

CRM-M-19649-2023
Date of decision: 14.02.2024

Sube SinghPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jai Vir Yadav, Senior Advocate with
Mrs. Sunita Shekhawat, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Ms. Divya Sharma, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

This is second petition under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.150 dated 14.04.2020 under Sections 147/149/323/302/188/216 of IPC registered at Police Station Khol, District Rewari.

The FIR was registered on the allegations that on 14.04.2020 at about 10:11 A.M., the petitioner along with Radhey Shyam, Harish, Om Parkash, Lilu Ram, Ashish, Rohtash and Abhey Singh along with ladies armed with iron rod and jelly, *Kulhari* and *lathi*, started ploughing the fields of the complainant. When Bholu Ram confronted them why they were ploughing their fields, Radhey Shyam hurled abuses and exhorted others to kill him. Thereafter, Harish caught hold of Bholu Ram and Sube Singh (the petitioner herein) inflicted iron rod blow on his head and Ashish gave blow of *lathi*,

Sunda Ram, Manphool, Suman Devi tried to save Bholu and in that process,

Om Parkash and Lilu Ram gave beatings to Suman Devi. Abhey Singh caught hold of Sunda Ram and Rohtash gave beating to Sunda Ram, Lilu Ram caught hold of Manphool and Om Parkash gave beatings to him, in the meantime, Surender and Bijender arrived at the spot and rescued them. Bijender took Bholu Ram to hospital where doctor declared him as brought dead.

Learned senior counsel for the petitioner *inter alia* contends that the earlier bail application was withdrawn on 13.08.2023 (Annexure P-4) and the trial has not made any progress as only one prosecution witness has been examined so far. Therefore, the second petition under Section 439 Cr.P.C. is filed. He further submits that the statement of the eyewitness-Satbir recorded under Section 161 Cr.P.C. (Annexure P-1) clearly indicates that the version of the eye-witness-Satbir Singh is at variance from the statement of the complainant. Ashish has been specifically attributed injury on the head of the deceased-Bholu Ram and petitioner is not attributed the injury on the head as such, it creates serious dent in the case set up by the prosecution. He further refers to the post mortem report (Annexure P-2) and submits that it would be a moot point to be determined by the learned trial Court whether the nature and extent of injuries would make out a case under Section 302 of IPC or it would be a case of culpable homicide not amounting to murder as the deceased has suffered only two injuries and there was no repetition and the weapon used in the alleged offence is an agricultural tool and no deadly weapons alleged to have been used. The petitioner is incarcerated since long and the trial is not progressing, as such, delay in the trial would entitle the petitioner to be released on bail in view of his right to speedy trial under Article 21 of the Constitution of India.

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Learned counsel for the complainant vehemently opposes the prayer made by learned senior counsel for the petitioner for grant of regular bail on the ground that the petitioner is the main accused and it has been clearly established on record that it is the petitioner who has caused the fatal blow which has resulted into the death of Bholu Ram. She further submits that the medical report and the ocular version clearly indicates the complicity of the petitioner in the alleged offence and also, there is a long pending discord between the parties and the petitioner has very strong motive to commit murder of the deceased and it is a premeditated cold blooded murder executed in broad day light.

The learned State counsel further submits that the cause of death given in the FIR is the head injury which has been specifically attributed to the petitioner by the complainant, as such, the petitioner is involved in a heinous crime and is not entitled to be released on regular bail. She further submits that the petitioner is involved in one more case.

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 10.08.2020 and as per custody certificate, he has already undergone a period of 03 years 06 months as on 12.02.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 01 out of 32 prosecution witnesses have been examined so far. The three co-accused, namely, Radhey Shyam, Harish and Ashish, who were found innocent during investigation, have been summoned to face trial as an additional accused under Section 319 Cr.P.C.

vide order dated 02.06.2023 passed by the learned Additional Sessions Judge,

Rewari. The said order was challenged by them by filing CRR-1476-2023 in which this Court has only stayed the operation of the impugned order and there is no stay on the trial. In spite of the fact that there is no stay on the trial, the prosecution has been indolent in concluding the trial and delay in trial cannot be attributed to the petitioner. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble 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. 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.

In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court 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**

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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, (2002) 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.

Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Sube Singh is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

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.

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.

(HARPREET SINGH BRAR)
JUDGE

14.02.2024
Neha

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