



225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33227-2024
DATE OF DECISION: 18.07.2024

SUDHIR KUMAR

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Pankaj Nanhera, Advocate and
Mr. Pradeep Duhan, Advocate and
Mr. Abhishek Sirohi, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

This petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No. 71 dated 20.01.2018 (Annexure P-1) under Section 420, 467, 468, 471, 119, 120B, 166, 176, 177, 179, 187, 34, 35, 188, 202, 403, 406, 417, 418, 423, 426, 453, 464, 471, 477, 477A, 203, 206, 207, 424 Indian Penal Code registered at Police Station Sadar Hisar, District Hisar, Haryana.

2. Learned counsel for the petitioner contends that the petitioner was not named in the FIR which pertains to the year 2018, and the petitioner has been arrested on 06.03.2024 after a gap of 6 years. There is no direct role attributed to the present petitioner regarding alleged benefit of transfer of plots in question which vest with the Shanti Cooperative House Building Society Limited. He further points out that the co-accused-Maanta and Manjeet have also



CRM-M-33227-2024

-2-

been granted concession of bail vide orders dated 31.05.2024 passed in CRM-M-24999-2024 and CRM-M-27365-2024.

3. Learned State Counsel has filed custody certificate, the same is taken on record. Copy has been supplied to counsel for the petitioner, as per the same, the petitioner has undergone sentence for a period of 4 months and 12 days. He seeks dismissal of the petition on the ground that the petitioner is involved in other FIRs also.

4. Having heard learned counsel for the respective parties, keeping in view the facts that the similarly situated co-accused have been granted concession of bail, investigation is complete, challan presented on 22.04.2024, the petitioner has already suffered sufficient period in custody i.e. 4 months and 12 days, the Court do not deem it appropriate to deny the petitioner concession of bail.

5. Further, as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that out of 39 prosecution witnesses, none has been examined so far and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another***;; (2018) 3 SCC 22”.

6. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional



CRM-M-33227-2024

-3-

right cannot be denied to the accused as is the mandate of the Apex court in “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98; wherein it was held as under:

*“10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc.** -(1995) 5 SCC 326 - para 2 are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status



reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

7. Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in "**Abdul Rehman Antulay and others v. R.S. Nayak and another**", 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

- I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

8. Without adverting further into the merits of the case, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.
10. The petition stands allowed in the above terms.

(SANDEEP MOUDGIL)

JUDGE

18.07.2024

anuradha

Whether speaking/reasoned Yes/No

Whether reportable Yes/No