bihar*, 1979 (3) SCR 169; (3) *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*, 1979 (3) SCR 532; (4) *Hussainara Khatoon and others v. Home Secretary, State of Bihar, Govt. of Bihar, Patna* 1979 (3) SCR 1276; (5) *Kadra Pahadia v State of Bihar*, 1983 (2) SCC 104; (6) *T. V. Vatheeswaran v. State of T.N.*, 1983(2) SCR 348; and (7) *Abdul Rehman Antulay v. R. S. Nayak*, 1992 (1) SCC 225.

14. From the allegations levelled by the complainant in the present case, it is apparent that serious allegations have been levelled against the petitioners in the present case; however, the petitioners cannot be kept behind the bars for an indefinite period. From the submissions made by the learned counsel for the parties, it is evident that the entire case was based on documentary evidence, which has already been collected by the police during the course of the investigation and the final report under Section 173 Cr.P.C. has already been presented before the competent Court. Apart from that, the petitioners are in custody for the last more than 06 months and the final report has already been presented before the Court. Apart from that, all the offences in the present case are triable by the Court of Magistrate and no witness has been examined so far. Consequently, further custody of the petitioner will not serve any meaningful purpose and the petitioners are ordered to be released on bail on their

furnishing bail bonds/surety bonds to the satisfaction of the learned
trial Court/Duty Magistrate/CJM concerned.

30.10.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No