

**2023 STPL(WEB) 2 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SATYEN VAIDYA, J.)

SANDEEP

Petitioner

VERSUS

STATE OF H.P.

Respondent

Cr.MP(M) No. 1462 of 2023-Decided on 4-7-2023.

Criminal, Bail, Murder

Indian Penal Code, 1860 – Section 34, 201, 302, 392 – Code of Criminal Procedure, 1974 – Section 439 – Bail – Right of Speedy trial – Murder case – Petitioner behind bar from three years – Case based on Circumstantial Evidence – Main witness examined – Trial not going to complete in near future – Co accused already granted bail – Non previous history of crime - Striking the balance between the right of petitioner as also the public interest – Bail granted with conditions.

(Para 7 to 14)

Cases Referred:
Umarmila @ Mamumia vs. State of Gujarat, (2017) 2 SCC 731
Legal Aid Committee v. Union of India, (1994) 6 SCC 731;
Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616)
Union of India vs. K.A. Najeeb, (2021) 3 SCC 713

Advocate(s): For the petitioner : Ms. Kanta Thakur, Advocate.

For the respondent : Ms. Sharmila Patial, Additional Advocate General.

JUDGMENT

Satyen Vaidya, Judge:-Petitioner is in custody since 11.04.2020 in case registered vide FIR No. 22 of 2020, dated 19.03.2020 under Sections 302, 392, 201 read with Section 34 of the Indian Penal Code in Police Station, Parwanoo, District Solan, H.P. The challan was filed after completion of investigation on 10.07.2020. The trial is still pending.

2. The prosecution case, in nut-shell, is that on 18.03.2020 a dead body was recovered by the police near railway track, Sector-5, Parwanoo, District Solan, H.P. The case was registered and on investigation, complicity of petitioner along-with two others namely Om Prakash and Tinku @ Boriya was found. The challan has been filed on the allegations that all three above named persons, way laid the deceased (Hari Ram) with intent to commit robbery and in the process committed murder. It is alleged that petitioner and Tinku @ Boriya caught hold of deceased in order to rob him, but petitioner was over-powered by the deceased and in such process petitioner inflicted blows on the person of deceased with knife which proved fatal.

3. Petitioner has prayed for grant of bail on the grounds that he has been falsely implicated. He is the sole bread earner of the family and the financial condition of the family has worsened with each passing day.

Material witnesses have already been examined. It has been contended on behalf of the petitioner that despite filing of challan on 10.07.2020, the trial has not yet concluded. Violation of fundamental right of speedy trial has also been alleged.

4. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent-State and have also gone through the record carefully.

5. Seriousness and gravity of offence are the factors which have bearing on the fate of the prayer for grant of bail. Merely because the offence involved is of serious nature and attracts severe punishment, cannot be the only ground to deny the right of bail. It has to be weighed and balanced with other factors such as the allegations against the bail petitioner and also the available evidence to prove such allegations.

6. Though this Court while deciding the bail application is not required to minutely scan the evidence collected by the police during investigation, still the material on record can be glanced only for the purposes of prima-facie assessment regarding the seriousness and gravity of allegations against the bail petitioner.

7. The case of the prosecution is based on circumstantial evidence. Admittedly, there is no eye witness to the crime. As per allegations, though the petitioner is alleged to be the main perpetrator of crime, yet the allegations are subject to proof. Petitioner was arrested on 11.4.2020. He has already suffered pre-trial incarceration for more three years. It has been contended on behalf of the petitioner that the material witnesses of the case have already been examined, which fact has not been denied on behalf of the respondent. It is also not in site that the trial is likely to be concluded in near future.

8. The co-accused of the petitioner namely Om Prakash has already been released on bail by this Court vide order dated 2.8.2022 in Cr.MP(M) No. 1581 of 2022.

9. The right of speedy trial has been recognized to be a fundamental right under Article 21 of the Constitution of India.

10. In *Umarmila @ Mamumia vs. State of Gujarat*, (2017) 2 SCC 731, the Hon'ble Apex Court has held as under:-

“11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Shaheen Welfare Assn. v. Union of India*, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest.”

11. Recently, three Judges Bench of Hon'ble Apex Court in *Union of India vs. K.A. Najeeb*, (2021) 3 SCC 713 has held as under:-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released

pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”

12. Petitioner does not have any past criminal history. It is not the case of the respondent that in case of release of petitioner on bail, there is any likelihood of his absconding from the course of justice. It has also not been alleged against the petitioner that his release on bail shall affect the trial adversely or the petitioner will be in a position to tamper with the prosecution evidence.

13. Taking into consideration the peculiar circumstances of the case, this Court is of the view that no fruitful purpose shall be served by prolonging pre-trial incarceration of the petitioner especially when nothing has been stated regarding early disposal of the trial.

14. Striking the balance between the right of petitioner as also the public interest and keeping in view the fact that petitioner is already in custody for more than three years, the prayer of the petitioner is allowed. Petitioner is ordered to be released on bail in case FIR No. 22 of 2020, dated 19.03.2020 under Sections 302, 392, 201 read with Section 34 of the Indian Penal Code in Police Station, Parwanoo, District Solan, H.P., subject to his furnishing personal bond in the sum of Rs.1,00,000/- with two sureties in the like amount to the satisfaction of learned trial Court. This order, however, shall be subject to the following conditions:-

- i) That the petitioner shall attend the trial Court on each and every date of hearing.
- ii) That the petitioner shall not directly or indirectly make any 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 or to the police.
- iii) That the petitioner shall not in any manner tamper with the prosecution evidence.
- iv) That the petitioner shall not leave India without permission of the Court.

15. Any observations made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observations made herein above.
