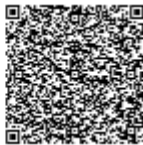


2024:PHHC:161498



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA S-2545-2024
Date of Decision: 03.12.2024

Sumit Sharma	...	Appellant
	Versus	
State of Haryana	...	Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sahil Choudhary, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

Ms. Shweta Beniwal, Advocate for
Mr. Aman Pal, Advocate for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has filed the present appeal against the impugned order dated 20.05.2024 passed by the Court of Ms. Anshu Shukla, Additional Sessions Judge, Ambala, whereby, the bail application under Section 439 Cr.P.C. filed by the present appellant was ordered to be dismissed.
2. The FIR in the present case was registered on the basis of the statement made by Ashok Kumar son of Lajja Ram and the same has been reproduced below:-

*“Statement of Complainant Ashok Kumar s/o Sh. Lajja
Ram Caste Ramdasia resident of village Dhana Police*

*Station Shahzadpur District Ambala aged 46 years
Phone No. 9812063651.*

Stated that I am resident of above mentioned address and I am working as contractor in PWD Shahzadpur. I have two sons namely Anil Kumar, aged 23 years and younger than him Rahul, aged 21 years, My elder son Anil Kumar was working in Paras Hospital, Panchkula. He daily 6 A.M in morning used to go on his motorcycle bearing registration No. HR 04E4243 make Hero Splendor Plus of silver colour and used to come home at evening on his motorcycle. My son Anil Kumar alongwith his friends Mahi Pal son of Labh Singh, Mohit s/o Krishan Lal resident of Tasdoli Police Station Panjokhara District Ambala and the Manager of Paras Hospital, Panchkula had taken a room on rent at Panchkula. My son Anil Kumar stays at that room in emergency. On 14.03.2021, my son as per his daily routine went on his duty on his motorcycle at 6.00 a.m. and did not return back in the evening. After waiting for long in evening at around 8.15 p.m., I made a phone call to my son and has talks with him who told me that he will be late and if possible he will return back, otherwise he will stay in the rented room at Panchkula and will return to his home on next day after duty hours. On 15.03.2021 at about 5.30 p.m. I again made a phone call on my son's phone but his mobile phone was coming switched off. Thereafter, I made phone calls to friends of my son Anil Kumar and disclosed that Anil Kumar had not come to home yet, than his friends told me that on 14.03.2021, Anil Kumar had gone on the motorcycle of Mahi Pal after duty hours. On 15.03.2021

at about 9.00 p.m., I informed Sarpanch of the village that my son Anil Kumar had not come to the house since yesterday, who told that you wait for tonight we will inform to the police next morning. Today on 16.03.2021, I was coming to Police Station Shahzadpur for informing about the same and I received the phone call of my younger son Rahul Kumar that a dead body is lying in the forest of Shahzadpur and asked me to reach there, upon which I and Sarpanch went to forest, Shahzadpur and saw that the clothes worn by the dead body are of my son Anil Kumar. I identified my son Anil Kumar's dead body from his physique and clothes and nearby to his dead body a Motorcycle No.HR 04G-7013 make CD Delux of Red and Black Colour was standing. There at a little distance mobile phone of my son Anil Kumar was also lying which was broken. We found that there are wounds on mouth, neck and right side chest of my son. About two years ago, family members of Sajjan Singh alongwith goons had given miserable beating to my son Anil Kumar and in this regard, family settlement took place. Now we came to know that my son Anil Kumar was chatting with Aman daughter of Dhanana on her mobile number 9053188917 on 'Whatsapp'. Because of this whatsapp chat and also due to previous grudge, I have an apprehension that my son Anil Kumar had been murdered by son of Pale, Rinku, Manish Kumar s/o Suresh Kumar, Shanky s/o Chandu, Gaurav s/o Sajjan and Chandu s/o Gyan Chand and in order to destroy the evidence/proof, dead body of my son had been thrown in forest and his face had been damaged. I pray that those who has caused death of my son legal

action be taken against them. I have recorded my statement and listened to the same which is Proceedings. correct. Sd/ Ashok Kumar 16.03.2021”.

3. Learned counsel for the appellant contends that the FIR was initially registered against Rinku, Manish Kumar, Shanky, Gaurav and Chandu etc., The appellant was neither named in the FIR nor there was any averment in the FIR, which even remotely connected the petitioner with the crime in any manner. In fact, initially, Himanshu, co-accused was arrested by the police and he suffered a disclosure statement (Annexure P-2) on 18.03.2021. Learned counsel for the appellant further contends that even as per the disclosure statement suffered by Himanshu, co-accused, the appellant had only caught hold of Anil Kumar, since deceased, while Himanshu had caused injuries to him. Even as per the disclosure statement suffered by Himanshu, the appellant had not caused any injury to Anil Kumar. Learned counsel further contends that the present case is based on circumstantial evidence and during the course of investigation also, the police could not collect any admissible evidence against the appellant. The appellant was arrested in the present case on 17.03.2021 and is in custody for the last almost 3 ½ years. Learned counsel further contends that in the present case, 09 witnesses out of total 33 witnesses have been examined so far and the trial may not conclude in near future.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently argued that the appellant had actively participated in the commission of crime with his co-accused Himanshu. The appellant had caught hold of Anil Kumar, since deceased, and thereafter, Himanshu had caused injuries to him. However, he could not dispute the fact that Aman Devi, who had allegedly conspired with the appellant and another co-accused has already been granted the concession of bail by this Court vide order dated 27.02.2023 (Annexure P-8).

5. I have heard learned counsel for the parties and perused the record.

6. At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Hon'ble the Supreme Court has observed in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of

necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

7. Hon'ble the Supreme Court in **Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429** has held as under:-

“Bail or Jail”- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. According to V.R. Krishna Iyer, J., the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.

8. In **Gurbaksh Singh Sibbia etc Vs The State of Punjab**, **AIR 1980 SC 1632**, Hon'ble the Supreme Court has observed as under:-

*“Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Vs. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in **K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504**, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. The*

Supreme Court referred also the decision of the Allahabad High Court in **Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356**, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

9. The legal position emerging from the above discussion can be summarised as follows:

“(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon

a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences

punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail

and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other nonbailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

10. Still further, the Hon'ble Supreme Court, while dealing with the scope of speedy trial and emphasizing that the speedy trial is one of the most important facets of the fundamental rights to life and liberty enshrined in Article 21, held in the matter of **Kartar Singh Vs. State of Punjab and connect case, 1994(2) RCR 169** as follows:

“Speedy Trial

89. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been

incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.....

90. It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. See Black's Law Dictionary, (Sixth Edition) p. 1400.

91. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

92. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision

so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

93. This Court in *Hussainara Khatoon (1) v. Home Secretary, State of Bihar*, 1980 (1) SCC 81 at P. 89 while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequent if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

94. See also (1) *Sunil Batra v. Delhi Administration*, 1979 (1) SCR 392; (2) *Hussainara Khatoon (1) v. Home Secretary, State of Bihar*, 1979 (3) SCR 169; (3)

Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, 1979 (3) SCR 532; (4) Hussainara Khatoon and others v. Home Secretary, State of Bihar, Govt. of Bihar, Patna 1979 (3) SCR 1276; (5) Kadra Pahadia v. State of Bihar, 1983 (2) SCC 104;, (6) T. V. Vatheeswaran v. State of T.N., 1983(2) SCR 348; and (7) Abdul Rehman Antulay v. R. S. Nayak, 1992 (1) SCC 225”.

11. In the present case, the appellant was not named as one of the accused and his name appeared in the disclosure statement suffered by Himanshu. In his statement Himanshu had alleged that the appellant and Kamaldeep had caught hold of Anil Kumar, since deceased, while Himanshu had caused injuries to him. Still further, this Court has also taken notice of the fact that only 09 witnesses out of total 33 witness have been examined so far and the trial would not conclude in near future. Even, the Hon’ble Supreme Court of India has held in number of judgment that when a timely trial would not be possible and the accused had suffered incarceration for a significant period of time, the Court would ordinarily be obliged to enlarge the accused on bail. Even, if the appellant is allowed to continue in custody for a longer period, then this would certainly be violative of Article 21 of the Constitution of India. Every person, who is in custody, has a fundamental right of speedy trial. Thus, keeping in view the period of custody undergone by the appellant, the appellant is ordered to be released on bail on his furnishing bail bonds/surety

bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The appellant shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The appellant shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The appellant shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The appellant shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the appellant involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the appellant.

(vii) The appellant shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard”.

03.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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