

RishiPetitioner

State of Haryana ...Respondent

Ms. Geeta Sharma, DAG, Haryana.

The FIR (*supra*) was registered on the statement of Sachin that at about 05:00 A.M., his uncle's son, namely, Manoj, Sumit along with him had gone towards Senior Secondary School for morning walk. At about 05:30 A.M., they were coming towards the school and on the way, two boys, out of which, one is Amit, met them and were having pistol in their hands. When Manoj was passing nearby them, Amit fired upon the back of Manoj and his associate also fired upon Manoj, which hit on the chest of Manoj. Amit again fired upon Manoj which hit his left arm. On sustaining the fire shots, Manoj fell down on the road in front of school. When they tried to come near, on

pointing pistol, they asked them to go back, otherwise, they will lose their life after which the complainant and Sumit moved back. Thereafter, both the boys fled away from there towards Igrah road with their respective weapons. When they checked Manoj after coming near to him, Manoj had already died at the spot due to the fire shots. Thereafter, they saw Satish, Mohit, Ramehar, Jasmer, Dharambir, Umed residents of village Bibipur, were also involved in the murder of Manoj, who were also present at Igrah Road. Both the murderers went with them. About 4-5 days ago from the incident, his *Bua*'s son, Ravinder, had come to their village Bibipur at that time wife of Rajesh had threatened him that they will take revenge of the death of Sandeep within one week. It is further alleged that Manoj has been murdered by them by hatching a conspiracy.

Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 01.02.2021 and he has already suffered incarceration of more than three years. The trial of the case has not been concluded in spite of passing three years. The complainant, namely, Sachin and eyewitness, namely, Sumit, have not supported the case of the prosecution and they have been declared hostile by the learned Public Prosecutor. Even the main accused, namely, Amit has been granted the concession of regular bail by this Court on 26.05.2023 passed in CRM-M-21052-2023 titled as 'Amit Vs. State of Haryana' (Annexure P-6).

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is a habitual offender and is also facing trial in 08 more cases.

A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions

of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 01.02.2021 and similarly situated co-accused, namely, Amit has been granted the concession of regular bail by this Court on 26.05.2023 passed in CRM-M-21052-2023 titled as 'Amit Vs. State of Haryana' (Annexure P-6). Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 19 out of 30 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

The foundational concept of the criminal jurisprudence is to ensure

speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**

Keeping in view the law laid down by the Hon'ble Supreme Court of India in '**Prabhakar Tewari Vs. State of U.P. and another**' 2020 (1) R.C.R. (Criminal 831) and '**Maulana Mohd. Amir Rashadi Vs. State of U.P. and**

Another', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Rishi is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

21.03.2024
Neha

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