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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH  
\*\*\*

CRM-M-48934-2023  
Date of decision : 25.07.2024

Adamayavir

... Petitioner

Versus

State of Haryana

... Respondents

**CORAM: HON'BLE MR.JUSTICE VIKAS BAHL**

Present: Ms.Preeti Singh, Advocate  
for the petitioner.

Mr.Jagdish Manchanda, Addl.A.G. Haryana.

**VIKAS BAHL, J.(ORAL)**

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.58 dated 06.02.2019 registered under Sections 302, 120-B, 34 IPC and Section 25 of the Arms Act at Police Station City Bahadugarh, District Jhajjar.
2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 08.07.2019 and there are 39 witnesses, out of which, none have been examined and thus, the trial is likely to take time and has submitted that on the ground of long custody alone, the petitioner should be granted the concession of regular bail as any further incarceration would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India. It is further submitted that

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earlier bail application was filed by the petitioner which was dismissed as withdrawn on 21.11.2022 with liberty to file a fresh petition after giving full and better particulars and thus, in fact the present regular bail application is the first regular bail application filed by the petitioner. It is argued that the petitioner is not named in the FIR and even in the supplementary statement of the complainant Vikas, he had not named the present petitioner but had named one Sushil son of Rajesh, Bijender son of Ramesh and Sachin son of Dulhera and out of the said persons, Sushil and Bijender have been granted regular bail. It is submitted that the petitioner has been implicated on the basis of disclosure statement of the co-accused. Learned counsel for the petitioner has relied upon various orders of the Hon'ble Supreme Court, wherein, solely on the basis of the custody, the concession of bail has been granted.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the present case relates to the murder of Ajay and the petitioner along with other co-accused have, as per the case of the prosecution, committed the said murder. It is argued that recovery of .32 bore pistol from Meerut has been recovered from the petitioner on 23.08.2019 and that the petitioner is a habitual offender and is involved in other cases. Other facts have however not been disputed.

4. Learned counsel for the petitioner in rebuttal has submitted that even as per the latest affidavit dated 18.02.2024 submitted by the Deputy Superintendent of Police, Bahadurgarh, in spite of lapse of more than 5



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years, the weapon allegedly used by the present petitioner has not been transferred from that case from which the said weapon was recovered and there is no Ballistic / FSL report to show that the weapon allegedly recovered from the present petitioner was the one used in the present offence.

5. This Court has heard the learned counsel for the parties and has perused the paper book.

6. The petitioner has been in custody since 08.07.2019 and out of 39 witnesses, none have been examined and thus, the trial is likely to take time. The petitioner is not stated to be named in the FIR and a perusal of paragraph 4 of the order passed by the Additional Sessions Judge, Jhajjar would show that supplementary statement of complainant Vikas was recorded wherein he had named Bijender, Sushil, Sachin and others to be behind the murder of Ajay. It is not in dispute that Sushil and Bijender have been granted regular bail. The petitioner is stated to be implicated on the basis of statement of co-accused and the recovery of .32 bore from Meerut is stated to have been recovered from him on 23.08.2019. In the affidavit dated 18.02.2024, the Deputy Superintendent of Police has stated as under:-

*“14. That the weapon used by the present petitioner in the present offence could not transferred from the afore said cases pending against the present petitioner in Distt. Meerut, U.P. and hence no Ballistic report / FSL report of weapon used by the present petitioner in the present offence is available.”*

7. Keeping in view the long custody of the present petitioner, any further incarceration of the petitioner would be violative of the right of the



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petitioner enshrined under Article 21 of the Constitution of India.

8. The Hon'ble Supreme Court in its latest judgment dated 18.07.2024 passed in ***Criminal Appeal no.2790 of 2024*** titled as ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*** has held as under:-

*“21. It is true that the appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.*

***22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.***

***23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the***



*accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:*

*9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.*

XXX XXX XXX

*32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.*

*33. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the*



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***appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant."***

9. The Hon'ble Supreme Court in case titled as "***Mohammad Salman Hanif Shaikh Vs. The State of Gujarat***", vide order dated 22.08.2022 passed in **Special Leave to Appeal (Crl.) No.5530-2022** was pleased to observe as under: -

*"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.*

*Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.*

*The special leave petition is, accordingly, disposed of in the above terms.*

*Pending application(s), if any, shall also stand disposed of."*

The above-said case was a case under the NDPS Act and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was being granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

10. The Hon'ble Supreme Court in ***Criminal Appeal No.245/2020*** titled as "***Chitta Biswas Alias Subhas Vs. The State of West Bengal***", vide



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order dated 07.02.2020, was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

*"Leave granted.*

*This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.*

*The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

*According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.*

*The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*

*Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:*

*(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the*



*appellant shall be released on bail.*

*(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."*

11. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

12. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

13. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)  
JUDGE

July 25, 2024  
Davinder Kumar

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |