

285 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2739-2023
Date of Decision:15.11.2023

Bhagirath @ Pandu

...Appellant

Vs.

State of Haryana

...Respondent

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

Present: Dr. Anmol Rattan Sidhu, Sr.Advocate with
Ms.Tejaswini, Advocate and
Ms. Kavita, Advocate
for the appellant.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

Mr. Varunveer Chauhan, Advocate
for the complainant.

N.S.Shekhawat J.

1. The appellant has filed the present appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Act"), against the impugned order dated 13.09.2023 passed by the Court of Additional Sessions Judge, Hisar, whereby the application for regular bail under Section 439 Cr.P.C was ordered to be dismissed, in a case arising out of FIR No.1135 dated 14.12.2021 under Sections 302,148,149,367,323,342,506 of IPC and under Section 3 (2) (v) of the "Act", Police Station Sadar, Hisar.

2. Learned senior counsel for the appellant submits that in the present case, the FIR was registered on the basis of the statement made by the complainant namely Sandeep son of Chiman Lal. In the FIR, he had levelled allegations against the Sandeep, Sunil, Golu, Deep, Sanjay, Vijay and 4/5 known persons, who had allegedly caused injuries to the complainant, Vinod

and Bhal Singh. Later on, Vinod son of Om Parkash succumbed to the injuries.

3. Learned Senior counsel vehemently argued that in the present case, the complainant as well as the appellant belonged to Village Mirkan, District Hisar, still the appellant was not mentioned as one of accused in the FIR, Annexure A-1, by the complainant. However, on the next day, i.e.15.12.2021, the supplementary statement of the complainant (Annexure A-2) was recorded by the police and the appellant was named as one of the assailant in the present case. Apart from that, the police had also recorded the statement of Bhal Singh, injured on 15.12.2021 (Annexure A-3) and again the appellant was named as one of the assailant. Accordingly, on the strength of the two supplementary statements, the appellant was ordered to be arrested on 16.12.2021 and is in custody since then. Learned Senior counsel next contends that in the FIR, the complainant had named six persons and also stated that 4/5 unknown persons had participated in the occurrence. However, in the supplementary statement dated 15.12.2021 (Annexure A-2) the complainant had shown the involvement of 11 additional accused, enhancing the number of accused in the present case to 17 accused. He contends that the appellant herein was among the 11 persons, who were subsequently named by the complainant. However, again the version put forth by the complainant was found to be false and five other persons named by the complainant were declared innocent. He next contends that the complainant appeared before the Trial Court and an application under Section 319 Cr.P.C was moved for summoning the five accused namely Surender son of Om Parkash Jaildar, Sunil son of Fateh Singh, Dinesh @ Mangu son of Asha Ram, Mandeep Kukna son of Bhadar Singh and Sumit @ Nanha Gadwal son of Subhash Gadwal, however, the said prayer was declined by the Trial Court vide

order dated 05.06.2023(Annexure A-6). He further contends that the present appellant is also similarly placed with the said five accused, who were exonerated by the Investigating Agency and the application under Section 319 Cr.P.C for summoning those accused as additional accused, already stood dismissed. Learned senior counsel further contends that Ravinder @ Dholu, who is also similarly placed, as he was also named by the complainant in the supplementary statement (Annexure A-2), has already been granted the concession of bail by this Court in CRM-M-6621-2023 vide order dated 02.03.2023 (Annexure A-7). Learned Senior counsel further contends that in the present case, the appellant is in custody for the last about 01 year and 11 months and even in the supplementary statement, on the basis of which the appellant has been arrayed as an accused, there is no specific attribution to him and his further continuation in custody would not serve any meaningful purpose.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the prayer made by learned senior counsel for the appellant on the ground that the present appellant had actively participated in the commission of the crime. Learned State counsel further submitted that in the present case, the present appellant was also part of the unlawful assembly, which had caused indiscriminate injuries to Vinod, since deceased and two injured namely Bhal Singh and Sandeep. Consequently, the appellant does not deserve the concession of bail.

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

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 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.

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. This Court is of the considered opinion that the petitioner deserves the concession of bail in the present case. The appellant was not initially named in the FIR and has been involved in the present case on the strength of the supplementary statement made by the complainant as well as Bhal Singh, injured. However, in the said statements also, there is no specific attribution to the present appellant. Moreover, the appellant is continuing in custody for the last 01 year and 11 months and the conclusion of the trial make take quite a long time.

11. Thus, in view of the above discussion, the present appeal is

allowed. The appellant is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

(i) The appellant 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 appellant shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The appellant shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The appellant 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 appellant 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 appellant is involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law,

while accepting the bails bonds and surety bonds of the appellant.

(viii) The appellant shall report every 1st Monday of English calender month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha.

12. In case, the appellant violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

15.11.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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