

## KASHMIRA SINGH

v.

## THE STATE OF PUNJAB

September 2, 1977

[P. N. BHAGWATI AND A. C. GUPTA JJ.]

*Practice and procedure in the matter of granting bail to an accused pending the hearing of an appeal—Order XLVII Rule 6 read with Order XXI Rule 6 of the Supreme Court Rules.*

The appellant, though charged with offences u/ss. 323 and 302 I.P.C., was convicted only u/s. 323 and sentenced to suffer 6 months' rigorous imprisonment. The appeal preferred by the State against acquittal u/s. 302, I.P.C. was accepted by the High Court and the appellant was convicted under that charge and sentenced to life imprisonment. As required under Rule 6, Order XXI of the Supreme Court Rules, the appellant surrendered before the trial court and preferred special leave which was granted on 28-2-1974; but the application for bail, preferred subsequently, was rejected on 10-1-1975. Since the appeal did not come up for hearing for a long time, the appellant preferred another application for bail. Allowing the application, the Court,

HELD: No practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the court must find its ultimate justification in the interest of justice. The 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 for an offence which is ultimately found not to have been committed by him. 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.

In the instant case, the very fact that this court has granted to the appellant special leave to appeal against his conviction shows that, in the opinion of this court, he has, prima facie, a good case to consider and in the circumstances, namely, that he has been in jail and the total period he has spent in jail so far is about 4½ years, it would be highly unjust to detain him in jail any longer during the hearing of the appeal and he should be released on bail. [386 D-G, 387 A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Misc. Petition No. 1907 of 1976. Application for Bail in Criminal Appeal No. 110 of 1974.

*U. P. Singh* for the Appellant.

*O. P. Sharma* for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI, J.,—This is an application for bail pending the hearing of an appeal by special leave. The appellant was convicted by

**A** the Sessions Court for an offence under section 323 of the Indian Penal Code and sentenced to suffer six months' rigorous imprisonment. There was also a charge against the appellant for an offence under section 302 of the Indian Penal Code but he was acquitted of that offence by the Sessions Court and hence the State preferred an appeal against the order of acquittal to the High Court. This appeal was allowed and the High Court set aside the order of acquittal and convicted the appellant of the offence under section 302 and sentenced him to suffer imprisonment for life. The appellant, thereupon, preferred a petition for special leave to appeal to this Court and special leave was granted to him on 28th February, 1974. The appellant filed an application for bail pending the hearing of the appeal, but the application was dismissed on 10th January, 1975. Since the appeal did not reach hearing for a long time, the appellant preferred another application for bail and that is the application which is now being disposed of by this judgment.

The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court 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 measureable 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 for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a *prima facie* case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing.

**H** Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of im-

imprisonment or at any rate a major part of it? 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.

Here in the present case, the appellant, after serving out the sentence of six months' rigorous imprisonment for the offence under section 323 imposed upon him by the Sessions Court, was on bail throughout the duration of the appeal before the High Court and since the appeal was allowed and he was convicted for the offence under section 302 and sentenced to life imprisonment, he surrendered before presenting his petition for special leave to appeal to this Court. Since then, the appellant has been in jail and the total period he has spent in jail so far is about four and a half years. The appeal is of 1974 and it is not likely to come up for hearing for at least another two years since this Court is at present hearing appeals preferred in the year 1972. The very fact that this Court has granted to the appellant special leave to appeal against his conviction shows that, in the opinion of this Court, he has *prima facie* a good case to consider and in the circumstances it would be highly unjust to detain him in jail any longer during the hearing of the appeal.

We, therefore, direct that the appellant be released on bail to the satisfaction of the Chief Judicial Magistrate, Patiala. The appellant will report at the nearest police station once in a fortnight.

S.R.

*Appeal allowed.*