



224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37712-2024
Date of Decision:13.08.2024

Aakash ...Petitioner

Vs.

State of Haryana ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rajesh Lamba, Advocate for
for the petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 439 Cr. PC with a prayer to grant regular bail to him in a case FIR No.150 dated 08.06.2020 under Sections 148,149,302,201,216,420,120-B of IPC and under Section 25 of Arms Act, registered at Police Station Kasola, District Rewari (Annexure P-1).

2. The FIR in the present case was registered on the basis of the statement made by Sumit @ Sunni and the same has been reproduced below:-.

"Sir, It is requested to you that I, Sumit @ Sunni son of Kashiram, resident of Mohalla Gujarwada Rewari. Today, I went to my plot at Uttam Nagar from my home, where I asked my mother about elder brother Amit. My mother told me that Amit had received a call from someone and after attending the phone he took away the car and was saying that he was going to Kasola Chowk. At the same time, my uncle's grandson Raj son of Krishna told that Amit



and his friend Govind Saini had been shot near bus stand near Garhi Bolni Road Moda Wali, on which, I reached Garhi Bolni Road, bus stand then my brother, Amit son of Kahiran @ Pappu resident of Gurjar Wada age 32 years and Govind son of Rajesh Kumar Saini resident of Arjun Nagar Rewari had already been taken to the Trauma Center, Rewari on an ambulance in an injured condition. The time was around 4:30 PM and I reached the Government Hospital, Rewari. I came to know that my brother Amit and his friend Govind had died due to the fire shots. Vikas @ lambu son of Sushil Yadav, Shiv Garden was also with them in the car. I enquired about this from the people on the spot and I came to know that Vaishali had called my brother Amit and Govind Saini to come to Kasola Chowk with an intention of killing them. My brother Amit and his friends Govind Saini and Vikas had gone on Santro Vehicle bearing registration no. DL 3CBF 1928 of white colour, who got down near Mod Wali to get Bidi (cigarettes) and at the same time a Baleno white coloured and two motorcycles came carrying Harkesh son of Kalu Ram, Manisa son of Bhoop Singh, residents of New Adarsh Nagar Bhadawas Road Rewari, Sundar son of Man Gujjar, Kali son of Dhanga Gaujjar, Bhadawas Road Rewari and other persons came. One hit my brother's car and one dropped motorcycle in front of my brother's car and all fired at my brother Amit and Govind with an intention of killing them, who had expired due to fire shots. It has come to knowledge that Vikas ran away from my brother's car. Then the miscreants left their Baleno car and went on motorcycles towards Rewari on motorcycle. The reason of this fight is that there is allegation of killing the Harkesh's cousin namely Sarjit son of Tulli on my brother Amit, for which FIR no. 119/2018 under section 302 IPC PS City Rewari was registered. Due to this enmity, Harkesh made a plan to kill my brother Amit and Govind Saini with Naveen son of Dhanga, who is in Jail by calling



Vaishali together. All the above had shot Amit and Govind Saini dead in a planned manner and strictest action be taken by arresting the culprits. SD Sumit @ Sunni son of Kashiram @ Pappu, resident of Mohalla Gujarwada, Rewari PS City Rewari, Mob. 9812989322.

3. Learned counsel for the petitioner contends that the petitioner was not named in the FIR and has been falsely involved only on the basis of the disclosure statement made by co-accused. He further contends that in the present case, during the course of investigation nothing was recovered from the present petitioner. He further contends that in the present case, the prosecution had relied upon 32 witnesses, however, only 06 witnesses have been examined so far and about 14 witnesses have been given up. Learned counsel further contends that co-accused namely Pardeep has already been granted the concession of bail by this Court in CRM-M-21752-2021 on 07.06.2021, whereas, accused Rahul has been granted the concession of bail vide order dated 21.03.2024 in CRM-M-13640-2023 (Annexure P-3). Learned counsel for the petitioner further contends that even though three more cases were ordered to be registered against the petitioner, however, the same cannot be a ground for rejection of the bail of the petitioner, as the petitioner is continuing in custody for the last about 04 years and 01 month.

4. On the other hand learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had actively participated in the commission of crime. Moreover, the accused in connivance with each other had killed Amit and Gobind Saini



and sufficient evidence was collected against him.

5. I have heard learned counsel for the parties and with their able assistance; I have perused the record.

6. It has been held by the Hon'ble Supreme Court in the matter of **Ranjan Dwivedi Vs. CBI, through the Director General, 2012(8) SCC 495; 2012 (4) RCR (Criminal) 880** as follows:-

"14. In Kartar Singh v. State of Punjab, (supra), another Constitution Bench considered the right to speedy trial and opined that the delay is dependent on the circumstances of each case, because reasons for delay will vary. This Court held :

"84. 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...". 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, 6th Edn. page 1400].

85. 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.

86. 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.

87. This Court in Hussainara Khatoon v. Home Secretary, AIR 1979 Supreme Court 1360, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5)

"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 consequence 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 levelled 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."

See also (1) Sunil Batra v. Delhi Administration (I), (2) Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (3) Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna, (4) Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna, (5) Kandra Pahadia v. State of Bihar (II), (6) T.V. Vatheeswaran v. State of T.N., and (7) Abdul Rehman Antulay v. R.S. Nayak.

88. Thus this Court by a line of judicial pronouncements has emphasised and re-emphasised that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in Maneka Gandhi."

The Court further observed :

"92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed



network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

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. At this stage, no doubt the allegations levelled by the complainant in the present case point towards the seriousness of the offence. However, this Court cannot be oblivious of the fact that now the petitioner is in custody for the last 04 years and 01 month. The Court is also conscious of the settled cannons that the object of the bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that the accused person will not stand his trial when called upon. The Hon'ble Supreme Court has held in plethora of judgments that pre-conviction detention should not be resorted to, except in the cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

10. From the allegations levelled in the present FIR, it is apparent that serious allegations have been levelled against the petitioner in the present case,



however, the petitioner cannot be kept behind bars for an indefinite period. The petitioner was arrested in the present case on 13.07.2020 and it was the duty of the prosecution to complete the prosecution evidence expeditiously. Any delay in conducting the trial on the part of the prosecution violates the right to life, which is guaranteed to every citizen under Article 21 of the Constitution of India. Even the learned State counsel has failed to prove on record that the trial proceedings have been delayed by the present petitioner in any manner.

11. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

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

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

(iv) The petitioner 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 petitioner 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 petitioner is involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

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

(viii) The petitioner shall report on every 1st Monday of English calender month to the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha.

12. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

13.08.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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