

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.MP(M) No. 2530 of 2024.

Reserved on : 22nd November, 2024.

Decided on : 26th November, 2024.

Ashok Kumar @ Governor **...Petitioner.**
Versus
State of H.P. **....Respondent.**

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Aman Parth Sharma,
Advocate.

For the Respondent: Mr. Sidharath Jalta, Dy. A.G.

Satyen Vaidya, Judge.

By way of instant petition, a prayer has been made to grant bail to the petitioner in a case registered on 17.09.2020 at Police Station Nalagarh, District Solan, H.P. vide FIR No. 292 of 2020, under Section 302, 201 and 120-B of the IPC.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. It is contended on behalf of the petitioner that the petitioner has been suffering incarceration since 18.09.2020 and only five witnesses have been examined till date. It is further submitted that the prosecution has submitted a list of 38 witnesses and there is no likelihood of early conclusion of the trial. The ground of false implication of the petitioner in the case has also been taken.

3. Learned counsel for the petitioner has contended that undue delay in conclusion of trial has caused serious prejudice to the constitutional right of speedy trial available to the petitioner. He has further submitted that the petitioner cannot be allowed to languish in custody for an indefinite period.

4. On the other hand, learned Additional Advocate General has opposed the prayer on the ground that the petitioner is facing serious allegation of commission of heinous crime. The petitioner is alleged to have committed

the murder of her young minor son with the help of her co-accused. It has also been submitted that the petitioner does not deserve any leniency. Apprehension of the petitioner influencing the prosecution witnesses has also been raised.

5. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

6. Status report filed by the respondent/State reveals that the petitioner is in custody since 18.09.2020. It is stated that only four out of 38 cited witnesses have been examined till date.

7. It is alleged that the petitioner along with his co-accused had committed the murder of Master Sandeep alias Sunny on 14.09.2020 as the deceased had seen the petitioner and his co-accused in a compromising position. As per the prosecution, the body of deceased was found on 16.09.2020 in the fields.

8. The case was registered at the instance of complainant Ram Asra. Besides the complainant, his two other minor children have been cited as prosecution witnesses. This Court has been informed that both the minor children of co-accused Kamlesh have been examined as witnesses.

9. Petitioner is in custody for more than four years now. Since, 34 more witnesses are yet to be examined, the trial is not likely to be concluded in near future. Pre-trial incarceration cannot be punitive as the accused carries a presumption of innocence until the charge is proved against him/her in accordance with law.

10. The right to speedy trial is one of the cardinal manifestations of Article 21 of the Constitution of India and has repeatedly been held by the Hon'ble Supreme Court to be valuable right available to a person or accused of an offence.

11. In **Hussainara Khatoon vs. Home Secretary, State of Bihar reported in (1980) 1 SCC 81** the right to speedy trial was held implicit in the broad sweep and content of Article 21 of the Constitution.

12. In **Dr. Vinod Bhandari vs. State of M.P. 2015 (1) Criminal Court Case 294 (SC)**, Hon'ble Supreme Court has held as under:-

“12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time.”

13. In **Zahur Haider Zaidi vs. Central Bureau of Investigation, (2019) 20 SCC 404**, a three Judges Bench

of Hon'ble Supreme Court has granted bail to an accused of offence under Section 302 of the IPC in the following terms:-

“1. Leave granted. We would presently consider whether the accused- appellant Zahur Haider Zaidi is entitled to be released on bail. The issue of transfer of case would be considered on a subsequent date after hearing all the accused.

2. Our attention has been drawn to the allegations against the accused-appellant and that he is in custody for the last 19 months. Though the accused-appellant is facing charge under Section 302, we are told that the trial has not made substantial progress beyond the framing of the charge. Completion of trial will take some time.

3. The only apprehension expressed on behalf of the Central Bureau of Investigation is that the appellant being a highly placed police officer may intimidate and win over witnesses and influence them.

4. We are of the view that the bail ought not to be denied on the aforesaid ground and in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail.

5. Taking into account the allegations, the period of custody suffered and likely time that may be taken for completion of trial, we are of the view that the accused- appellant should be released on bail in connection with FIR No.RC SI 2017 S0009 CBI/SC-I/New Delhi, on satisfaction of the appropriate condition(s) as may be imposed by the learned trial court. The order of the High Court is set aside. The appeal is disposed of to the aforesaid extent.”

14. In **Criminal Appeal Nos. 152 of 2020, Prabhakar Tewari v. State of UP and Anr.** (along with connected matter) and **Criminal Appeal No.98 of 2021, Union of India v. K.A. Najeeb**, the Hon’ble Supreme Court has emphasized the value of speedy trial for the accused and in cases of delay in completion of trials, liberty of bail has been granted.

15. In **Criminal Appeal No. 943 of 2023 titled as Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**, Hon’ble Supreme Court, vide its judgment dated 28.03.2023, has held as under: -

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wreaked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were under-trials.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers – Group on Prisons & Borstals - 1966 U.K. published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

16. Recently in **Criminal Appeal No.2787 of 2024, titled as Javed Gulam Nabi Shaikh vs. State of Maharashtra and Another**, Hon'ble Supreme Court has observed as under:-

“19. If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

17. Reverting to the facts of the case, the petitioner is in custody since 18.09.2020 and the facts suggest that the trial is not likely to be concluded in near future. There is nothing on record to suggest that the delay in trial is attributable to the petitioner. The prosecution has cited total 38 witnesses, out of which only four have been examined till date. The co-accused in the case has already been released on bail in identical facts and circumstances.

18. As noticed above the vulnerable witnesses have already been examined. No credible material has been placed on record to suggest that grant of bail to petitioner at

this stage will prejudice the trial in any manner. The petitioner also does not have any criminal history.

19. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on bail in case FIR No. 292 of 2020, dated 17.09.2020, registered under Sections, 302, 201 and 120-B of the IPC at Police Station Nalagarh, District Solan, H.P., on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

- i) *Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.*
- ii) *Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.*
- iii) *Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.*
- (iv) *Petitioner shall not leave India without permission of learned trial Court till completion of trial.*

20. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

(Satyen Vaidya)
Judge

26th November, 2024.
(jai)