(2024:HHC:16436)

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MP(M) No. 2705 of 2024.

Reserved on : 20th December, 2024.

Decided on : 27th December, 2024.

Hind ...**Petitioner.**

Versus

State of H.P. ....**Respondent.**

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?[1] *No.*

For the Petitioner: Mr. Servedaman Rathore, Advocate.

For the Respondent: Mr. Gobind Korla, Addl. A.G.

Satyen Vaidya, Judge.

By way of instant petition, a prayer has been made for release of petitioner on bail in a case registered vide FIR No. 32 dated 29.03.2022 at P.S. Kihar, District Chamba for offence under Section 302 of the IPC.

[1] Whether reporters of the local papers may be allowed to see the judgment?

2. At the time of hearing of petition, learned counsel for the petitioner has laid stress on violation of right of petitioner to speedy trial by pointing out that the petitioner is in custody in the same case since 29.03.2022 and there is no possibility of conclusion of trial in near future. He has submitted that out of 36 cited prosecution witnesses only 18 have been examined till date. It is also submitted that the petitioner is permanent resident of Village Bhant, P.O. Sanghani, Development Block, Tehsil Salooni, District Chamba, H.P. and has no criminal history.

3. The prayer of the petitioner has been opposed by the respondent-State on the ground that the petitioner is facing the charge for a very heinous offence and in case guilt is proved against the petitioner, it may entail even capital punishment. An apprehension has also been expressed about the possibility of petitioner fleeing from

the course of justice besides exerting influence on the prosecution witnesses.

4. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

5. The petitioner earlier also approached this Court for grant of bail by way of Cr.MP(M) No. 2248 of 2022 but the same was withdrawn by the petitioner on 31.10.2022.

6. Since, the earlier bail application of the petitioner was not decided on merits and even otherwise also more than two years have elapsed, therefore, filing of successive bail application cannot be a bar for consideration of the instant application on merits.

7. Admittedly, the petitioner is in custody for more that 2 and ½ years now. Only 18, out of 36 prosecution witnesses have been examined, therefore, the plea of the petitioner that the trial is not likely to be concluded in near future has substance.

8. In the initial status report dated 11.12.2024 filed by the respondents, it was submitted that the brother of petitioner, who is also a prosecution witness, remains to be examined and petitioner if released on bail could influence his deposition. However, subsequently it has transpired that the said witness has already been examined on 25.11.2023. The respondent-State has not been able to support their contention that any other vulnerable witness remains to be examined, rather it has been shown that only official witnesses and expert witness on medical opinion remain to be examined.

9. There is also nothing on record to suggest that the petitioner has any criminal history. It is also not denied that the petitioner is permanent resident of Village Bhant, District Chamba.

10. The right to speedy trial is one of the cardinal manifestations of Article 21 of the Constitution of India

and has repeatedly been held by the Hon'ble Supreme Court to be valuable right available to a person or accused of an offence.

11. In ***Hussainara Khatoon vs. Home Secretary, State of Bihar reported in (1980) 1 SCC 81*** the right to speedy trial was held implicit in the broad sweep and content of Article 21 of the Constitution.

12. In ***Dr. Vinod Bhandari vs. State of M.P. 2015 (1) Criminal Court Case 294 (SC)***, Hon'ble Supreme Court has held as under:-

> *"12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody*

for indefinite period if trial is not likely to be concluded within reasonable time."

13. In ***Zahur Haider Zaidi vs. Central Bureau of Investigation, (2019) 20 SCC 404,*** a three Judges Bench of Hon'ble Supreme Court has granted bail to an accused of offence under Section 302 of the IPC in the following terms:-

"1. Leave granted. We would presently consider whether the accused- appellant Zahur Haider Zaidi is entitled to be released on bail. The issue of transfer of case would be considered on a subsequent date after hearing all the accused.

2. Our attention has been drawn to the allegations against the accused-appellant and that he is in custody for the last 19 months. Though the accused-appellant is facing charge under Section 302, we are told that the trial has not made substantial progress beyond the framing of the charge. Completion of trial will take some time.

3. The only apprehension expressed on behalf of the Central Bureau of Investigation is that the appellant being a highly placed police officer may intimidate and win over witnesses and influence them.

> *4. We are of the view that the bail ought not to be denied on the aforesaid ground and in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail.*
>
> *5. Taking into account the allegations, the period of custody suffered and likely time that may be taken for completion of trial, we are of the view that the accused- appellant should be released on bail in connection with FIR No.RC SI 2017 S0009 CBI/SC-I/New Delhi, on satisfaction of the appropriate condition(s) as may be imposed by the learned trial court. The order of the High Court is set aside. The appeal is disposed of to the aforesaid extent."*

14. In ***Criminal Appeal Nos. 152 of 2020, Prabhakar Tewari v. State of UP and Anr.*** (along with connected matter) and ***Criminal Appeal No.98 of 2021,Union of India v. K.A. Najeeb,*** the Hon'ble Supreme Court has emphasized the value of speedy trial for the accused and in cases of delay in completion of trials, liberty of bail has been granted.

15. In ***Criminal Appeal No. 943 of 2023 titled as Mohd Muslim @ Hussain Vs. State (NCT of Delhi),***

Hon'ble Supreme Court, vide its judgment dated 28.03.2023, has held as under: -

> *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in 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 on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of these 122,852 were convicts; the rest 4,27,165 were under-trials.*
>
> *22. 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. State21 as "a radical transformation" whereby the prisoner:*
>
> > *"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."*
>
> *23. 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"22 (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/ default/files/PSI-2021/Executive _ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers – Group on Prisons & Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: cimmediate 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."*

16. Recently in ***Criminal Appeal No.2787 of 2024, titled as Javed Gulam Nabi Shaikh vs. State of***

Maharashtra and Another, Hon'ble Supreme Court has observed as under:-

> *"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 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."*

17. In the facts of the instant case, there is nothing on record to suggest that the petitioner has been assessory in delaying the trial of the case.

18. Petitioner has already suffered incarceration for more than two years 8 months. Pre-trial incarceration cannot be punitive or preventive.

19. The allegation against the petitioner is that he had committed the murder of his father-in-law by pushing him. It has been alleged that the petitioner was not properly maintaining his family and used to ill-treat her. On objection

raised by the father and brother of the wife of the petitioner, the petitioner is alleged to have got agitated and as a result is stated to have committed the alleged offence.

20. Be that as it may, the petitioner having already suffered inordinately long pre-trial incarceration, this Court feels that the petitioner deserves to be released on bail.

21. As noticed above the vulnerable witnesses have already been examined. No credible material has been placed on record to suggest that grant of bail to petitioner at this stage will prejudice the trial in any manner. The petitioner also does not have any criminal history.

22. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on bail in case FIR No. 32, dated 29.03.2022, registered at P.S. Kihar, District Chamba, under Section 302 of the IPC, on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court.

This order shall, however, be subject to the following conditions:-

i) *Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.*

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of learned trial Court till completion of trial.

23. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

(Satyen Vaidya)
Judge

27th December, 2024.
(jai)

GANGA RAM SHARMA

Digitally signed by GANGA RAM SHARMA
DN: C=IN, O=HIGH COURT OF HIMACHAL PRADESH, OU=HIGH COURT OF HIMACHAL PRADESH SHIMLA, Phone=53d793b89e8f7ed22df51a99c485c30e69ef93029aa64cf7f7477f3ea023b5fe, PostalCode=171001, S=Himachal Pradesh, SERIALNUMBER=8d8cfd67531d5f7cf98b98478b7c873db362a2c10726a8f44f89d8ea8ad55e1d, CN=GANGA RAM SHARMA
Reason: I am approving this document
Location:
Date: 2024-12-28 10:38:48