HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

I. A. No.2 OF 2023 IN CRIMINAL APPEAL No.305 OF 2015

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. R. Prasanth, learned counsel for the petitioner - appellant - accused No.5 and Mr. T.V. Ramana Rao, learned Additional Public Prosecutor appearing on behalf of the respondent.

2. This application is filed by accused No.5 seeking suspension of execution of judgment dated 17.03.2015 passed in S.C. No.141 of 2013 by learned Judge, Family Court - cum - VIII Additional Sessions Judge, Mahabubnagar, (for short, 'the trial Court') and to release him on bail pending appeal.

3. vide impugned judgment dated 17.03.2015, the trial Court convicted the petitioner herein/appellant for the offences under Section - 302 of IPC, Sections - 25 (1) and 27 of Indian Arms Act and Section - 20 of the Unlawful Activities Prevention Act, 1967 and accordingly sentenced him to undergo life imprisonment for the offence under Section - 302 of IPC, while sentenced him to undergo rigorous imprisonment for a period of three (03) years for the offences under

Sections - 25 (1) and 27 of Indian Arms Act and Section - 20 of the Unlawful Activities Prevention Act, 1967.

4. The allegations levelled against the petitioner herein are that he along with other accused killed the deceased, President, Mandal Praja Parishad and Congress Leader, Amangal. He is a Maoist Leader. He along with other accused killed the deceased. According to the petitioner, he was in remand from 05.01.2008 to 21.11.2009 and he is in jail from 09.07.2014 i.e. since more than 11 years. He has wife and son.

5. Mr. R. Prasanth, learned counsel for the petitioner - accused No.5 would contend as follows:-

i. There is no sufficient material available on record to convict the petitioner and no evidence to say that the petitioner committed the offences as alleged.

ii. Prosecution could not thoroughly investigated the case and did not find out the real culprits in this case.

iii. The Investigating officer has filed charge sheet against the petitioner to show that the petitioner along with the other accused killed the deceased.

iv. Family members of the deceased i.e. P.Ws.1 to 3 did not support the prosecution case. They only stated that the naxals killed the deceased. They did not mention name of the petitioner.

v. Test Identification Parade (TIP) was not conducted properly in accordance with law.

vi. Ex.P.9-TIP cannot be considered.

vii. The prosecution failed to prove the alleged relation of the petitioner with Maoist leader. He is nothing to do with the present case. He is not associated with the Maoist Party.

viii. Without considering the said aspects, the Trial court convicted the petitioner herein and sentenced him to undergo life imprisonment.

ix. The petitioner/A.5 had filed I.A.No.1 of 2023 seeking bail.

x. While hearing the said application, this Court directed the learned Addl. Public Prosecutor to get instructions, with regard to cases in which the petitioner is an accused. They have not furnished correct information.

xi. In fact, the petitioner herein was acquitted in S.C.No.477 of 2010 and C.C.No.585 of 2015. He is in jail from 09.007.2014.

xii. The petitioner is having fair chances of succeeding in the appeal.

xiii. This Court is hearing the appeals of the years 2013 and 2014 and hearing of this appeal may take some time.

xiv. In support of his case/contentions, learned counsel for the petitioner also relied on several judgments.

xv. With the said submissions, he sought to release the petitioner on bail.

6. On the other hand, learned Additional Public Prosecutor, on instructions, would submit that on consideration of aforesaid aspects, vide order dated 15.09.2023, this Court dismissed I.A.No.1 of 2023. There is no change in circumstances. The allegations leveled against the petitioner herein are serious and grave in nature. He is a Moist leader. The prosecution had furnished proper information while hearing I.A.No.1 of 2023 as directed by this Court. With the said submissions, he sought to dismiss the present application.

7. We have heard Sri R.Prashanth, learned counsel for the petitioner and Sri T.V.Ramana Rao, learned Addl.Public Prosecutor at length. In the light of the submissions made by Sri R.Prashanth, learned counsel for the petitioner, it is relevant to note that in High Court of Telangana, there is only one Division Bench dealing with the Criminal Appeals arising out of the offences punishable for a period of 10 years

and above ten years. We have already heard the appeals of the year 2013. Now we are also hearing Criminal Appeals of the year 2014. This is an appeal of the year 2015.

8. It is relevant to note that we are also giving preference to the appeals where the accused are in jail, whenever the said fact is brought to the notice of this Court. We are also hearing the bail applications on every Monday, in special cases, in other days also. Every Wednesday, we are taking up final hearing matters only. Considering the fact that the petitioner/appellant is in jail since last 11 years, we were inclined to hear the appeal itself finally. But learned counsel reported that he is not ready to argue appeal itself finally and that petitioner/appellant is willing to engage a Senior Counsel.

9. It is relevant to note that in **Kashmira Singh vs. State of Punjab**[1], the Apex Court had an occasion to deal with the situation where bail was denied to an accused in an appeal filed by him challenging the judgment of the trial Court convicting him when he is ready with his appeal and the Court is not affording him an opportunity to hear the same for no fault of the accused. In **Kashmira Singh** (supra), even after grant of special leave, the Court was not able to hear

[1] AIR 1977 SC 2147

the appeal for a period of four and half years. The relevant portion is extracted below:-

> "practice not to release on bail a person who has been sentenced to life imprisonment was evolved on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose so long as his conviction and sentence are not set aside; but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the court is not in a position to dispose of the appeal for five or six years. It would, indeed, be a travesty of justice to keep a person in jail for a period of five or six years"
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> It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and- sentence.

10. In **Batchu Ranga Rao v. State of A.P.**[2], a Division Bench of erstwhile High Court of Andhra Pradesh, referring to **Kashmira Singh** (supra) the evolved criteria for disposal of criminal appeals and granting of *interim* bails to the convicts, and the relevant paragraph is extracted as under:

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[2]. 2016 (3) ALT (Crl.) 505 (DB) (AP)

"On considering their valuable suggestions and after a thorough evaluation of the relevant factors, we are inclined to indicate broad criteria on which the applications for grant of bail pending the Criminal Appeals filed against the conviction for the offences, including the one under Section-302 IPC, and sentencing of the appellants to life among other allied sentences, are to be considered. Accordingly, we evolve the following criteria:

1) A person who is convicted for life and whose appeal is pending before this Court is entitled to apply for bail after he has undergone a minimum of five years imprisonment following his conviction;

2) Grant of bail in favour of persons falling in (1) supra shall be subject to his good conduct in the jail, as reported by the respective Jail Superintendents;

3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra:

   The offences relating to rape coupled with murder of minor children dacoity, murder for gain, kidnapping for ransom, killing of the public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs.

4) While granting bail, the two following conditions apart from usual conditions have to be imposed, viz., (1) the appellants on bail must be present before the Court at the time of hearing of the Criminal

Appeals; and (2) they must report in the respective Police Stations once in a month during the bail period.

This broad criteria cannot be understood as invariable principles and the Bench hearing the bail applications may exercise its discretion either for granting or rejecting the bail based on the facts of each case. Needless to observe that grant of bail based on these principles shall, however, be subject to the provisions of Section-389 of the Code of Criminal Procedure."

11. Referring to several judgments including **Kashmira Singh** (supra), Full Bench of High Court of Patna in paragraph No.75 in **Anurag Baitha vs. State of Bihar**[3] held as follows:-

75. The Courts have been the guardian of the Constitution and sentinels of the rights and liberties of the citizens and they have been guarding the same through the judicial process. They have looked to the interest of the citizens even if there is no specific provision for the same as it is apparent from the cases decided by the courts specially the Supreme Court from time to time and they have tried to protect the interest of the society as the aim of law is to harmonise the social interest and that is why the courts have administered justice even without law but on other considerations quite within the ambit of law and Constitution. Though the courts have power to fix any period as has been done in the case of Sheela Barse v. Union of India, (AIR 1986 SC 1773) (supra), but the courts have also refrained from doing so unless there are adequate provisions for the same. How far the provisions for the early

[3] AIR 1987 Pat 274

disposal of cases and the appeals are looking have been mentioned from time to time by the Courts and that is the reason why in the case of Kashmira Singh, (AIR 1977 SC 2147) and later on in Sheela Barse the Courts have refrained from fixing period and so in the case of appeals against conviction on capital charges it will be prudent, reasonable and in consonance with the lacking and wanting conditions of the Courts that the resort should be had to the rules of the Court which provided for the expeditious disposal of the appeals of the persons in jail and giving them preference over those who are outside the jail; rather than fixing the despotic period of one year in those cases in which the conscience is not shocking and denying the period of one year to those in cases in which conscience of the society is shocked. So if the rules are strictly followed then it is possible that the appeals of all the convicts who are not entitled to bail on merits whether shocking to conscience or not will be disposed of within a period of even less than one year. One cannot forget that this is a society consisting not only of the criminals alone but innocent and law abiding and law fearing people also whose interest is also to be safeguarded side by side and the interest of the criminals who have been convicted in accordance with law.

12. It was also further held by the Patna High Court that the delay in disposal of appeal, could be considered as one of the reasons for suspending the sentence and directing release of the prisoner on bail, particularly for the reason that prolonged incarceration of the person is incompensatable. Unless the court is in a position to hear and dispose of the appeal of a prisoner at an early date, it can be violation of prisoners right, under Article 21 of

the Constitution of India. This interpretation can well be said to be extension of 'right to life' (supra) held as follows:-

13. In **Babu Singh vs. State of UP**[4], the Apex Court held that while granting bail nature of charge and nature of evidence and, the punishment to which party may be liable are taken into consideration. The Court has also to consider the likelihood of the applicant interfering with witnesses. Refusal of bail is not for the purpose of refusal of bail is not for punitive purpose, but for the bi-focal interests of justice-to the individual involved and society affected. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissable in principle but shall not stampede the court into a complacent refusal. There is no rationale when the Court is not in a position to dispose of the appeal for five to six years, the Court should ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence.

14. Considering the same, in **Chandrasekhara Bharti Vs. The State of Bihar**[5], Division Bench of Patna High Court held that the

[4] (1978) 1 SCC 579
[5] (2014) Crl.L.J.2953

observations made in **Anurag Baitha** (supra) holds to the effect that delay, in hearing of substantive appeal, because of Courts inability to hear the appeal expeditiously, is a relevant factor for grant of bail to a convict pending disposal of his appeal. In fact, the proposition - that delay, in disposal of appeal, is a relevant factor calling for suspension of sentence and consequent release on bail - has been well recognized in **Kashmira Singh** (supra). The reason for the view, so taken in **Kashmira Singh'** (supra) and followed in **Anurag Baitha** (supra), is that speedy trial is a constitutional right guaranteed by Article 21; hence, when an appeal is an extension of trial, the guarantee, which Article 21 embodies, must be applied to appeals and, therefore, delay, in the disposal of appeal, due to Court's inability to expeditiously heard appeal, provides a reasonable ground for suspension of sentence of appellant and his release on bail pending disposal of appeal.

15. In **Saudan Singh vs. State of UP**[6]**,** the Apex Court called for report from various High courts and considering the same, gave series of directions. The Apex Court also granted bails to the accused who have been languishing in jail for ten years or more than 10 years considering that the accused has been in custody for 17 years, Apex

[6] In Spl.Leave to Appeal (Crl) No.4633 of 2021

Court held that there is apparently a misconception that if the Court is ready to hear the appeal, the bail application should not be considered in all circumstances. This would normally be true as counsels can't get away with unpreparedness to argue the appeal and claim bail. The caveat to this would be in cases where a person has already served out 14 years of actual sentence as in that case, a different norm comes into place requiring the case to be considered throughly under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. Thus to deny even bail to such a person for the fault of the counsel who does not argue, the accused having nothing to gain, would be really a parity of justice.

16. The Apex Court also considered the said aspect of pendency of appeals and that convicts have been languishing in jails for the years together, gave series of directions in **Sonadher Vs. State of Chattisgarh**[7]. In both the cases, the Apex Court appointed *Amicus curie* seeking suggestions and call for the report from various High Courts.

17. In **Kamal Vs. State (NCT of Delhi)**[8], the Apex Court observed that the witnesses having identified the appellants in the dock

[7] Special leave to Appeal (Crl) No.529 of 2021

[8] Crl.A.No.734 of 2011 dated 28.03.2012

is sufficient to hold that they have been duly identified by the witnesses and prove the guilt of the accused is perverse. The Apex Court held that if the accused are already shown to the witnesses in the Police Station, then the sanctity of TIP before the court is doubtful.

18. In **Rakesh Roy Vs. State of Sikkim**[9], A three Judge Bench of the Apex Court held that the Apex Court considered the relation in recording disclosure statement. In the said case, A.3 was in custody in connection with completely a different crime and during the course of said investigation, he allegedly made a disclosure statement. Without making him over to the police which was concerned with the investigation in the present crime, his statement was recorded and at his pointing out, according to the prosecution, dead body of deceased was recovered. Considering the said aspects and also the other aspects, the Apex Court set aside the judgment of the High Court reversing the judgment of the trial Court acquitting the accused.

19. In **Dinubhai Bogabhai Solanki vs. State of Gujarat**[10], the Ahmedabad High Court, held that while deciding an application to suspend sentence, re-appreciation of evidence is not to be done by the Court, an application for suspension of sentence cannot be rejected only

[9] MANU/SC/1327/2021
[10] MANU/GJ/1466/2021

on the ground that competent Court has recorded conviction. Deciding an application for suspension of sentence under Section 389(1) of CrPC need not be seen only as exercise of discretion/powers by the appellate Court, it is also duty cast upon the appellate Court to see to it, whether continuing the convict in jail, during pendency of his appeal is justified, if the conviction itself is less likely to be ultimately sustained.

20. In the light of the aforesaid principles laid down and discussion, as discussed supra, this application is filed seeking suspension of sentence and grant bail. The petitioner herein is life convict in S.C.No.141 of 2013.

21. Trial court considered the depositions of P.Ws.4 and 5 and also Ex.P.9-TIP proceedings. Trial Court also considered that the petitioner herein/accused made confession before police of Vanasthalipuram Police Station in the presence of P.Ws.14 and 15 and P.W.14 did not turn hostile. He has supported the version of P.W.15.

22. P.W.1 is brother of the deceased and he is an eye witness to the incident. He categorically deposed that A.2 gave a chit (Ex.P.2) and left. He saw A.5 and A.7 at a distance of half kilometre from the Shivalayam when they were proceeding to the road between Srishailam and Hyderabad. However, during cross-examination, he has admitted

that after due enquiry, police informed him the names of the persons referred in Ex.P.1 as accused. Basing on the same, he mentioned the names of the persons in Ex.P.1. He has not mentioned the names of A.5 and A.7 in Ex.P.1 that he saw while they were proceeding on to the road.

23. P.W.4 is another eye witness to whom Ex.P.2 was given and while giving the said Ex.P.2, Maoist informed him about killing of the deceased. He had identified the petitioner/A.5 in the TIP. P.W.5 is another eye witness who identified A.5.

24. Sri R.Prashanth, learned counsel for the petitioner would submit that the petitioner was implicated in the present case basing on the confession made by him in another case in Vanasthalipuram Police Station. TIP was not conducted in accordance with the procedure laid down under law.

25. As discussed supra, while hearing earlier bail application filed by the petitioner i.e. I.A.No.1 of 2023 considering the submissions made by the learned Additional Public Prosecutor that the petitioner is a Moist Leader, we have directed him to furnish the details of the accused in which he was involved. He has produced list of 17 cases in which the

petitioner was involved. Out of 17 cases, the petitioner acquitted in 15 cases. According to the prosecution, petitioner was arrested on 02.07.2014 in Cr.No.161 of 2023 pending on the file of II Town Police Station, Mahabubnagar, registered for the offences punishable under Section 380 of IPC and Sections 25 and 27 of the Indian Arms Act and sent to remand. The said case was numbered as S.C.No.477 of 2010 which is pending. Cr.No.211 of 2007 for the offences punishable under Sections 302, 120-B of IPC and Sections 25 and 27 of the Indian Arms Act is ended in conviction.

26. Whereas, learned counsel for the petitioner has filed a memo enclosing a copy of the judgment in C.C.No.585 of 2015 (arising out Cr.No.161 of 2013 pending on the file of P.S. II Town Police Station, Mahabubnagar). Perusal of the same would reveal that the petitioner herein is A.1 in C.C.No.585 of 2015. Vide Judgement dated 23.12.2017, learned Judicial Magistrate of First Class, Mahabubnagar acquitted him.

27. In S.C.No.345 of 2014 (arising out of Cr.No.217 of 2007 pending on the file of P.S.Amanagal) the petitioner herein is A.8. Vide Judgment dated 17.12.2014, learned II Additional Assistant Sessions Judge (FTC) at Mahabubnagar, acquitted the petitioner herein/A.5.

Thus, the information furnished by the prosecution is not on correct facts and that they have furnished false information. Except the present case, in other cases, the petitioner/accused No.5 herein was acquitted.

28. There is no dispute that the second bail application is maintainable.

29. As discussed supra, vide order dated 15.09.2023 in I.A.No.1 of 2023 in Crl.A.No.305 of 2015, we have dismissed the bail application field by the petitioner herein relying on the information furnished by prosecution but two cases are pending out of 18 cases, the petitioner was acquitted in 15 cases and convicted in two cases and one case is pending. The same is factually incorrect. We have also considered the other aspects.

30. As discussed supra, we are hearing appeals of the year 2014. This appeal is of the year 2015. Even we have expressed our willingness to hear the appeal finally considering the fact that the petitioner herein is in jail. However, learned counsel for the petitioner reported not ready to argue the appeal finally and according to him, the petitioner is intending to engage a senior lawyer.

31. According to the learned Additional Public Prosecutor, there are no adverse remarks against the petitioner herein but however,

learned counsel for the petitioner would contend that the petitioner has acquired higher educational qualification while undergoing sentence and he is also imparting training to co-accused in the jail and sought to consider the said facts.

32. As discussed supra, admittedly, during trial, the petitioner was remanded on 05.01.2008 to 21.11.2009 and he is in jail from 09.07.2014 i.e. almost 11 years. Earlier bail application was dismissed on the wrong information furnished by the prosecution. He has wife and a son.

33. In the light of the aforesaid discussion, we are of the considered view that the appellant/Accused No.5 is entitled for bail.

34. This Application is accordingly allowed granting interim bail to the petitioner herein *namely* Daragoni Srinu Vikram S/o Narayana/A.5 on his executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two (02) sureties for a like sum each to the satisfaction of learned Judge, Family Court – cum – VIII Additional Sessions Judge at Mahabubnagar. During bail, the petitioner/A.5 shall not indulge in any criminal acts. The petitioner/A.5 is directed to appear before the Station House

Officer, Amanagal Police Station, monthly once i.e. on 1st Sunday of the month between 11.00A.M. to 6.00 P.M.

JUSTICE K. LAKSHMAN

JUSTICE K. SUJANA

19th October, 2023
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