

CRM-M-12023-2024
Date of decision: 13.03.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sourabh Sheoran, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is first petition filed under Section 439 of Code of Criminal Procedure praying for grant of concession of regular bail pending trial in case FIR No.297 dated 17.09.2018 registered under Sections 398, 401 and Section 25 of Arms Act at Police Station Sadar Hansi, District Hisar.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was granted regular bail by learned Additional Sessions Judge, Hisar vide order dated 24.08.2022, in the FIR (supra). The petitioner was appearing before the learned trial Court on each and every date of hearing. Learned counsel relies upon *zimni* orders annexed as Annexures P-3 to P-8 to substantiate his assertion. On 20.02.2023, due to miscommunication between the petitioner and his counsel, the petitioner, inadvertently, noted down the date as 24.05.2023 instead of 24.03.2023. Due to said bona fide mistake, he could not appear before the learned trial Court on 24.03.2023 and his bail was cancelled and non-bailable warrants were issued. It is further contended that the absence of the petitioner was neither intentional nor deliberate. The same

was due to miscommunication and he was produced before the learned trial Court, in pursuance of production warrants issued on 21.09.2023 and the petitioner has been in custody, in the present case, for more than 03 years and 08 months and the prosecution has not been able to conclude its evidence till date. In para No.13 of the paper book, the petitioner has provided the details of his antecedents and the pending cases against him. It is contended that the petitioner is on bail in all other cases.

3. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender and he is involved in number of cases as discernible from the custody certificate, however, she could not controvert the fact that not even a single prosecution witness has been examined till date.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner has already undergone a total custody period of 03 years, 08 months and 17 days as on 12.03.2024 and the trial of the case has not made any progress as out of 09 witnesses cited by the prosecution, none has been examined so far. The culpability, if any, of the petitioner would be seen at the time of the trial.

5. 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.

6. 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.

7. 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 (Crl) 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.***

8. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

9. Accordingly, the present petition 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. The petitioner-Jogender 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. 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 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |