

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

286

CRA-D-796-2024(O&M)
DATE OF DECISION: 13.11.2024

LOVEPREET SINGH

... Appellant (s)

Versus

STATE OF PUNJAB

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Nandan Jindal, Advocate for the appellant.

Mr. Harmandeep Singh Sullar, Senior DAG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

CRM-22320-2024

This application has been preferred for condonation of delay of 45 days in preferring the appeal.

2. Learned counsel for the applicant/appellant submits that the applicant/appellant is a poor person and was in custody while there is no other person in her family who could pursue litigation on her behalf.

3. Heard.

4. The appeal against an order rejecting the application for bail is provided under Section 21 of the National Investigation Agency Act, 2008. The period of limitation which is prescribed therein is 30 days which can be condoned up to 90 days with sufficient cause. The appeal in the instant case has been preferred after 45 days. It has been held by the Division Bench of the Bombay High Court in the case of **Faizal Hasamali Mirza versus State of Maharashtra and another, 2023 SCC (online) Bom 1936**, that the period of 30 days prescribed under Section 21 of the National Investigation Agency

Act, 2008 would be directory as the right to appeal is one of the essential component of Article 21 of the Constitution of India which guarantees protection of life and personal liberty. It has been held that in case the delay is not condoned then it would deprive the undertrial the right of appeal which is provided by the Statute which impinges on the life and liberty of the undertrial as enshrined in the Constitution of India. It was held as under: -

“(i) that the Appellate Courts have the power to condone delay beyond the 90 days period, despite the language of the 2nd proviso to Section 21(5) of the NIA Act and that this can be done by virtue of Section 5 of the Limitation Act, 1963, the applicability of which is not excluded under the provisions of the NIA Act. Thus, an application seeking to condone delay beyond 90 days in filing an appeal against the judgment, sentence, order, not being an interlocutory order, passed by a Special Court is maintainable, on sufficient cause being shown;

(ii) that the word `shall' in the 2nd proviso to sub-section (5) of Section 21, be read down, to read as `may', and hence, directory in nature.”

5. In the instant case, the applicant/appellant was in custody as an undertrial. The delay appears to be unintentional and not deliberate. It would, therefore, be in the interest of justice, if the appeal is heard and decided on merits. Consequently, the application is allowed and delay of 45 days in preferring the appeal is condoned.

MAIN CASE

The appellant has challenged the impugned order dated - 02.03.2024 whereby his application for bail has been declined.

2. Learned counsel for the appellant submits that the appellant has been arraigned as an accused on the statement of the co-accused-Baljeet Kaur @ Sukhi (mother of the appellant). It is alleged that two accused namely Deepak and Divanshu @ Guddu had stayed in house of co-accused Baljeet Kaur @ Sukhi and the appellant from 29.04.2022 to 07.05.2022 and thereafter the appellant had dropped them to Jalandhar in car bearing No.DL-10-CL-1969 belonging to the appellant and the said car was dropped by the appellant at Jalandhar itself and was recovered on the basis of disclosure statement of the appellant. He has been challaned under Section 307, 212, 216, 120-B IPC, under Sections 16, 18, 18B, 19, 20, 23 of UAPA Act, under Sections 3 and 6 of Explosive Substance Act, 1908 and Sections 25/54/59 of Arms Act. There is another case under Section 25 of Arms Act against the appellant. He submits that even assuming that the two co-accused had stayed at his house there is no cogent material to indicate that the appellant was aware of the unlawful activities of the co-accused. The applicant has undergone an actual sentence of over 02 years and 05 months approximately.

3. Learned State counsel, while referring to the affidavit filed by the respondent, submits that the applicant/appellant was arraigned as an accused on the statement of the co-accused Baljeet Kaur @ Sukhi. Two of the co-accused had been harboured by her and the appellant (son) as they had stayed at their residence. He, upon instructions from SI Gurpreet Singh, submits that the applicant/appellant has used an application namely 'Zangi' and it was not possible to have the record of the telephonic conversations he had with the co-accused. He also submits that the location of the phone indicates that the applicant/appellant along with others was present at the same place and time

but in response to query of this Court, he submits that there are no call records that the other co-accused have actually spoken to him

4. Heard.

5. The applicant/appellant is accused in FIR No.236 dated 9.5.2022. It is alleged that the applicant had harboured two co-accused. A bare reading of the affidavit filed by the respondent indicates that Lovepreet Singh had been arrested on 29.6.2022 and the car, which was used by the shooter, was recovered on his demarcation. The accused-Nishan Singh had left both the shooters namely Deepak and Divanshu along with his brother-in-law, Anantdeep Singh in the car at the house of the applicant/appellant on 28.4.2022. Deepak and Divanshu were alleged to have given a gold ring to the applicant/appellant through Nishan Singh and his brother-in-law, Anantdeep Singh. The gold ring is stated to have been recovered but the particulars as to when and where it was purchased from are not forthcoming. There does not seem to be any identification of the gold ring. The applicant has undergone an actual sentence of 02 years and 05 months approximately and is not involved in any other criminal case. We are conscious of the fact that the provisions of UAPA are stringent and bail could be granted if there are no reasonable grounds to believe that the allegations against the accused are *prima facie* true. At the same time, it is necessary to carefully scrutinise the material against the appellant. The afore-noted material against the applicant/appellant at this stage appears to be insufficient to indicate her involvement in the commission of the offence. We, therefore, have no hesitation to hold that we are of the considered view that there are no reasonable grounds at this stage to believe that the allegations against the applicant/appellant are *prima facie* true.

6. Consequently, the appeal is allowed. The impugned order dated 02.03.2024 is set aside. The applicant/appellant shall be released on bail subject to his furnishing requisite bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.
7. These observations are only for deciding the appeal and shall not be construed to be an expression of opinion on the merits of the case.
8. Pending application, if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

13.11.2024
Prince

(LAPITA BANERJI)
JUDGE

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