

(2004) 04 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7675-M of 2004

Kimti Lal alias Jhota

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Citation : (2004) 3 AICLR 474 : (2004) 2 CCC 171 : (2004) 2 CCJ 112 : (2004) 3 CCR 581 : (2004) 2 RCR(Criminal) 757

Hon'ble Judges : K.S.Garewal, J

Advocate : Mr. V.S. Rathore, Advocate. Mr. Rajesh Bhardwaj, AAG, Haryana.,
Advocates for appearing Parties

Judgement

K.S. Garewal, J.

1. Kimti Lal @ Jhota is seeking bail under Section 439 Cr.P.C. in a case of murder. The incident took place outside Shaifali Hotel, Karnal on the night of June 18, 2000. Varinder Gaba was allegedly struck on the face by Kimti Lal with a broken glass bottle in what was probably a drunken brawl. Varinder Gaba was evacuated to P.G.I. Chandigarh where he later died.

2. Kimti Lal was arrested on July 2, 2000, final report against him and his coaccused was filed on September 22, 2000 whereafter all of them were committed to the Court of Sessions for trial. Five witnesses were examined on July 9, 2001 but on February 28, 2002 a supplementary report under Section 173 Cr.P.C. was filed and trial commenced afresh.

3. The facts of the case need not be recounted because bail is being sought only on the ground of the extremely slow progress before the trial Court. When an accused person is taken into custody he has every right to expect that he shall not only be given a fair trial but also a speedy one. Accused persons always have their own version of the incident but unless they have a fair and speedy trial, they are unable to present their defence effectively. Every accused person is presumed to be innocent until proved guilty. Expectation of being released on

bail, particularly when the trial is being delayed, is something that accused are entitled to entertain.

4. The Supreme Court has in a number of judgments (Hussainara Khatoon (I) v. Home Secy., State of Bihar, 1980 SCC (Cri) 23, Abdul Rehman Antulay v. R.S. Nayak, 1992 SCC (Cri) 93 : 1992(2) RCR(Cr.) 634 (SC) , Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507 : 1998(4) RCR(Cr.) 396 (SC) , Akhtari Bi (Smt.) v. State of M.P., (2001) 4 SCC 355 : 2001(2) RCR(Cr.) 302 (SC) and Bipin Shantilal Panchal v. State of Gujarat and another, (2001) 3 SCC 1 : 2001(1) RCR(Cr.) 859 (SC) repeatedly emphasised that long incarceration without trial cannot possibly be regarded reasonable, just or fair so as to be in conformity with the requirement of Article 21. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial appeal, revision and retrial.

5. In Abdul Rehman Antulay's case (supra) it was recognized that right of speedy trial meant that the period of remand and during conviction, detention should be as short as possible. The accused should not be subjected to unnecessarily or unduly long incarceration prior to his conviction. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or nonavailability of witnesses or otherwise.

6. Some of the other factors which deserve to be considered are the abject failure of Courts of Session to observe the basic tenet of criminal trials that once it has begun it must continue from day to day until all witnesses of the prosecution have been examined. Experience has shown that trial Courts have never been able to conduct a day to day trial as mandated by Section 309 Cr.P.C. The investigators and the prosecutors must bear a major share of the blame if not the whole blame.

7. Furthermore, denial of bail during trial, which has not been concluded even three and a half years after the occurrence, the delay not being attributable to the defence, also has the effect of denying even temporary release to the petitioner either on parole or on furlough. This is something he can only expect if he is convicted. If that stage had been reached speedily, he would have been able to obtain temporary release under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 to sow or harvest his crops or repair his house. As a convict the petitioner would have been required to work in the jail and earn minimum wages for his labour (State of Gujarat and another v. Hon'ble High Court of Gujarat, (1998) 7 S.C.C. 392 : 1998(4) RCR(Cr.) 350 (SC) and send money home. It is entirely a different matter that the wages being paid to the convicts in Haryana are a mere Rs. 8 or 10 per day, whereas the minimum wages are much higher. Suffice it to say that convicts enjoy much better facilities than

do under trial prisoners.

8. Taking all the above aspects in view, delay in the conclusion of the trial not only deprives a citizen of his liberty without due process of law but also seriously impairs and prejudices his defence. Detention in custody destroys the accused person's life, causes irreparable harm to his family and children, who are not only deprived of his company but also of his earnings. The effect on children can be particularly harmful and may even lead to impressionable young minds becoming delinquent.

9. There are certain provisions of the Code of Criminal Procedure which entitle an accused to be released on bail with the passage of time. In trials before Magistrates, Section 437(6) Cr.P.C. entitles an accused to secure bail after 60 days of the commencement of recording of evidence. Proviso to Section 167(2) Cr.P.C. entitles an accused to be released on bail after 60/90 days in case the investigation is not concluded in that period. However, there is no corresponding provision which entitles an accused to be admitted to bail if his trial is not concluded within says 60, 90 or 120 days. the reason is obvious. Trials are required to be concluded expeditiously on a day to day basis. This may be the reason why there is no provision to enable a Court of Sessions to release an accused person on bail if trial is not concluded within a certain specified period. On the contrary trials continue for years and the accused continue to remain in detention without trial for years on end.

10. It is well recognised that bail is the rule and detention in jail is the exception to the rule. The purpose of bail is to ensure that the accused person appears in Court whensoever he is required to do so. If an accused person is not of violent disposition, who may commit serious crime on release, therefore, must be kept in custody during trial, bail should be the rule. Moreover, if the accused is not likely to interfere or threaten the witnesses, then again bail should be the rule. Looking at bail from any angle, it is difficult to see how detention without bail can be justified.

11. Under our scheme of criminal law, punishment is supposed to follow conviction and not precede it. Pretrial detention is a form of punishment, therefore, such detention should only be inflicted in rare cases. Unfortunately, the practice in our Courts is to deny bail and thus award pretrial punishment/detention on the basis of the seriousness of the crime. Does this not amount to causing serious prejudice to the accused ? Under ordinary circumstances the facts of the case should not be a factor in deciding whether an accused should be released on bail or not because denial of bail would amount to awarding sentence without trial which is an anathema to law. It reminds one of Jedburgh justice (16th century Scotlant) where a criminal would be hanged first and tried later. The facts of the case can only be considered if bail is being denied on the ground that the accused possesses a violent disposition and there may be a great risk that he may commit further crime or cause serious harm to the witnesses if released on bail. Otherwise, if the Court is satisfied that he will put in appearance

regularly, bail should be the rule.

12. Denial of bail and denial of speedy trial are serious violations of the right of a citizen who has not yet been convicted. Law should favour release of accused on bail pending determination of guilt. Deprivation of liberty pending trial is harsh and oppressive since it subjects a person, whose guilt has not yet been established, to economic and psychological hardship and interferes with his liberty, nay even his right to defend himself effectively. On the other hand release of under trials on bail has many advantages. It reduces overcrowding in jails. It helps in avoiding collateral damage to the family and dependants of the undertrial. It prevents under trials from exposure to hardened criminals. Most importantly, it gives the accused a fair trial.

13. The petitioner in this case was denied bail by the learned Sessions Judge, Karnal on September 13, 2000. His bail application was dismissed as withdrawn on August 10, 2001. Infact the order of the learned Sessions Judge is annexed herewith and runs into 8 pages in which the Court had discussed the evidence in details. Three and a half years have gone by. Two and a half years ago his bail was dismissed as withdrawn. The trial is still not over, it is going on and on like a well oiled merrygoround.

14. It is felt that the present is a fit case for the release of the petitioner on bail. However, the discretion to do so must necessarily be exercised by the trial Court because that court enjoys primacy. The trial Court may decline bail only if it feels that there are extremely weighty reasons to keep the accused in custody until the trial is over or if the accused is likely to commit acts of violence if released on bail or is likely to flee.

15. The application is disposed of with the above directions which have been made to uphold the supremacy of the trial Court. The petitioner may not file a fresh application, the instant petition shall be taken as an application under Section 439 Cr.P.C. for bail and the trial Court shall decide it after notice of the application to the prosecution.

JUDGMENT accordingly.