HIGH COURT OF JAMMU AND KASHMIR AND LADAKH AT JAMMU

Reserved on 12.08.2024
Pronounced on 06.09.2024

Bail App No. 140/2023

Raman Kumar S/o Mohan Lal, Age 32 years, R/o Ghagwal, District Kathua. …..Appellant(s)/Petitioner(s)

Through: Mr. Vivek Sharma, Advocate
Mr. Abid Khan, Advocate
Mr. Vikrant Singh Jasrotia, Advocate

vs

Union Territory of Jammu and Kashmir through Station House Officer, Police Station, Ghagwal ….. Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner figures as co-accused in the chargesheet titled, "State vs. Raman Kumar and Anr." pending before the court of learned Principal Sessions Judge, Samba (hereinafter to be referred as "the trial court") for commission of offences under sections 302/34, 201 RPC and 4/25 of the Arms Act.

2. Through the medium of this application, the petitioner has approached this Court for grant of bail, primarily on the ground that the petitioner has been in custody for the last more than 13 years and the charge sheet could not be disposed of by the learned trial court even though the same has been pending for final arguments for the last more than five years. In

nutshell, the petitioner is seeking bail on account of violation of his fundamental right to speedy trial in the charge sheet.

3. The respondent has filed objections, stating therein that the present application is not maintainable as the allegations against the petitioner are in respect of commission of offence under Section 302 RPC. The respondent has given the factual aspects of the case, thereby alleging that on 19.02.2011 one Ajeet Singh S/o Nagar Singh, caste Rajput lodged a written complaint with the Police Station, Ghagwal stating therein that on 18.02.2011, his brother, namely, Netar Singh had gone out from his house for some work but did not return till evening. In the morning, during the search, the deceased was called on his mobile phone and when he reached near nallah, he heard the ring of his mobile phone from a nallah. He along with other residents of the village reached on spot and found that there was a lot of blood on the stones, and chappal, shawl and phone of his brother were found there. The dead body of his brother was also found in the nearby bushes and neck of his brother was found cut. On receipt of this complaint, FIR bearing No. 46/2011 under Section 302 RPC was registered and the investigation was commenced. During investigation, it was found that the petitioner was having illicit relationship with the co-accused and due to that they had enmity with Netar Singh. The petitioner and said Neelam Rani were arrested under Section 54 of the Cr. P.C. and enquiries were made from them. They accepted their guilt and subsequently they were arrested under Sections 302/34 RPC, 4/25 Arms Act. The petitioner made disclosure statement in respect of iron darat, which was seized from Tapyal nallah and his bloodstained clothes were also seized from his residential house. Pursuant to

the disclosure statement made by the co-accused-Neelam Rani, her bloodstained clothes were also seized from a box. During investigation, the Investigating Officer proved the offences under Section 302/34, 201 RPC and 4/25 of the Arms Act against both the accused i.e. the petitioner and co-accused Neelam Rani. The chargesheet was produced before the court of law on 19.04.2011.

4. Mr. Vivek Sharma, learned counsel for the petitioner has vehemently argued that the petitioner was arrested on 20.02.2011 and till date he has been in custody. He has further argued that for the last nearly five years, the matter is being posted for final arguments by the learned trial court, which has resulted in denial of the fundamental right of the petitioner to speedy trial as enshrined under Article 21 of the Constitution of India. Learned counsel for the petitioner also argued that as per the statement of Medical Officer, Dr. Rajinder Kumar Sharma, the petitioner too had suffered incised wounds on both of his hands and right ear. He further submitted that the trial court is without Presiding Officer and the learned Additional Sessions Judge, Samba has been assigned the additional charge of the trial court as well.

5. Per contra, Mr. Vishal Bharti, learned Dy. AG has vehemently argued that the allegations against the petitioner are in respect of commission of offence under Section 302 RPC and as such, in view of specific bar for grant of bail under the Code of Criminal Procedure, the petitioner cannot be granted bail.

6. Heard learned counsel for the parties and perused the record of the trial court

7. A perusal of the chargesheet reveals that the petitioner was arrested on 20.02.2011. The Investigating Officer filed the chargesheet before the court of Chief Judicial Magistrate, Samba on 19.04.2011, which was assigned to the court of Addl. Munsiff JMIC, Samba and the learned JMIC committed the chargesheet on the same date itself to the learned trial court. The petitioner and co-accused were charged for commission of offence under Sections 302/34, 201 RPC and 4/25 Arms Act by the trial court vide its order dated 07.09.2011. Thereafter, the prosecution led its evidence ant the evidence of the prosecution was closed on 15.09.2014. After recording of their statements, the accused led their evidence which was closed on 16.02.2015 and the matter was posted for 04.03.2015 for final arguments. A perusal of the minutes of the proceedings of the trial court reveals that even arguments in part were also heard by the trial court, however, before the arguments could be concluded, the prosecution i.e. respondent on 09.06.2016, submitted an application under Section 540 Cr. P.C. for summoning of additional witnesses, meaning thereby that the said application was filed by the prosecution after more than 1 ½ years of conclusion of its evidence and even after conclusion of evidence led by accused/petitioner in his defence. The learned trial court vide its order dated 22.11.2016, allowed the application filed by the respondent and permitted the prosecution to produce three additional witnesses i.e. PWs 37, 38 and 39 on 06th and 07th December, 2016 by observing simultaneously that failure on the part of the prosecution to produce the said witnesses during the calendar, shall result into closure of the prosecution evidence. This court is surprised by the fact that though vide order dated 22.11.2016, peremptory order

was passed by the learned trial court, but despite that learned trial court permitted the prosecution to lead evidence beyond the calendar and it was only on 12.11.2018, the evidence of the prosecution was finally closed.

8. It is pertinent to note that even 2½ years granted to the prosecution were not enough for the prosecution to examine these three witnesses, as only two witnesses, except PW 38, were examined during the span of more than 2 ½ years. This Court is surprised with the manner, in which the adjournments were granted to the prosecution just to produce three witnesses, that too in view of the peremptory order already passed by the learned trial court. The statement of the petitioner in terms of Section 342 Cr. P.C. was recorded on 31.12.2018 and likewise the statement of the co-accused in terms of section 342 Cr. P.C was recorded on 19.01.2019. Vide order dated 18.03.2019, evidence of the defence was closed, and the matter was posted on 05.04.2019 for final hearing. Thereafter, for the one reason or the other, the charge sheet has not been taken to its logical conclusion and till 01.06.2024, even the prosecution has not advanced its arguments, what to say of conclusion thereof.

9. A perusal of the order dated 03.11.2023 reveals that learned PP sought time for arguments on the ground that he was recently posted in the said court. In its order dated 11.01.2024, it has been mentioned by the learned trial court that both APP and learned counsel representing the accused have sought time for arguments. This position continues be so till date, meaning thereby that the charge sheet has not been decided by the trial court, despite the fact that the same has been pending for arguments for the last more than five years.

10. This is admitted fact that the petitioner has been in custody for the last more than 13 years. The manner, in which the trial has been conducted in this chargesheet, is quite shocking and disturbing. Whereas the prosecution has delayed the trial without any justification, the learned trial court too has miserably failed to ensure that the trial is completed within reasonable time frame. The evidence of the prosecution was closed initially on 15.09.2014. After exhausting almost 80 dates of hearings to conclude its evidence initially, the prosecution took further 2 ½ years to examine two witnesses, though they were permitted to examine three witnesses during the calendar fixed by the trial court vide order dated 22.11.2016. Though it was ordered that evidence shall be deemed to have been closed in the event of failure of the prosecution to examine three witnesses during the calendar fixed by the trial court, but the trial court granted adjournments in routine manner, oblivious to the timeline fixed by none other than the trial court. The trial court not only stretched beyond the time limit framed for the prosecution to examine those three witnesses not only by couple of months but by 2 ½ years, thereby adjourning the hearings just on the asking of the prosecution. The Hon'ble Supreme Court of India has deprecated this practice of adjourning the matters in routine manner and has proceeded to observe in "***Ishwarlal Mali Rathod v. Gopal",* ****(2021) 12 SCC 612,*** as under:

> **9.** Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice

> delivery system. Many a time, the task of adjournments is used to kill justice. Repeated adjournments break the back of the litigants. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. **Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligent and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law**.
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> (emphasis added)

11. The expeditious disposal of the criminal case is not only in the public interest, as the guilty may be punished quickly but it would also protect the fundamental right of the accused to speedy trial. This Court has not even an iota of doubt that the prosecution has protracted the trial without any justification and the trial court too has miserably failed to keep a proper check on the prosecution to ensure the protection of the right of the accused to speedy trial as guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court of India in **'Sheikh Javed Iqbal vs. State of Uttar Pradesh'**, **2024 INSC 534**, has held as under:

> 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**.
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> 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.

23.1. After referring to various other decisions, this Court further observed as follows:

> 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 a 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.
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> 20. We may hasten to add that the petitioner is still an accused; not a convict. The overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.
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> 21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

24. Earlier, in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India2, this Court had issued a slue of directions relating to undertrials in jail facing charges under the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly, the 'NDPS Act' hereinafter) for a period exceeding two years on account of the delay in disposal of the cases lodged against them. In respect of undertrials who were foreigners, this Court directed that the Special Judge should impound their passports besides insisting on a certificate of assurance from the concerned Embassy/High Commission of the country to which the foreigner accused belonged and that such accused should not leave the country and should appear before the Special Court as required.

> 25. Similarly, in Shaheen Welfare Association Vs. Union of India3, this Court was considering a public interest litigation 2 (1994) 6 SCC 731 3 (1996) 2 SCC 616 15 wherein certain reliefs were sought for undertrial prisoners charged with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) languishing in jail for considerable periods of time. This Court observed that while liberty of a citizen must be zealously safeguarded by the courts but, at the same time, in the context of stringent laws like the TADA Act, the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an undertrial can only be on account of the accused-undertrial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.

12. It was argued by the learned counsel for the respondent that in view of the bar contained in the code of criminal procedure, the petitioner cannot be granted bail as he is charged for the commission of offence which is punishable with death or life imprisonment. No doubt, there is an embargo in the code of criminal procedure for granting bail in respect of offences punishable with death or life imprisonment exclusively, but the accused too has a right to speedy trial as guaranteed under Article 21 of the Constitution of India.

13. The embargo for grant of bail in the Code of Criminal procedure in respect of offences punishable with death or life imprisonment, has been provided in public interest so as to ensure that such offenders, who are guilty of commission of offences punishable with death or life imprisonment exclusively do not roam open in the society, thereby endangering the life and liberty of the common citizens but the Article 21 of the Constitution of India also includes in its ambit the right of the accused to speedy trial. While considering the bar for

grant of bail in offences punishable with death or life imprisonment, a proper balance is required to be maintained to ensure that the right of the accused to speedy trial is not violated. The jail not bail is a rule in such cases, but where the accused has been in long incarceration for 13 years, the prosecution is guilty of protracting the trial without justifiable reasons and where the trial court has miserably failed to dispose of the chargesheet for a considerable long period without any fault on the part of the accused more particularly when the same has been pending for final arguments for considerable period of time, this Court is of the considered view that the accused deserves concession of bail notwithstanding the embargo contained in Code of Criminal Procedure.

14. The respondent has not been able to bring on record any material to demonstrate that the petitioner has criminal antecedents. Pursuant to the direction of this Court, the custody certificate of the petitioner has been produced and as per the said certificate, the petitioner has been in custody for the last 13 years and 26 days as on 01.06.2024. During custody, the petitioner was granted bail four times, once in the year 2018 and thrice in the year 2019 and last time, he was released on interim bail on 05.10.2019. The petitioner every time surrendered pursuant to the orders passed by the learned trial court, meaning thereby that the petitioner has not at all jumped over the bail at any point of time granted to him by the trial court.

15. Having gone through the chargesheet, it comes to fore that the prosecution case is based upon the circumstantial evidence and disclosure statements and the consequent recoveries. It is also evident that the petitioner too has suffered injuries. This Court would not like to comment upon the

merits of the case as it is in the domain of the learned trial court to appreciate the evidence in its right perspective and return a finding whether the petitioner is guilty of commission of offences of which he has been charged or not. The other co-accused is already on bail.

16. Taking into consideration the incarceration of the petitioner for the last 13 years because of the protracted trial due to the fault of the prosecution and inability of the trial court to dispose of the chargesheet for the last five years and allegations against the petitioner are not in respect of any incident related to terrorism, this Court is of the considered view that the petitioner deserves to be enlarged on bail. Accordingly, the present application is allowed, and the petitioner is enlarged on bail subject to the following conditions:

(i) He shall furnish two solvent sureties to the tune of Rs. 50,000/- each and personal bond of like amount to the satisfaction of the learned trial court.

(ii) He shall appear before the trial court on each and every date of hearing.

(iii) He shall not leave UT of Jammu and Kashmir without prior permission of learned trial court.

(iv) He shall not seek unnecessary adjournments for final arguments.

18. In the event of violation of any of the conditions mentioned above, the respondent can lay a motion for cancellation of bail of the petitioner before the trial court. The trial court is directed to dispose of the chargesheet as

expeditiously as possible preferably within a period of three months from the date of receipt of this order.

19. Copy of this order be sent to learned trial court for information.

20. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu:
06.09.2024
Karam Chand/Secy.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No