

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(THROUGH VIRTUAL MODE)

Reserved on: 31.05.2021
Pronounced on:24.06.2021

Bail App No.253/2020

SOHAN SINGH

... PETITIONER(S)

Through: - Mr. R. S. Thakur, Sr. Advocate, with Mr.
Ashwani Thakur, Advocate.

Vs.

UNION TERRITORY OF J&K

...RESPONDENT(S)

Through: - Mr. Aseem Sawhney, AAG.
Mr. A. P. Singh with Mr. T. R. Wani,
Advocates (for intervener)

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, who is facing trial for offence under Section 302 RPC before the Court of Principal Sessions Judge, Kathua, has moved the instant application for grant of bail.

2) It is contended in the petition that the petitioner is incarcerated since 31st of December, 2012 and the prosecution evidence in the case is yet to be completed. According to the petitioner, there has been unexplained and unreasonable delay in completion of the trial of the case, which entitles him to the grant of bail. It is further averred that the prosecution is deliberately delaying the recording of deposition by PW

Hoshiar Singh, who happens to be one of the relations of the deceased, which has contributed to the delay in trial of the case.

3) The other ground urged by the petitioner is that he is badly suffering from backache and his condition in the jail is worsening with each passing day. According to the petitioner, he is not being given proper medical treatment in the jail and keeping in view his medical condition, he deserves to be enlarged on bail.

4) The petitioner has also sought bail on merits claiming that, whatever evidence has been recorded by the prosecution in the case so far, the same does not even, *prima facie*, show the involvement of the petitioner in the alleged crime as the evidence recorded so far is contradictory and unreliable.

5) I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondents. Learned counsel appearing for the legal heirs of the deceased/victim, Mr. A. P. Singh, has also been permitted to make his submissions in opposition to the bail application. I have also gone through the record of the trial court.

6) Learned counsel for the petitioner, while making his submissions, has reiterated the grounds urged by the petitioner in his bail application and submitted that the petitioner is facing incarceration without any trial and that he is in jail for last more than seven years. According to the learned counsel, the delay in completion of trial is solely attributable to the prosecution as well as to the complainant party and for this, the petitioner cannot be made a scapegoat. According to

the learned counsel, the trial court vide its order dated 11.11.2020, while rejecting bail application filed by the petitioner, refused to remedy the wrong by enlarging the petitioner on bail. Learned counsel for the petitioner has taken this Court through the statement of prosecution witnesses recorded so far and pointed out certain portions of these statements, which, according to him, amount to contradictions and infirmities in the prosecution case and on this basis, contended that there are reasonable grounds for believing that the petitioner is not involved in the alleged crime thereby entitling him to grant of bail. The learned counsel has also referred to the medical report of the petitioner and submitted that the medical condition of the petitioner is deteriorating day by day. It has been further contended that having regard to the worsening situation of COVID-19 pandemic and the medical condition of the petitioner, he deserves to be enlarged on bail. Learned counsel for the petitioner, in support of his submissions, has referred to and relied upon the following judgments:

1. Sandeep alias Raja Acharya v. State of Orissa (AIR 2017 SC 1568)
2. Kerala Union of Working Journalists v. Union of India & Ors. (WP(Crl.) No.307 of 2020)
3. Ram Saran Pal alias Lallu v. State of U.P (AIR 2017 SC 2880)
4. Sanjay @ Mausam v. State of U.P, Criminal Misc. Bail Application No.22305 of 2020
5. Sujit Tiwari v. State of Gujarat & Ors. (AIR 2020 SC 667)
6. Prabhakar Tewari v. State of UP & anr. Criminal Bail No.153 of 2020 (arising out of SLP(Crl.) No.9207/2019)
7. Dataram Singh v. State of UP (AIR 2018 SC 980)

8. Union of India v. K. A. Najeeb (AIR 2021 SC 712)
9. Parvez Noordin Lokhandwalla v. State of Maharashtra & anr. (AIR 2021 SC 641)
10. Sanjay Chandra v. Central Bureau of Investigation (AIR 2012 SC 830)
11. Arnab Manoranjan Goswami v. State of Maharashtra & Ors. (AIR 2021 SC 1)

7) *Per contra*, learned AAG and the learned counsel appearing for the interveners have objected to the grant of bail on the ground that earlier bail application has been rejected by the trial court only on 11.11.2020 whereas the instant bail application has been filed by the petitioner within a few days of rejection of his bail application without there being any change in the circumstances. It has been contended that the delay in completion of prosecution evidence is not attributable to prosecution as the trial of the case remained stayed for quite some time due to the orders of the High Court and the Supreme Court. On the question of medical condition of the petitioner, it has been contended that the petitioner is not suffering from such a serious ailment which cannot be managed by the jail authorities and that the petitioner is being taken care of by the jail authorities so far as his medical condition is concerned.

8) Lastly, it has been contended that this Court cannot meticulously examine and appreciate the evidence led by the prosecution at this stage in these proceedings so as to conclude as to whether the trial against the petitioner would ultimately result in his conviction or acquittal.

9) Before coming to the rival contentions of the parties, let me give a brief background of the prosecution case.

10) It was on 30th of December, 2012, the petitioner, armed with a sickle, inflicted a serious injury on the head of the deceased, as a result of which he died on the next day. Co-accused Samunder Singh is stated to have abetted him in the commission of the crime. Initially a case under Section 307, 323 RPC was registered. However, offence under Section 307 RPC was converted into one under Section 302 RPC after the deceased succumbed to injuries. After completion of investigation as well as further investigation of the case that was directed by the trial court in terms of its order dated 03.06.2013, charge sheet came to be filed against the petitioner and co-accused. Vide order dated 13.02.2014, petitioner as well as co-accused were charged. Petitioner has been charged with offence under Section 302 RPC whereas co-accused has been charged with offence under Section 302/109 RPC.

11) It appears that the complainant party had made an application before the learned trial court seeking impleadment of more persons as accused. The said application came to be dismissed by the learned trial court vide its order dated 12.02.2014 with the observation that the motion of the complainant party is premature at that stage. It also appears from the record that the aforesaid order came to be challenged by the complainant party before this Court vide Criminal Revision No.24/2014 and the said petition was dismissed vide order dated 17.11.2014. The matter did not rest here. The aforesaid orders came to be challenged by the complainant party before the Supreme Court and

ultimately the proceedings culminated in terms of order dated 06.12.2016 passed by the Supreme Court wherein the Court observed that the application for impleadment of accused shall be kept pending and in case it is found that there is sufficient material to arraign more persons as accused, it would be open to the complainant party to press that application at that stage. During the pendency of all the above proceedings the trial of the case remained stayed. The trial of the case resumed only on 3rd February, 2017.

12) Before discussing the grounds urged by the petitioner for grant of bail in his favour in the light of the facts narrated hereinbefore, it is necessary to notice the legal position relating to grant of bail in heinous offences like murder.

13) The consistent view of the Supreme Court as well as of this Court, is that the matters to be considered in a bail application for grant of bail are as follows:

1. Whether there is a, *prima facie*, reasonable ground to believe that the accused had committed the offence;
2. Nature and gravity of the charge;
3. Severity of punishment in the event of conviction;
4. Danger of accused absconding or fleeing, if released on bail;
5. Character, behavior, means, position and standing of the accused;
6. Likelihood of the offence being repeated;

7. Reasonable apprehension of the witnesses being tampered with;
8. Danger of course of justice being thwarted by grant of bail;

14) So far as the instant case is concerned, petitioner is facing the charge of murder which is punishable with death sentence or imprisonment for life. The Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, (2004) 7 SCC 528**, while laying down the guidelines for grant or refusal of bail in serious offences like murder, has observed as under:

“11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind Upadhyay Vs. Sudarshan Singh and others and Puran Vs. Rambilas and another.

12. In regard to cases where earlier bail applications have been rejected there is a further

onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay, supra)

15) In the aforesaid judgment, the Supreme Court has also observed that the conditions laid down in Section 437(1)(i) of Cr. P. C are sine qua non for granting bail even under Section 439 of the Code, meaning thereby that in a case where a person is alleged to be involved in a offence punishable with death sentence or imprisonment for life, he cannot be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence. So the petitioner in the instant case, in order to succeed in making out a case for grant of bail in his favour on merits, has to satisfy this Court that on the basis of the evidence led by the prosecution and the evidence that is proposed to be led by the prosecution, there is absence of reasonable grounds for believing that he has committed the offence.

16) Learned counsel for the petitioner has taken this Court through the statements of prosecution witnesses recorded before the trial court. He has particularly referred to the statements of PWs Inder Singh, Mohan Singh and Omkar Singh. According to the learned counsel, these are the star witnesses of the prosecution and there are contradictions on vital aspects of the case in the statements of these witnesses. On this ground it is urged that this Court can safely conclude that there are no reasonable grounds for presuming that the petitioner is

involved in the commission of alleged crime and, as such, he deserves to be enlarged on bail.

17) Before dealing with the argument of learned counsel for the petitioner, we need to be clear as regards scope of this Court in appreciating and examining the evidence led by the prosecution at this stage of the proceedings.

18) The Supreme Court in the case of **State of UP through CBI v. Amaramani Tripathi, (2005) 8 SCC 21**, while dealing with this aspect of the case has observed that a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice. The Court further observed that a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. Keeping these principles in view, the contention of learned counsel for the petitioner on merits of this application is required to be tested.

19) The statements of prosecution witnesses, which have been referred to by learned counsel for the petitioner, reveal that, *prima facie*, they have supported the prosecution case. It is not a case where these witnesses have turned hostile or that they have stated something which is absolutely and diagonally opposite to what prosecution has alleged in the charge sheet. A meticulous or detailed examination of the statements of aforesaid prosecution witnesses may or may not bring out inconsistencies and contradictions in their statements on vital aspects of the case but this is not the stage for this Court to undertake such an

exercise as the same would amount to prejudging merits of the case. However, one thing is clear that there is, *prima facie*, evidence on record in the form of statements of witnesses recorded by the prosecution so far and the statements of witnesses recorded during investigation, which are yet to be produced before the trial court, that the petitioner is, *prima facie*, involved in the commission of alleged crime. So there is absolutely no scope for this Court to enlarge the petitioner on bail on merits.

20) That takes us to the second ground urged by learned counsel for the petitioner which relates to long incarceration of the petitioner and non-completion of prosecution evidence.

21) As already noted, the trial in this case remained held up after the presentation of challan in the year 2014 up to February, 2017 when, upon culmination of proceedings before the Supreme Court, the prosecution was directed to lead evidence. For almost three years, the trial in the case remained stalled, not because of fault of the prosecution but because of the reasons for which no body can be blamed.

22) A perusal of the minutes of the proceedings shows that after commencement of the trial in February, 2017, the witnesses of the prosecution have been produced before the trial court diligently. In fact, there are instances when the prosecution witnesses were produced but their statements could not be recorded either because of non-availability of counsel for the accused or due to the reasons not attributable to the prosecution. The minutes of the proceedings also

show that some of the prosecution witnesses have been cross examined for days together, for which prosecution cannot be faulted. Even PW Hoshair Singh, regarding which it has been contended by the petitioner that he is being deliberately withheld by the prosecution, has been produced in the trial court on 16.11.2019 but due to non-availability of the defence counsel his statement could not be recorded.

23) It is true that some delay in completion of trial has taken place on account of restrictions in physical hearing of cases due to COVID-19 pandemic but that is an eventuality beyond the control of everybody. The same cannot be the sole ground for enlarging an accused on bail, particularly in a heinous offence like murder. Even otherwise, the Supreme Court in **Kalyan Chandra Sarkar's** case (supra) has clearly laid down that in a case where gravity of offence alleged against an accused is severe, the bail cannot be granted only on the ground of long incarceration.

24) So far as grant of bail to the petitioner on medical grounds is concerned, the petitioner has not placed on record any document or medical record to show that he is suffering from any such ailment which cannot be managed inside the jail. However, if at all the petitioner is suffering from any ailment, the jail authorities shall take every possible care and provide requisite medical facility to the petitioner, as and when required.

25) There is yet another aspect of this case which is required to be noticed. Earlier the bail application of the petitioner was dismissed by

learned trial court on 11.11.2020 and only a few days thereafter, the petitioner rushed to this Court by way of instant application without there being any change of circumstances. I am conscious of the fact that the High Court, being a superior and Constitutional Court, has unfettered powers to entertain an application for grant of bail of an accused whose bail application has been rejected by an inferior Court but then there has to be some fresh grounds before the High Court to persuade it to take a view different from the one taken by the trial court. In the instant case, learned counsel for the petitioner has not urged any such ground that would persuade this Court to take a view different from the one taken by the learned trial court. In fact, the order of trial court is well-reasoned and lucid and this Court does not find any ground to take a different view.

26) For the forgoing reasons, I do not find any merit in this petition and the same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Jammu
24.06.2021
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>