

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-64251-2023 (O&M)

Date of Decision: 30.01.2024

KRISHAN @ BHATI @ ROHIT

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Kumar Gupta, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 707 dated 02.08.2018 registered under Sections 323, 396, 120-B of Indian Penal Code and Sections 25, 27, 54 and 59 of Arms Act at Police Station Old Industrial Panipat (Now Model Town Panipat) as the first petition was dismissed on 28.03.2023.

2. Brief facts of the case are that on the intervening night of 1/2.08.2018 at about 1.00 O' Clock, three young boys entered into the house of the complainant after scaling the wall. One boy was having a pistol in his hand. All the three assailants tied the legs and hands of the complainant with the veil (*chunni*) and Parna and then killed her father with a gun shot and thereafter, they fled away from the spot along with cash of Rs. 15/20 lacs and 15 tolas of jewellery. On this complaint, formal FIR of the case was registered under Sections 323, 396 and 120-B of IPC and Section 25 of the Arms Act.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 03.10.2018 and he has been nominated as accused in the present FIR on the basis of disclosure statement made by co-accused while in police custody, which has no evidentiary value and in spite of passing of more than 05 years, the trial of the case has not yet completed as out of 18 prosecution witnesses, only 13 have been examined so far. Learned counsel further contends that material witness i.e. complainant has already been examined during the course of trial.

4. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that country made pistol, one live cartridge, three gold rings and Rs. 15,000/- have been recovered from the petitioner and his role has been clearly established in the alleged incident.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 03.10.2018. Culpability, if any, would be determined at the time of the trial.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. Hon'ble the 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.

7. 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.

8. In this regard, reference is being made to the law laid down by Hon'ble Supreme Court of India 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 (CrI) 1674, P. Ramachandra Rao vs. State of Karnataka, (2202) 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 (CrI) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**

9. In **P. Ramachandra Rao's** (supra) the following (relevant) has been held:

"No person shall be deprived of his life or his personal liberty except according to procedure established by law- declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully.

Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial-in short everything commencing with an accusation and expiring with the final verdict-the two being respectively the terminus a quo and terminus ad quem-of the journey which an accused must necessarily undertake once faced with an implication."

10. The Hon'ble Supreme Court in **Hussain and another v. Union of India, 2017 (5) SCC 702** has observed that deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of Constitution. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. While a person in custody for a grave offence may not be released if trial is delayed, trial must be expedited or bail has to be granted in such cases. It was further observed that timely delivery of justice is a part of human rights.

11. In **Akhtari Bi (Smt) (supra)**, the Hon'ble Supreme Court was considering a case of convict who had preferred an appeal against conviction, which was pending for hearing and bail was rejected by the Court. In this context it was observed that to have speedy justice is fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon the accused to apply for bail.

12. In the decision delivered by Hon'ble Supreme Court in case of **Shaheen Welfare Association v. Union of India and others, AIR 1996 SC 2957**, it was observed that deprivation of personal liberty without prospect of trial being concluded, justifies invocation of Article 21 of the Constitution.

13. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner- Krishan @ Bhati @ Rohit is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

14. 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

30.01.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No