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AKHTARI BI
v.
STATE OF M.P.

MARCH 22, 2001

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

Constitution of India, 1950 : Article 21.

C

Speedy Trial—Right to—Bail—Grant of—Guidelines—Accused sentenced to life imprisonment—Appeal unlikely to be heard in the near future—Bail application rejected by High Court—Held : Prolonged delay in trial and appeals confers a right on the accused to apply for bail—Convicts may be released on bail if appeals not disposed of within 5 years—High Courts directed to constitute regular and special Benches for disposal of appeals—On facts, accused released on bail by keeping sentence in suspension.

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The appellant was sentenced to life imprisonment for the murder of her daughter-in-law. The appeal filed by the appellant was pending before the High Court and not listed for hearing till date. The appellant's bail application was rejected by the High Court. Hence this appeal.

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On behalf of the appellant it was contended that the appeal was unlikely to be heard in the near future in the normal course.

Allowing the appeal, the Court

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HELD : To have speedy justice is a fundamental right, which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. Due to huge vacancies in the High Court the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the Constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within a specified period not exceeding 5 years in any case. Regular Benches to deal with the

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criminal cases can be set up where such appeals are listed for final disposal. If an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. It is, therefore, appropriate to direct the appellant's release on bail by keeping the sentence awarded to her in suspension. [628-E-H; 629-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 320 of 2001.

From the Judgment and Order dated 10.7.2000 of the Madhya Pradesh High Court in Crl.A. No. 708 of 1997.

K.K. Mohan and Ms. Joon Choudhary for the Appellant.

Ms. Vibha Dutta Makhija and Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

For the murder of her daughter-in-law, Prem Bai, the appellant was tried with others and after the conclusion of the trial, sentenced to imprisonment for life vide judgment of the court dated 27th February, 1997. The appeal filed by her is pending in the High Court of Madhya Pradesh and not listed for hearing till date. Her prayer for grant of bail, pending disposal of the appeal, on the grounds of infirmity and old age has been rejected by the High Court vide the order impugned in this appeal.

At the time of preliminary hearing on 1.12.2000, the learned Senior Counsel Shri Anoop G. Chaudhary submitted that the position in the Madhya Pradesh High Court regarding criminal appeals pending before the Division Bench was that as on that day appeals of 1989-1990 have only been taken up. The appeal filed by the appellant, being an appeal of 1997, there was no reasonable chance for its being brought on Board. Distressed by such

A a situation allegedly prevailing in the High Court, we called for the report of the Registrar of the Madhya Pradesh High Court (Jabalpur) as to the position of the criminal appeals pending before the Division Bench and the possibility of this 1997 appeal to be heard in the near future. Vide his reply dated 23rd January, 2000, the Registrar has intimated as under:

B "I am to inform you that as per the practice prevalent in the High Court of Madhya Pradesh cases are listed for final hearing seniority-wise. Accordingly, at present at the Main Seat at Jabalpur, Criminal Appeals instituted in the year 1989 and 1990 are being listed before the Division Bench (Criminal), sitting regularly. However, some times courts do allow applications for early hearing. In that case even Criminal Appeals instituted in the later years are heard. As such Criminal Appeal No.708/97 is unlikely to be heard in near future in the normal course, unless an application for early hearing is moved by a party and allowed by the court."

D From the report of the Registrar it appears that even if an application for early hearing is filed, there is no surety that such an appeal would be heard at an early stage apparently on the ground that many such applications must have been filed and the appeals directed to be listed for early hearing.

E To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court, has time and again, reminded the executive of their obligation to appoint requisite number of judges to cope with the ever increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Courts huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the constitution to fill up the vacancies, it is incumbent upon the high courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up where such appeals be listed for final disposal.

H We feel that if an appeal is not disposed of within the aforesaid period of

5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purposes.

However, in the instant case without commenting on the merits of the case but keeping in view the allegations made against the appellant coupled with the fact that she is old and infirm, we feel it appropriate to direct her release on bail by keeping the sentence awarded to her in suspension. We have further been persuaded to take such a course in view of the fact that during the pendency of the trial wife of Hasru, the son of the appellant and co-accused with her, has died while giving birth to a male child, who under the compulsion of circumstances was also kept in jail to be looked after by the appellant till he attained the age of three years. Now the said child has been sent out as the jail authorities did not permit the child to remain with the appellant after attaining the age of three years. Keeping the appellant further in jail is likely to deprive the said child of the parental love, affection and care which he needs at this stage. There is no law by which such a child can also be directed to be kept with the appellant in jail. Depriving the appellant from looking after the child would not only be against the interests of the child but against the interests of the society as well.

In the circumstances of the case we allow this appeal by setting aside the order impugned with a direction that the order of conviction and sentence passed against her shall be kept in abeyance and she be released on bail on furnishing personal bond with two sureties in the amount and to the satisfaction of the trial court.

V.S.S.

Appeal allowed.