

CRM-M-9982-2024
Date of decision: 01.03.2024

...PETITIONER

V/S

...RESPONDENT

Present: Mr. Sachin Bhardwaj, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the second petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.471 dated 21.09.2018 registered under Sections 148, 149, 323, 506, 325, 307 of Indian Penal Code (Section 302 IPC was added later on) at Police Station Model Town Rewari, District Rewari, Haryana. First petition was dismissed as withdrawn on 15.05.2023.

2. The present FIR was lodged by complainant-Pankaj on the allegations that on 21.09.2018 at about 10.45 AM, he along with one Prajwal son of Nihal were going on foot for the purpose of getting coaching from Chankya Academy. When they reached behind Shagun Hotel, Ashutosh, Nikhil and Ankit, who were armed with *Bindas* of *kassi* along with 4/5 other boys and Lalit and Sandeep who were also armed with *Binda* of *Kassi* along with 10/12 other boys who were armed with *dandas* started arguing with Prajwal and in the meantime, Lalit and Sandeep along with other accomplices started giving beatings to them with their respective '*Bindas*' and Ashutosh,

Nikhil and Ankit along with other respective *dandas*. In the said altercation, complainant Pankaj received injuries on his hand and waist whereas Prajwal received grievous injuries on his head and other body parts. The accused also threatened them of their life. Victim-Prajwal was shifted to Pushpanjali Hospital for treatment and got admitted there. He subsequently succumbed to those injuries, on account of which, the offence punishable under Section 302 of the IPC was added in the case.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and he was nominated as accused in the present FIR, after a lapse of 2^{1/2} years, after the registration of the FIR. Moreover, the post-mortem report of the deceased Prajwal indicates that he suffered only 02 injuries and the investigating agency has declared 07 persons as innocent, who had been named by the complainant in his statement. As such, the version given by the complainant is not credible and even after the conclusion of the investigation, no specific injury has been attributed to the petitioner, as per the case set up by the prosecution and similarly situated 09 co-accused have been granted the concession of regular bail. The petitioner is behind the bars since 10.03.2021. Learned counsel relies upon the orders dated 18.01.2024 and 15.05.2023 passed by this Court, whereby, co-accused namely Lalit Kumar and Ashutosh (Annexures P-10 and P-11) have been granted the concession of regular bail by this Court.

4. Per contra, the learned State counsel, on instructions from the Investigating Officer, opposes the prayer of grant of regular bail to the petitioner on the ground that the petitioner has played active role in the incident. The petitioner is a habitual offender as he is involved in 02 more cases. Custody certificate filed by the respondent-State is taken on record.

5. Having heard the learned counsel for the parties and after perusing

the record of the case, it transpires that the petitioner has already suffered the incarceration of more than 02 years, 11 months and 20 days. Trial of the case is progressing at a snail's pace as in the last 05 years, out of 26 witnesses cited by the prosecution, only 15 have been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. Hon'ble the Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play and it would prevail over the embargo created by Section 37 of the NDPS Act.

8. In this regard, reference is being made to the law laid down by Hon'ble Supreme Court of India in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (CrI) 1674, P. Ramachandra Rao vs. State of***

Karnataka, (2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.

9. Accordingly, the present petition is allowed. The petitioner Ajay Kumar is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.
10. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.
11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

March 01, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No