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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-900-2023(O&M)

Date of Decision: 06.08.2024

KANWARJEET SINGH @ KANWALJEET SINGH @ KANWAR BATH

.....APPELLANT

VERSUS

STATE OF PUNJAB

....RESPONDENT

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

Present: Mr. Himmat Singh Deol, Advocate
for the appellant.

Mr. H.S. Sullar, Sr. DAG, Punjab.

ANUPINDER SINGH GREWAL, J (ORAL)

CRM-31722-2023

This application has been preferred for condonation of delay of 164 days in preferring the appeal.

2. Learned counsel for the applicant-appellant submits that the applicant-appellant was undergoing the sentence and his case was being pursued by his aged mother, who was not well conversant with the legal process, therefore, the delay has occurred in preferring the appeal.

3. Learned State counsel submits that the applicant-appellant has not set out sufficient case for condoning the delay.

4. Heard.



5. The applicant has been undergoing the sentence and is stated to be in custody for about 02 years, 02 months and 10 days. The delay in preferring the appeal does not appear to be intentional or deliberate. It has been held by the Division Bench of the Bombay High Court in the case of **Faizal Hasamali Mirza Vs. 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.”



6. It would be in the interest of justice, if the delay is condoned and appeal is heard and decide on merits. Consequently, the application is allowed and delay of 164 days in preferring the appeal is condoned.

Main case

The appellant has challenged the impugned order dated 16.01.2023, whereby his application for release on bail has been declined.

2. Learned counsel for the appellant submits that the only allegation against the appellant is that he had harboured two co-accused Deepak and Divanshu @ Guddu who were stated to have stayed at his house for one night. The only recovery which has been effected from the appellant is of Rs.1000/- which is stated to have been taken from the aforesaid two persons (Rs.500/- each) for their stay at his home. There is no recovery of firearm or any other incriminating material from the appellant. Learned counsel further submits that co-accused Baljit Kaur @ Sukhi and Anant Deep Singh @ Sonu have been granted bail vide orders dated 18.12.2023 and 18.04.2024 passed in CRA-D-471-2023 and CRA-D-665-2023 after they had undergone a period of 01 year, 06 months and 13 days and 02 years respectively.

3. Learned State counsel while referring to the reply filed by the respondent submits that the appellant was actively involved in the conspiracy which was hatched along with the co-accused. The main accused Nishan Singh and other accused were alleged to have brought the arms and ammunition from across the border. He therefore, submits that in view of the seriousness of the involvement of the appellant in a heinous crime, he is not entitled to be released on bail.



4. Heard.

5. The allegations against the appellant are that he had harboured two co-accused who were alleged to have stayed at his house for one day. It is stated that the accused had paid a sum of Rs.1000/- which has been recovered from the appellant. There is no recovery of firearm or any other incriminating material/documents from the appellant. Baljit Kaur, who was also alleged to have harboured two co-accused Deepak and Divanshu @ Guddu at her home for 10 days has been granted benefit of bail. Co-accused Anant Deep Singh @ Sonu who was accused of providing weapons and sheltering the co-accused has also been granted benefit of bail. The appellant has undergone an actual sentence of 02 years, 02 months and 10 days. 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 scrutinize the material against the appellant. The material against the appellant at this stage, appears to be insufficient to justify his further incarceration, especially when none of 49 prosecution witnesses have been examined. It has been held by the Supreme Court in the cases of **Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713** and **Shoma Kanti Sen Vs. State of Maharashtra and another, 2024 SCC Online SC 498** that the long custody itself would be justified to grant bail in the cases where the conclusion of the trial is not in sight. Reference can also be made to the judgments of the Supreme Court in the cases of **Vernon Vs. The State of Maharashtra and another, 2023 SCC Online 885**, **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh**, bearing Criminal

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Appeal No.2790 of 2024, decided on 18.07.2024 and **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another**, bearing Criminal Appeal No.2787 of 2024 decided on 03.07.2024.

6. In the instant case, appellant has undergone an actual sentence of 02 years, 02 months and 10 days, we therefore, have no hesitation to allow the appeal. The appeal is allowed and the impugned order dated 16.01.2023 is set aside. The appellant shall be released on bail subject to his furnishing requisite bonds to the satisfaction of the Trial Court/concerned Duty Magistrate.

7. At the time of release of the appellant, the SHO, Police Station Sohana, District SAS Nagar (Mohali) shall be informed and the appellant shall furnish his mobile number to him and keep the location of his phone on. The appellant shall appear before the concerned police station on first Monday of every month till the conclusion of the trial.

8. It is clarified that observations made hereinbefore are only for the purpose of deciding the instant appeal at this stage and shall not be construed to be an expression of opinion on the merits of the case.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

06.08.2024
Prince

Whether speaking/ reasoned : Yes/No
Whether Reportable : Yes/No