

Reserved**Court No. - 7****Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16961 of 2022****Applicant :- Anil Gaur @ Sonu @ Sonu Tomar****Opposite Party :- State of U.P.****Counsel for Applicant :- Nanhe Lal Tripathi****Counsel for Opposite Party :- G.A.****Hon'ble Ajay Bhanot, J.**

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

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I. Introduction

1. Shri Nanhe Lal Tripathi, learned counsel assisted by Shri Satish Kumar Mishra, learned counsel for the applicant predicates his submissions on merits by contending that the applicant's inability to access legal aid raises legal and constitutional issues which directly affect the right of bail and the personal liberty of the applicant. Members of the Bar also submit that this problem is faced by many prisoners. The issue regarding the scope and right of legal aid to prisoners arises in the circumstances of this case, but also transcends the facts of this case.

2. While discharging judicial functions in bail determination this Court is not denuded of its status as a constitutional court. The court is under a constitutional obligation to address various legal and constitutional issues which impact the grant of bail if they arise in the facts of a case. Forgotten humanity in jails has been brought in full glare of the judicial process. In these facts and circumstances the court cannot abdicate its constitutional role, and turn a blind eye to their suffering.

II. Submissions of learned counsels

3. Shri Nanhe Lal Tripathi, learned counsel assisted by Shri Satish Kumar Mishra, learned counsel for the applicant makes the following submissions:

A. The applicant belongs to a economically deprived class of citizenry, who was abandoned by his near and dear ones after his imprisonment. He has no effective paurokar to conduct his

case.

B. The applicant did not have access to legal aid to file his bail applications in a timely manner before the trial court as well as this Court.

C. Denial of legal aid delayed recourse to the legal remedy of bail, and caused unjustified incarceration.

D. Right of the applicant to legal aid is a fundamental right and is also a statutory right vested in him by the Legal Services Authorities Act, 1987.

4. Learned members of the Bar also made submissions on the issue of legal aid and pointed out various other instances where under trials in cases of heinous crimes could not approach the courts for consideration of bail applications in a timely manner due to lack of legal aid. Shri Rishi Chaddha, learned A.G.A. and Shri Paritosh Kumar Malviya, learned A.G.A. have assisted the Court on behalf of the State.

Learned counsels at the Bar have called attention to the statutory provisions of the Legal Services Authorities Act, 1987, rulings of constitutional courts and the jail manual, which will be discussed in the narrative.

III. Prisoners' Rights

“Prison and the authorities conspire to rob each man of his dignity”¹.

5. Stephen William Hawking in his book “The Grand Design” relates an incident where keeping fish in bowls was banned in

1 Nelson Mandela in Long Walk to Freedom

Italy. The sponsor of the measure demonstrated that fish in spherical bowls develop a distorted vision with passage of time. Prison conditions which are not under constitutional watch will degrade human life and distort human vision.

6. India's long freedom struggle seared the experience of oppressive prison regimes and steeled the resolve to improve prison conditions.

7. Constitutional courts have fortified certain inviolable fundamental rights of prisoners. The discussion will profit by referencing some authorities. While examining conditions of jailed prisoners, the Supreme Court in **Sunil Batra v. Delhi Administration and Ors.**², acknowledged the restricted fundamental rights of prisoners but found in no uncertain terms that “Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoners' shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority.” Further“...The operation of Article 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether.” Finally the following proposition was entrenched in the body of case laws relating to fundamental rights of prisoners.“56...So the law is that for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.”

8. **Hussainara Khatoon and others (I) v. Home Secretary, State of Bihar**³ recognized the right of speedy trial of a

2 (1978) 4 SCC 494

3 (1980) 1 SCC 81

prisoner flowing from Article 21 of the Constitution of India “to be implicit in the broad sweep” of Article 21 of the Constitution. Other facets of fundamental rights of prisoners have been propounded in **Mohammad Giasuddin vs. State of Andhra Pradesh**⁴, **Sunil Batra (II) v. Delhi Administration**⁵, **Sheela Barse v. State of Maharashtra**⁶, **Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and Ors**⁷, and **Shabnam v. Union of India and others**⁸.

9. This Court in **Gobardhan Singh and another v. State of U.P.**⁹ noted the abject conditions of a large number of forgotten “nameless” prisoners and set forth:

“This is not just an isolated case. We realize that there are a large number of such cases of forgotten "nameless" prisoners who have become "ticket numbers" and are languishing in jails for prolonged periods of time, as under trials (UTs) or as convicted prisoners whose appeals are pending almost interminably before Higher Courts, who may or may not have filed bail applications and who have become very old, or are ailing from an incurable disease, or who may even have become immobile or have lost any capacity to commit a further crime. The complainant (if any) has lost any interest in prosecuting them or in keeping them in jail any longer. Usually the families of such accused have been destroyed, or reduced to such abject poverty, as happens when a family member contracts a serious disease, that they cannot pay counsel's fee or incur the recurring unavoidable expenditures in Court offices to get applications

4 (1977) 3 SCC 287

5 (1980) 3 SCC 488

6 (1987) 4 SCC 373

7 (1993) 2 SCC 746

8 (2015) 6 SCC 702

9 2013 SCC Online All 13141

and affidavits prepared or the matters listed, and the bail or case disposed of. The relatively luckier children and dependents may perhaps have been provided with a roof over their heads by a grudging relative, or they may have been placed in a State or private run children's home. Others may simply have been abandoned to the street. The daughters in the family may not have been married off, and may be getting exploited by some social deviant in the family or outside. Keeping such prisoners in jail any further, in the already overcrowded jails, serves no useful purpose and is an unnecessary burden on the State and the tax payer.”

10. The concerns expressed in **Gobardhan Singh (supra)** were followed up by commensurate action in **Bachchey Lal v. State of U.P.**¹⁰ by issuing various directions for ameliorating the conditions of prisoners and upholding their rights.

11. Constitutional courts have consistently protected the dignity and rights of prisoners in jails.

IV. Right of bail

12. The right of bail is acknowledged as a statutory right, but is also seen in the perspective of constitutional liberties by good authorities in point. Various facts of the right to seek bail were examined by this Court in **Junaid Vs. State of U.P.**¹¹ and **Ajeet Chaudhary Vs. State of U.P. and another**¹²

13. The aforesaid authorities establish the undeniable linkage between right of bail and fundamental right to personal liberty. Every prisoner has a fundamental right to file an application for bail before the competent court as per law and without delay.

10 2014 SCC Online All 15093, 2014 SCC Online All 14128, 2014 SCC Online All 14986

11 2021 (6) ADJ 511

12 (2021) 1 ADJ 559

V. Legal Aid: A. Constitutional Law Backdrop

14. Liberty was assured to all citizens in the constitutional text, but justice is dear to many citizens in the real world. Inalienable constitutional rights are severed by compelling socio economic realities. Poverty, social exclusion and lack of legal aid impede the course of justice. Article 39A of the Constitution of India removes the barriers in redeeming the preamble promise of securing justice for all citizens. Article 39A of the Constitution of India underscores the importance of providing legal aid to serve equal justice to all citizens and states so:

“39A. EQUAL JUSTICE AND FREE LEGAL AID.

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

15. Free legal aid is today enshrined as a statutory right in the Legal Services Authorities Act. Free legal aid was earlier exalted as a fundamental right by constitutional law. Holdings of constitutional courts form the backdrop of the Legal Services Authorities Act. Allahabad High Court had pioneered the concept of legal aid as intrinsic to a fair trial in the fabled dissent of Hon'ble Syed Mahmood J in **Queen-Empress v. Pohpi and others**¹³. Denial of legal aid causes violation of fair, reasonable and just procedure, unjustified incarceration, and

curtailment of liberty. Articles 14 and 21 of the Constitution of India are engaged in these circumstances.

16. In this regard reference can be made profitably to the following holdings in **Hussainara Khatoon and others (IV) v. Home Secretary, State of Bihar, Patna**¹⁴ made after referencing Article 39A of the Constitution of India:

“7.....This Article also emphasises that free legal service is an inalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.”

17. The need to rescue the credibility of the legal system and restore the faith of the common man in the justice system was emphasized in following terms:

“9. We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our

14 (1980) 1 SCC 98

legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contract with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor". The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.We would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A."

(emphasis supplied)

True then, true now.

18. The courts too have a duty to ensure that prisoners appearing in criminal proceedings have access to legal aid. Courts cannot remain mute spectators when legal aid is denied to prisoners in legal proceedings before them.

19. The trial courts stand at a vantage point in these matters and are best circumstanced to understand the need of legal aid of the prisoners appearing before them.

20. The Supreme Court in **Khatri and others (II) v. State of**

Bihar¹⁵ and others recognized pervasive legal illiteracy in the country and cast an obligation on trial judges to bring about the fruition of the rights of prisoners to free legal aid in the following terms:

“But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Unfortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage of the free legal services provided by the State, he must be provided legal representation at the cost of the State.”

15 (1981) 1 SCC 627

Prophetic words which fell on institutions with short memories.

21. The aforesaid propositions are entrenched in the body of judicial precedents as is evident from readings of **Madhav Hayawadanrao Hoskot v. State of Maharashtra**¹⁶ and **Sukdas v. Union Territory of Arunachal Pradesh**¹⁷ and **State of Andhra Pradesh v. Challa Ramkrishna Reddy**¹⁸.

22. The right to free legal aid, responsibility of the trial courts and the Government is stated in Section 304 of the Code of Criminal Procedure:

“304. Legal aid to accused at State expense in certain cases.-

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.”

16 (1978) 3 SCC 544

17 (1986) 2 SCC 401

18 AIR 2000 SC 2083

V. Legal Aid: B. Statutory Scheme of LSA Act, 1987

23. The need for a specific statute and independent statutory authorities to provide “free legal and competent legal services (to the weaker sections of the society) to ensure that the opportunities of securing justice are not denied to any citizens by any reason of economic and other disabilities”, was acknowledged by the legislature when it enacted the Legal Services Authorities Act, 1987 (hereinafter referred to as the “Act”, 1987).

24. The Act is a welfare legislation. Settled canons of statutory interpretation will guide the court in construing the provisions of the Act. Cases in point settle the proposition that welfare legislations are liable to be interpreted liberally to ensure that beneficent measures contemplated by the legislature reach eligible persons.

25. The proposition will be reinforced by authorities. **K.H.Nazar v. Mathew K.Jacob and others**¹⁹ held that:

“Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects.⁶ Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court’s duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.”

¹⁹ (2020) 14 SCC 126

[Also see: **Union of India v. Prabhakaran Vijaya Kumar and others**²⁰, and **Allahabad Bank and another v. All India Allahabad Bank Retired Employees Association**.²¹]

26. Relevant provisions of the Act are discussed in the paragraphs that follow. Section 2 of the Act is the definition clause. Section 2 (aaa), section 2(c) and section 2(g) of the Act define “court”, “legal service” and “scheme” respectively.

27. Section 2(aaa) is extracted below:

“Section 2 (aaa). “court” means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.”

28. The definition of the word “court” is exhaustive. The vast reach of the provision envisages all proceedings pending before various courts and legally constituted tribunals and authorities where a lis can be instituted, and rights of citizens will be engaged and adjudicated as per law. Trial courts, revising courts and appellate courts alike come within the purview of the provision.

29. Section 2(c) of the Act reads as under:

“**Section 2(c)**. legal service” includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.”

30. The provision contains an inclusive definition of “legal service” and recognizes various collateral services which are integral to providing fruitful legal aid in the conduct of legal proceedings or giving legal advice. The wide ambit of the

20 (2008) 9 SCC 527

21 (2010) 2 SCC 44

provision ensures that legal aid is not curbed by a constricted understanding, and legal services are rendered effectively.

31. The construction of the words “means” and “includes” used in the definition clauses in section 2(aaa) and section 2(c) is assisted by this iteration in **Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union**²² by holding thus:

“When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. The use of the word “means” indicates that the “definition is hard and fast definition, and no other meaning can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition. It makes the definition enumerative and not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within its matter, which in its ordinary meaning may or may not comprise.”

32. Section 2(g) of the Act reads as under:-

“Section 2(g). scheme” means any scheme framed by the Central Authority, a State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act.”

33. The provision imparts statutory flavour to the schemes framed by various authorities under the Act. This creates enforceable rights in favour of the recipient and enhances efficacy of the schemes for legal aid.

34. Section 3 and Section 3A constitute National Legal Services Authority and the Supreme Court Legal Services Committee respectively.²³ I

²² (2007) 4 SCC 685

²³ NLSA appended to endnote as **Appendix I** to the judgment

35. Section 6 constitutes the State Legal Services Authority. Section 8A and Section 9 constitute High Court Legal Services Committee and District Legal Services Authority respectively.²⁴ⁱⁱ

36. Section 7 of the Act which defines the functions of the State Authority has a direct bearing on the controversy and is being reproduced below:

“Section 7. Functions of the State Authority-(1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in subsection (1), the State Authority shall perform all or any of the following functions, namely,-

(a) give legal service to persons who satisfy the criteria laid down under this Act;

(b) conduct Lok Adalats, including Lok Adalats for High Court cases;

(c) undertake preventive and strategic legal aid programmes; and

(d) perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.”

37. Among other functions the statute unequivocally enjoins upon the State Authority to give legal aid to persons who satisfy the criteria laid down under this Act, and to undertake “preventive and strategic legal aid programmes”. The power to undertake legal aid programmes by creating various schemes and procedures is guided in broad and conceptual terms, and not by a minutely detailed framework.

38. The meaning of “strategic” in Oxford dictionary is “forming

²⁴ SLSA, HCLSC and DLSA appended to endnote as **Appendix II** to the judgment

part of a long-term plan or aim to achieve a specific purpose.” The meaning of “preventive” is “designed to prevent something from occurring.” The words “strategic” and “preventive” in Section 7 are of wide import which envisage the State Legal Services Authority to independently and proactively create schemes to provide legal aid and prevent miscarriage of justice.

39. Entitlement to legal services is provided for in Chapter IV. Section 12 of the Act²⁵ⁱⁱⁱ contains the criteria for giving legal services. Section 12(e) of the Act is germane to the controversy and is extracted below:-

“Section 12 (e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.”

40. The eligibility criteria for giving legal services under Section 12(e) is broad based.

The breadth of the provision manifests the legislative intent to reach out to the last person at the bottom of the social heap. The section contemplates to give legal aid to persons who suffer from deprivation and exclusion caused by circumstances of want which are not of their making.

Under the provision persons facing circumstances of “undeserved want” become entitled for legal services. The phrase “undeserved want” is generic in nature. The word “such as” precedes the examples of “undeserved want” described in the section. The instances of “undeserved want” depicted in the

²⁵ Section 12 appended to endnote as **Appendix III** to the judgment

provision are illustrative and not exhaustive, and are in the nature of externalities i.e. adverse circumstances over which a person has no control and which prevent recourse to justice.

The phrase “undeserved want” in the statute is not a fixed concept but an evolutionary exercise. The State Legal Services Authority is mandated to enquire whether the circumstances of a person being considered for legal aid fall within the sweep of “undeserved want”.

41. The entitlement to legal services of persons who satisfy any of the criteria laid down in Section 12 of the Act is vested by virtue of Section 13 of the Act.

“Section 13. Entitlement to legal services.-(1) Persons who satisfy or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.”

42. A conjoint reading of various provisions detailed above establishes that for grant of aid the legislature has made no distinction between persons who are imprisoned for heinous offences or non heinous crimes. Further, eligible persons are entitled to legal services at any stage of proceedings (whether pre trial, trial or appeal or revisional) which he or she is prosecuting or defending. (**Ref: Rajoo alias Ramakant Vs.**

State of Madhya Pradesh²⁶).

43. Under the scheme of the Act the Legal Services Authorities also have to suo moto initiate the process of identifying classes of persons who face circumstances of “undeserved want”, educate them on their right to legal aid, frame schemes, determine the nature of legal services required in the case, and give them requisite legal services.

44. The statute envisages that the arms of law are long enough to reach injustice. The constitution ensures that the arms of courts are strong enough to serve justice.

45. In light of the scheme of the Act thus discussed, I hold that persons who cannot file bail applications before the competent court due to these reasons.

(a) they do not have resources to do so,

(b) have been abandoned by friends and family after their incarceration,

(c) do not have any paurokar,

(d) have not been educated of their right to move a bail application without delay; are victims within the scope of “undeserved want”.

46. Such class of persons are entitled to legal services, the nature of which has to be decided by the statutory authorities.

47. Similarly there are persons who fail to file bail applications before the trial court in a timely manner after their detention, or do not expeditiously approach the High Court for bail after the

rejection of their bail applications by the trial court. The said cases prima facie fall within the ambit of “undeserved want”, subject to enquiry by the State Legal Services Authority or the District Legal Services Authority.

V. Legal Aid: C. Instances and Consequences of denial of legal aid

48. The applicant was in jail since 06.12.2017. He was able to file a bail application before the trial court in 2019 i.e. after a delay of more than one year. The bail application was rejected on 04.06.2019 by the trial court. He could approach this Court for bail only in the year 2022 i.e. three years after the trial court refused him bail.

49. The applicant was delayed in taking recourse to legal remedies and securing justice because of financial penury, lack of legal awareness, absence of pairokar and denial of legal aid.

50. This case is not a one off. While sitting in bail jurisdiction, I noticed a number of cases where bail applications were filed after inordinate delays because the prisoners did not have access to legal aid. The other category of cases was where bail applications could be filed but lay unattended in the cold storage of the Registry. In the latter cases lack of funds and absence of pairokars led to ineffective prosecution causing indefinite delays in hearing.

And so the prisoners wait resigned to their fate.

51. Some like cases which were pointed out by the members of the Bar.

[**I.** Rajnish v. State of U.P. in Criminal Misc. Bail Application No.20805 of 2022, **II.** Chhotey vs. State of U.P. in Criminal Misc. Bail Application No.5328 of 2018, **III.** Mahesh Chandra Shukla v. State of U.P. in Criminal Misc. Bail Application No.17940 of 2022, **IV.** Vikas Dwivedi v. State of U.P. in Criminal Misc. Bail Application No.22375 of 2020 and **V.** Ramu Vs. State of U.P. in Criminal Misc. Bail Application No.17912 of 2019]

52. In **Rajnish (supra)** the applicant was in jail since 26.04.2011. The first bail application was filed by the applicant before the trial court 11 years after his imprisonment. The trial had not concluded when the applicant was enlarged on bail by this Court on 06.08.2022. While granting bail the Court was constrained to hold:

“This is the first bail application which has been moved by the applicant before this Court. The applicant belongs to the bottom heap of humanity and unfortunately forgotten class of citizens. He did not have the resources to engage a counsel nor was he given to access to legal aid for these long years. Constitutional promise of securing justice has been denied to him.

However, it is for all instruments of governance, the trial courts, the police authorities, the legal services authorities to introspect and bring about necessary systemic corrections with the conviction that such a state of affairs will not be repeated. Never again. The District Legal Services Authority in the State of Uttar Pradesh shall draw up a list of prisoners who are incarcerated for long period and examine whether they have not been able to move bail applications due to penury and lack of access to legal aid. Corrective measures should accordingly be taken. Legal aid

workshop should be conducted in every jail in the State of Uttar Pradesh to ensure that such grievances are promptly redressed.”

(emphasis supplied)

53. In **Ramu (supra)** the applicant was in jail since 14.02.2008. The first bail application was rejected by this Court on 15.11.2008. The applicant was able to file the second bail application before the High Court in 2019 i.e. more than 11 years after the rejection of first bail application by this Court. Thereafter, further three years delay occurred in hearing of the bail due to applicant's inability to file listing application and effectively prosecute them. The trial had not concluded when the bail was granted by this Court on 16.07.2022.

54. In **Chhotey (supra)** the applicant was in jail since 22.02.2014. The first bail application of the applicant was rejected by this Court on 19.08.2014. The second bail of the applicant was filed more than three years after the rejection of first bail application by this Court. Further four years delay happened as the applicant lacked resources to file listing applications and prosecute them effectively.

55. It is noteworthy that in **Chhotey (supra)** the trial proceedings came to a halt in the year 2012 when the records of the trial court were transmitted to this Court. During eight years of imprisonment of the applicant the trial was at a stand-still. While granting bail to the applicant on 16.03.2022 in **Chhotey (supra)** this Court made these observations :

“The comments of the trial judge indicate that the records of the case

were transmitted to this Court in compliance of the orders passed on 12.09.2012. In the comments sent by trial judge it is further stated that in the absence of the records the Sessions Trial No. 956 of 2013 (State Vs Chhotey) cannot proceed. Without availability of original documents including the case diary the applicant could not be charged by the trial court. As per the comments of the trial court various communications were sent by the trial court on 28.03.2014, 27.09.2014, 14.01.2020, 15.01.2021, 04.08.2021 to the High Court. However the records have not yet been transmitted to the trial court. From the aforesaid submissions as well as the records available before this Court it appears that the applicant has been in detention since 22.02.2014 but has not been charged by the trial court till date. The trial against the applicant is yet to commence.”

(emphasis supplied)

Denial of legal aid was highlighted in the aforesaid order.

56. In **Vikas Dwivedi (supra)** the applicant was in jail since 05.03.2013. The applicant was able to file the bail application before the trial court more than four and half years after his imprisonment. He could file the first bail application before this Court more than six months after the rejection of his bail by the trial court. The first bail application of the applicant was rejected by this Court on 17.05.2018. The second bail of the applicant was filed more than two years after the rejection of first bail application by this Court. Thereafter, further two years of delay was occasioned due to lack of resources to file listing applications and prosecute the same effectively. When the applicant was granted bail by this Court on 17.02.2022 the trial

had not concluded.

57. In **Mahesh Chandra Shukla (supra)** the applicant was in jail since 12.07.2009. The fourth bail was filed nine years after the rejection of the third bail. Trial had not concluded when bail was granted by this Court on 29.08.2022.

58. Many of the aforesaid bail applications were delayed second or subsequent bail applications before this Court.

The grounds for second or subsequent bail applications can be promptly advised to prisoners only when they have regular and unimpeded access to legal aid.

59. The failure of justice in the said cases was occasioned by poverty, social exclusion, legal illiteracy, impersonal administration and denial of legal aid.

Exactions of poverty are more severe than punishments in law. For them the glorious dawn of the 75th year of independence has lost the sheen of freedom's ideals and the substance of the republic's promise.

60. Injustice is the birthmark of a slave nation. Justice is the birthright of a free people and our constitution says they shall have it.

The resolve of the “people of India” to secure justice for all citizens was embedded in the Constitution of India.

61. All stakeholder institutions have to pause and reflect. The judiciary too have to turn the searchlights inwards. The courts have the power to judge, but cannot escape the judgement of the nation's collective conscience. Independence of judiciary is

strengthened by honest introspection and self correction.

62. The Bar of the Allahabad High Court spoke for prisoners who had lost their voice, and worked tirelessly without thought of remuneration or expectation of reward. The learned counsels uphold the highest traditions of the profession, and shine light on the hallowed heritage of this Court.

63. Shri Ajay Kumar Pathak, learned counsel, Shri Saurabh Yadav, learned counsel, Shri Anil Kumar Srivastava, learned counsel, Ms.Ushma Mishra, learned counsel and Shri Ashish Kumar Singh, learned counsel and Shri Rishi Chaddha, learned A.G.A. and Shri Paritosh Kumar Malviya, learned A.G.A. in the aforesaid cases respectively deserve fullest appreciation. In such matters, Shri N.I. Jafri, learned Senior Counsel assisted by Ms. Nasira Adil, learned counsel, Ms. Gunjan Jadhvani, learned counsel, Shri Omar Zamin, learned counsel and Shri Rajrshi Gupta, learned counsel have unconditionally volunteered to take up the causes. The learned counsels have always assisted the Court competently. They researched painstakingly and argued with ability.

V. Legal Aid: D. NLSA Scheme for Legal Aid

64. The plight of prisoners who suffer long incarcerations due to interminable delays in the criminal justice system was noticed by the Supreme Court. In '**Re-inhuman conditions in 1382 jails' (Writ Petition (Civil) No.406 of 2013)**²⁷ various directions were issued by the Supreme Court on 24.04.2015 to

²⁷ (2016) 3 SCC 700

the National Legal Services Authority (NLSA), and the Ministry of Home Affairs (MHA) to set up Under Trial Review Committees (UTRCs) in every district. Functioning of the UTRCs improved consequent to directions of the Supreme Court issued on various dates.

65. The campaign for release of prisoners gained force momentum after a scheme was initiated by the National Legal Services Authority to commemorate the 75th year of independence. The programme is being implemented with full vigour in the State of Uttar Pradesh by the State Legal Services Authority in conjunction with the District Legal Services Authority.

The cases like that of the applicant and in issue before this Court are not covered by the said scheme.

V. Legal Aid: E. Summation

66. In summation legal aid is a catalyst to redeem the preamble promise of justice and remains a bulwark for protection of fundamental rights.

67. The rights to file a bail without delay, and access to legal aid of an eligible prisoner are intertwined. They cannot be separated. The right of moving a bail application becomes illusory and personal liberty remains a distant dream, if the right to legal aid of an entitled prisoner is not effectuated.

68. Fresh breeze of fundamental rights shall blow through the stone walls that a prison make. Iron bars of jails cannot hold back the glad tidings of equal justice.

VI. Conclusions & Directions

69. Anonymity of a prisoner imposed by isolation cannot suppress the identity of a citizen created by the Constitution. Fundamental rights of prisoners paired with statutory duties of the State Legal Services Authority cast an obligation on the SLSA to devise a scheme (I) to identify prisoners who are undertrial for various crimes including heinous offences and have not applied for bail before the trial court in a timely manner after their imprisonment, (II) to identify prisoners who are facing trials for various crimes including heinous offences but have failed to file bail applications before the High Court in an expeditious time frame after rejection of their bail application by the trial court, (III) to identify prisoners who are facing trials in various offences including heinous crimes but are unable to file subsequent bails before the High Court after rejection of earlier bail application by this Court, (IV) to identify prisoners who are unable to effectively prosecute their pending bail applications in various offences including heinous crimes causing delays in hearing, (V) to ascertain whether inability of the said prisoners to expeditiously file or effectively prosecute bail application is caused by factors comprehended under Section 12 read with Section 13 of the Act, (VI) to approach prisoners who qualify for legal aid, educate them on their rights of filing bail applications without delay, and determine the nature of legal aid needed by them, (VII) to provide legal aid and facilitate filing of bail applications of such

prisoners in a timely manner before the competent courts, (VIII) to facilitate counsels in getting necessary instructions, relevant documents, office support for filing the bail applications. (IX) to facilitate effective prosecution of bail applications by the counsels who should take out measures for listing of bails and hearing of matters.

70. This exercise of identification of prisoners, determination of their eligibility for legal aid and giving legal aid should be an established procedure in jails which should be undertaken on a continuous basis and without any break by the District Legal Services Authority.

71. The jail authorities too have responsibilities in this regard. The duties of jail officials to prevent “undue long detention of prisoners are stated in Regulation 439(a) of the U.P. Jail Manual. **[Ref: the U.P. Jail Manual^{28 iv}]**

72. The jail authorities as well as concerned State authorities are directed to cooperate with the State Legal Services Authority and the District Legal Services Authority and ensure effective implementation of the schemes framed by the State Legal Services Authority.

73. This scheme will have the added benefit as delayed trials or pending appeals will come to the notice of the High Court for appropriate directions as per law.

74. Following suggestions for effective implementation for the said scheme may be considered :

28 U.P. Jail Manual appended to endnote as Appendix IV to the judgment

A. To create a comprehensive programme with SOPs for legal aid to prisoners accused of various crimes including heinous offences who have not filed bail applications before the High Court within a period of one year after rejection of bail by the trial court. The said period of one year is only suggestive. The said period has to be determined by the State Legal Services Authority.

B. To create a comprehensive programme with SOPs for giving legal aid to prisoners accused of committing various crimes including heinous offences who have not been able to move bail applications before the trial court six months after imprisonment. The said period of six months is only suggestive. The said period has to be determined by the State Legal Services Authority.

C. The State Legal Services Authority may suggest to the High Court to decide an appropriate procedure for filing of bail applications on behalf of the undertrial prisoners, and particularly those who do not have any paurokars.

D. Legal aid counsels may be given appropriate directions to take measures for listing and early hearing of bail applications.

E. Filing of subsequent bail applications in case the first bail application is rejected by the High Court.

F. The jail authorities and District Legal Services Authority shall maintain the list of all prisoners which shall contain these details. Date of imprisonment, date of filing of bail application before the competent court, date of grant/rejection of bail

application by the trial court, the date of grant/rejection of bail application by the High Court, date of conviction and latest status of pending bail applications. Efforts should be made to make updated ordersheets of courts, likely dates of listing available online in jails.

G. Regular intimation of the status of the case to the prisoners. Take regular feedback from prisoners including those who have been given legal aid.

VII. Order on bail application

75. By means of this first bail application the applicant has prayed to be enlarged on bail in Case Crime No. 880 of 2017 at Police Station Neodiya, District Jaunpur under Section 302 IPC. The applicant is in jail since 06.12.2017.

76. The bail application of the applicant was rejected by learned Additional District & Sessions Judge, Jaunpur on 04.06.2019.

77. Sri Nanhe Lal Tripathi, learned counsel assisted by Sri Satish Kumar Mishra, learned counsel for the applicant contend that the applicant has been falsely implicated in the instant case. The applicant was not named in the FIR. There is no direct evidence against the applicant and he had no motive to commit the murder. At best it is a case of circumstantial evidence. The recovered items were planted on the applicant by the police authorities only to burnish their professional credentials. There is no independent witness to the recovery. The recovered items cannot be connected with the offence. The applicant was not

last seen in the company of the deceased at a time proximate to the death of the latter. The time of death opined in the post mortem report contradicts the prosecution case. The chain of incriminating circumstances against the applicant is neither complete nor reliable. The applicant has explained part of his criminal history. The learned counsel reiterates the ground of denial of legal aid causing prolonged imprisonment.

78. Learned AGA points out two more criminal cases registered against the applicant while he was in jail.

Rejoining the issue, learned counsel for the applicant submits that the aforesaid cases could not be disclosed as the applicant does not have any effective parokar to take details of the case. However on the basis of instructions from the applicant and from the record of learned AGA, learned counsel for the applicant submits that the applicant was falsely implicated in the aforesaid cases when he raised his voice against the excesses of jail authorities and demanded legal aid.

79. Shri Rishi Chaddha, learned A.G.A for the State could not satisfactorily dispute the aforesaid submissions from the record.

80. The applicant was granted interim bail on 18.08.2022 by this Court.

81. Let the applicant- **Anil Gaur @ Sonu @ Sonu Tomar** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not influence any witness.
- (iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

Order Date :-12.09.2022

Ashish Nayan Tripathi

VIII. Appendix

i. Appendix I

Chapter II

The National Legal Services Authority

“[3. Constitution of the National Legal Services Authority.—(1) The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under this Act.

(2) The Central Authority shall consist of—

(a) the Chief Justice of India who shall be the Patron-in-Chief;

(b) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

(3) The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

(4) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the Central Authority shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(5) The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(7) The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India.

(8) All orders and decisions of the Central Authority shall be authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

(9) No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority.”

“Section 3A. Supreme Court Legal Services Committee.-(1) The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by

regulations made by the Central Authority.

(2) The Committee shall consist of –

- (a) a sitting Judge of the Supreme Court who shall be the Chairman; and
- (b) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India.

(3) The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.”

ii. Appendix II

Chapter III

State Legal Services Authority

“Section 6. Constitution of State Legal Services Authority.- (1) Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act. State Legal Services Authority

(2) A State Authority shall consist of-

(a) the Chief Justice of the High Court who shall be the Patron-in-Chief;

(b) a serving or retired Judge of the High Court to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority:

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

(4) The terms of office and other conditions relating thereby, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the State Authority shall be

entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary or any other officer of the State Authority shall be defrayed out of the consolidated fund of the State.

(8) All orders and decisions of the State Authority shall be authenticated by the Member Secretary or any other officer of the State Authority duly authorized by the Executive Chairman of the State Authority.

(9) No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.”

“8A. High Court Legal Services Committee.-(1) The State Authority shall constitute a committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.

(2) The Committee shall consists of-

(a) a sitting Judge of the High Court who shall be the Chairman; and

(b) such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority.

to be nominated by the Chief Justice of the High Court.

(3) The Chief Justice of the High Court shall appoint a Secretary to the Committee possessing such experience and qualifications as may be prescribed by the State Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.”

“Section 9. District Legal Services Authority-(1) The State Government shall, in consultation with Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

(2) A District Authority shall consist of-

(a) the district Judge who shall be its Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(4) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation

with the Chief Justice of the High Court.

(5) The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorized by the Chairman of that Authority.

(9) No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority.”

iii. Appendix III

Chapter IV

Entitlement To Legal Services

12. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is—

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in

Article 23 of the Constitution;

(c) a women or a child; 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);] 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]"

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or 2[(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.] 2[(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]"

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if

the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]”

iv. Appendix iv

Jail Manual

“439(a) Whenever an undertrial prisoner is detailed in jail for an undue long period the Superintendent shall address the District Magistrate or the Sessions Judge, as the case may be, with a view to the speedy disposal of his case or the exercise by him of the power of releasing the prisoner on bail.”

Order Date :-12.09.2022

Ashish Nayan Tripathi