Neutral Citation No. (2024:HHC:6933)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 1551 of 2024.
Reserved on: 06.08.2024
Date of Decision: 13.08.2024.

Mureshi Sahni ...Petitioner

Versus

State of Himachal Pradesh through Secretary Home ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Ms. Kanta Thakur, Advocate.
For the Respondent/State : Mr. Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested on 14.09.2016, for the commission of an offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') vide FIR No. 241/2016, dated 13.09.2016, registered in Police Station Baddi, District Solan. The petitioner has been in judicial custody for the last 7 years and 10 months. The matter is now listed on 17.09.2024 for recording

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

the statements of prosecution witnesses. Only one witness remains to be examined and the case has been listed for service of the witness since 13.03.2019. There is an unjustified delay in the conclusion of the trial and more than 05 years and 03 months have elapsed for the examination of Dr. Mahesh. There is nothing on record to connect the petitioner with the commission of the crime. No fruitful purpose would be served by detaining him in judicial custody. The petitioner is a permanent resident of Bihar. He has deep roots in the society and there is no chance of his absconding. Hence, the present petition.

2. The petition is opposed by filing a status report asserting that the informant and Brijesh Kumar were serving in one Company. They were residing in one room with Loleg, younger brother of Brijesh Kumar. The informant was told by the contractor that the present petitioner had beaten Brijesh Kumar. The informant went to the shop of accused Mureshi Sahni and found that Brijesh Kumar was lying unconscious. He had suffered multiple injuries. When the informant asked the petitioner as to why he had beaten Brijesh, the petitioner replied that Brijesh Kumar was standing outside his shop with the intent to commit theft. The matter was reported to the police.

The police registered the FIR and conducted the investigation. The petitioner made a disclosure statement under Section 27 of the Indian Evidence Act, which led to the recovery of the iron rod and pipe. Brijesh Kumar subsequently succumbed to his injuries. As per the report of the post-mortem, the immediate cause of the injury was cardiorespiratory arrest and the antecedent cause was assault with head injury with blunt trauma abdomen with a neck injury with multiple soft tissue injuries with myoglobinuria with acute renal failure. The police added Section 302 of IPC. The challan was filed before the Court. 26 witnesses have been examined out of 27 cited witnesses. The matter is now listed on 17.09.2024 for recording the statement of Dr. Mahesh Jangra. Hence, the status report.

3. I have heard Ms. Kanta Thakur, learned counsel for the petitioner and Mr. Prashant Sen, learned Deputy Advocate General for the respondent/State.

4. Ms Kanta Thakur, learned counsel for the petitioner submitted that the petitioner has been in judicial custody for more than 7 years. The matter is listed for the examination of one witness for about 5 years. The witness has not been produced despite the specific direction given by the learned Trial

Court on 18.01.2024. The petitioner cannot be kept indefinitely behind the bars; hence, she prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Prashant Sen, learned Deputy Advocate General for the respondent/State submitted that the petitioner had committed a heinous offence and should not be released on bail.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. Learned Trial Court passed an order on 18.01.2024 stating that the bailable warrants issued to secure the presence of Dr. Mahesh were returned unserved with the report that he had left PGI. Bailable warrants issued to secure the presence of Ashutosh Sharma were not returned. The prosecution had failed to get the service of these witnesses effected despite repeated directions. The accused was in judicial custody and the Court had been summoning the witness at Sl. No. 10 and 23 since 13.03.2019 but the process was either not returned or served despite urgency shown by the Court in various orders. A copy of the order was sent to Superintendent of Police, Baddi to take action against the erring official and to ensure that warrants issued by the Court were properly served and in case of default,

the Court would pass an adverse order, the responsibility of which would be with the prosecution.

8. The order passed by the learned Trial Court shows the casual manner in which the prosecution is handling the case. Learned Trial Court noticed that the processes were being issued to secure the presence of witnesses at Sl. No. 10 and 23 but the processes were either not being returned or not served which resulted in the delay. The fact that the prosecution had failed to secure the presence of two witnesses for more than 5 years speaks volumes about the apathetic attitude of the State towards individual liberty. A copy of the order was sent to Superintendent of Police, Baddi to ensure the service of the witnesses but the situation did not improve. This shows that even a high-ranking police officer is not concerned with the early conclusion of the Trial but is happy with keeping a person behind the bars without Trial. Nothing more needs to be said about the deplorable situation prevalent in the State regarding the rights of under trial prisoners and the lip service being paid to the Rule of Law.

9. It was laid down in ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352*** that the right of speedy trial is a

constitutional right of an accused. The right of bail is curtailed on the premise that the trial would be concluded expeditiously. It was observed: -

> "13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in ***Vaman Narain Ghiya v. State of Rajasthan, [2008] 17 SCR 369: (2009) 2 SCC 281*** ('the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....'). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in ***Kartar Singh v. State of Punjab, [1994] 2 SCR 375: (1994) 3 SCC 569*** made observations to this effect. In ***Shaheen Welfare Association v. Union of India, [1996] 2 SCR 1123: (1996) 2 SCC 616*** again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:
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> > a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be

> protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

10. The Court highlighted the effects of pre-trial detention and the importance of speedy trial as under:

> "22. Before parting, it would be important to reflect that laws which impose stringent conditions for the grant of bail, may be necessary in the public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as of 31st December 2021, over 5,54,034 prisoners were lodged in jails against a total capacity of 4,25,069 lakhs in the country[*National Crime Records Bureau, Prison Statistics in India https://ncrb. gov. in/sites/default/files/P SI-202 1/Executive ncrb Summary-2021.pdf*]. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.
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> 23. The danger of unjust imprisonment, is that inmates are at risk of 'prisonisation' a term described by the Kerala High Court in ***A Convict Prisoner v. State, 1993 Cri LJ 3242*** as a radical transformation ' whereby the prisoner:
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> > 'loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes. '
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> 24. There is a further danger of the prisoner turning to crime, 'as crime not only turns admirable but the more professional the crime, more honour is paid to the criminal'[*Working Papers - Group on Prisons & Borstals - 1966 U.K.*] (also see Donald Clemmer's 'The Prison

> Community' published in 1940[*Donald Clemmer, The Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, 'Donald Clemmer's Concept of Prisonisation', available at: https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf (accessed on 23rd March 2023).*]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts, therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

11. It was held in ***Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366*** that a person cannot be kept behind bars when there is no prospect of trial being concluded expeditiously. It was observed on page 621:

> "**8.** It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary."

12. Similarly, it was laid down by the Hon'ble Supreme Court in ***Jagjeet Singh v. Ashish Mishra*, *(2022) 9 SCC 321: (2022) 3***

SCC (Cri) 560: 2022 SCC OnLine SC 453 that no accused can be subjected to unending detention pending trial. It was observed on page 335:

> **"40.** Having held so, we cannot be oblivious to what has been urged on behalf of the respondent-accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (see ***Union of India v. K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713***, paras 15 and 17])."

13. It was laid down by the Hon'ble Supreme Court recently in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr. in Criminal Appeal No. 2787 of 2024 decided on 03.07.2024*** that the right to speedy trial of the offenders facing criminal charges is an important facet of Article 21 of the Constitution of India and inordinate delay in the conclusion of the trial entitles the accused to grant of bail, it was observed: -

"12 Long back, in ***Hussainara Khatoon v. Home Secy., the State of Bihar reported in (1980) 1 SCC 81***, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

> "Now obviously procedure prescribed by law for depriving a person of 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 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 a 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."

13 The aforesaid observations have resonated, time and again, in several judgments, such as ***Kadra Pahadiya & Ors. v. State of Bihar reported in (1981) 3 SCC 671*** and ***Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225***. In the latter, the court re-emphasized the right to speedy trial and further held that an accused, facing prolonged trial, has no option: "The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent

> legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands a speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to a speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. It was further held that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide the right of speedy trial to the accused, then the bail should not be opposed on the ground that crime is serious. It was observed

> "19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

15. In the present case, the fact that the prosecution is unable to examine two witnesses despite the lapse of more than 5 years shows that the right of speedy trial of the petitioner is being violated. The promise held to the petitioner that his bail was being denied on the premise that his Trial would be concluded expeditiously is not being honoured; hence, the petitioner cannot be kept behind the bars indefinitely. The fact that the petitioner is accused of the commission of the heinous

offence is not sufficient to deny bail to him when the prosecution has failed to do its duty to examine the witnesses expeditiously.

16. In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of ₹1,00,000/- with two sureties each of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions: -

(I) The petitioner will not intimidate the witnesses nor will he influence any evidence in any manner whatsoever;
(II) The petitioner shall attend the trial in case a charge sheet is presented against him and will not seek unnecessary adjournments;
(III) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of intending visit to the SHO, the Police Station concerned and the Trial Court;
(IV) The petitioner will surrender his passport, if any, to the Court; and
(V) The petitioner will furnish his mobile number, and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

17. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

18. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

19. The petition stands accodingly disposed of and so are the pending miscellaneous applications, if any. A copy of this judgment be sent to the Superintendent, District Jail, Solan, District Solan. H.P and the learned Trial Court by FASTER.

(Rakesh Kainthla)
Judge

13th August, 2024
(Nikita)

KARAN SINGH GULERIA

Digitally signed by KARAN SINGH GULERIA
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