A SURINDER SINGH @ SHINGARA SINGH

v.

STATE OF PUNJAB

SEPTEMBR 6, 2005

B [B.P. SINGH AND S.H. KAPADIA, JJ.]

Code of Criminal Procedure, 1973—Section 439—Bail—Application for—During pendency of appeal against conviction u/s. 302 IPC—On the basis of a judgment of High Court—Bail denied—However, granted to the C *co-accused—Appeal to this Court—Granted bail by interim order in view of his having undergone imprisonment for more than 6 years—Held : The direction in the High Court Judgment laid down guidelines to be kept in mind while dealing with bail applications in a pending appeal—It does not lay down hard and fast rule of universal application—In view of the facts of the* D *case interim order made absolute—Penal Code, 1860—Section 302.*

Appellant accused, a convict u/s. 302 IPC had applied for regular bail in High Court during pendency of his appeal before the High Court. He claimed release on bail on the basis of Judgment in *Dharampal* v. *State of Haryana,* (2000) 1 CLR 74, since he had undergone imprisonment for E **three years after conviction. His bail applications were dismissed by the High Court whereas the co-accused had been released on bail by the High Court. Hence the present appeal. This Court had granted bail to the appellant by interim order as he had remained in custody for about six years and four months.**

F

Disposing of the appeal, the Court

HELD : 1. High Court in *Dharampal's* case laid down guidelines which ought to be kept in mind by Courts dealing with applications for grant of bail in a pending appeal. It does not lay down any hard and fast G **rule of universal application. Difficulties may arise if such a direction is treated as an invariable rule in the matter of grant of discretionary relief. In a discretionary matter, like grant or refusal of bail, it would be impossible to lay down any invariable rule or evolve a strait jacket formula. The Court must exercise its discretion having regard to all the relevant facts** H **and circumstances. The rule laid down in *Dharampals* case may be**

inferentially understood to mean that unless a convict has undergone five years imprisonment, he should not be released on bail.

[1176-G, H, 1177-A; 1178-A]

Hussainara Khatoon and Ors. **v.** *Home Secretary, State of Bihar,* **[1980] 1 SCC 81;** *Supreme Court Legal Aid Committee representing under-trial Prisoners* **v.** *Union of India and Ors.,* **[1994] 6 SCC 731;** *Kashmira Singh* **v.** *The State of Punjab,* **[1977] 4 SCC 291;** *Kadra Pehadiya and Ors.* **v.** *State of Bihar,* **[1981] 3 SCC 671;** *Akhtari Bi* **v.** *State of M.P.,* **[2001] 4 SCC 355 and** *Abdul Rehman Antulay and Ors.* **v.** *R.S. Nayak and Anr.,* **[1992] 1 SCC 225, referred to.**

Dharmapal **v.** *State of Haryana,* **(2000) 1 C.L.R. 74, referred to.**

2. In the present case the appellant has already been granted bail by interim order and had remained in custody for about six years and four months. Apart from the facts and circumstances of the case, the co-accused had been released on bail by the High Court. The interim order is made absolute. [1178-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1154 of 2005.

From the Judgment and Order dated 29.10.2004 of the Punjab and Haryana High Court in Crl.Misc. No. 42316 of 2004 in Crl.A. No. 29-DB/ 2002.

Sudhir Walia and Mahinder Singh Dahiya for the Appellant.

D.P. Singh, Arun K. Sinha and Ms. Avneet Toor for the Respondent.

The Judgment of the Court was delivered by

B.P. SINGH, J. : Special leave granted.

The appellant herein was found guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code and was sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000. He preferred an appeal before the High Court of Punjab and Haryana at Chandigarh against his conviction and sentence which was registered as Criminal Appeal No. 29-DB

A of 2000. The said appeal was admitted for hearing on November 3, 2001. The appellant's application for grant of regular bail was dismissed by order dated September 8, 2004. One of the co-accused namely, Satwant Singh was granted bail by the High Court by order dated September 17, 2004 since he had suffered imprisonment for three years after his conviction and, therefore, was
B covered by the ratio of the judgment in *Dharampal* v. *State of Haryana,* (2000) 1 C.L.R.74.

The case of the appellant is that his case is also covered by the said judgment and, therefore, he should also be released on bail. It was submitted on his behalf that in terms of the law as laid down in *Dharampal's* case, he
C having undergone more than three years of actual sentence he deserves to be released on bail. The second bail application preferred by the appellant being Criminal Miscellaneous No.42316 of 2004 was dismissed by the High Court by its Order dated October 29, 2004. The High Court while rejecting the bail application observed that the appellant had not undergone three years of actual
D sentence after conviction, inasmuch as he had only undergone three years, one month and six days of sentence after conviction, and out of this period, he had remained on parole for eight months and twelve days. In sum and substance, the Court rejected his bail application on the ground that he had remained in actual custody after conviction only for two years and five months.
E

It was submitted before us in this appeal that in view of the ratio in *Dharampal's* case, the appellant ought to have been released on bail, he having remained in custody for more than four years. It was submitted that it makes no difference in principle whether the appellant remained in custody
F for three years or more after his conviction, or whether he remained in custody for such or longer period since he was first arrested in connection with the case.

We have carefully perused the judgment of the Punjab and Haryana High Court in *Dharampal's* case (supra). Strictly speaking the case of the
G appellant is not covered by the directions contained in the aforesaid decision which directs that life convicts, who have undergone atleast five years imprisonment, of which atleast three years should be after conviction, should be released on bail pending the hearing of their appeals, should they make an application for this purpose. This was of course, confined to the cases
H which fall under categories C, D and E enumerated in the judgment.

Counsel for the State submitted that the Punjab and Haryana High Court in *Dharampal's* case did not intend to lay down any invariable rule of universal application for grant of bail. It only laid down guidelines which may be kept in mind by a Court while considering an application for grant of bail.

We notice that in *Dharampal's* case, the High Court referred to several decisions of this Court viz; *Hussainara Khatoon and others* v. *Home Secretary, State of Bihar,* [1980] 1 SCC 81; *Supreme Court Legal Aid Committee representing under-trial Prisoners* v. *Union of India and others,* [1994] 6 SCC 731; *Kashmira Singh* v. *The State of Punjab,* [1977] 4 SCC 291 and *Kadra Pehadiya and others* v. *State of Bihar*, [1981] 3 SCC 671. Apart from these cases, counsel for the parties have also drawn our attention to some other decisions of this Court namely; *Akhtari Bi* v. *State of M.P.*, [2001] 4 SCC 355 and *Abdul Rehman Antulay and others* v. *R.S.Nayak and another,* [1992] 1 SCC 225.

It is no doubt true that this Court has repeatedly emphasized the fact that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution of India. The aforesaid Article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. It has also been emphasized by this Court that the procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. These are observations made in several decisions of this Court dealing with the subject of speedy trial. In this case, we are concerned with the case where a person has been found guilty of an offence punishable under Section 302 IPC and who has been sentenced to imprisonment for life. The Code of Criminal Procedure affords a right of appeal to such a convict. The difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time. In *Kashmira Singh* v. *State of Punjab*, [1977] 4 SCC 291 this Court dealt with such a case. It is observed:-

"The practice not to release on bail a person who has been sentenced

A 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 B 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 C 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 D 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 E hearing. 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 imprisonment or at any rate a major part of it? It is, F 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 G appeal against his conviction and sentence".

Similar observations are found in some of the other decisions of this Court which have been brought to our notice. But, however, it is significant to note that all these decisions only lay down broad guidelines which the H Courts must bear in mind while dealing with an application for grant of bail

to an appellant before the Court. None of the decisions lay down any invariable rule for grant of bail on completion of a specified period of detention in custody. Indeed in a discretionary matter, like grant or refusal of bail, it would be impossible to lay down any invariable rule or evolve a strait jacket formula. The Court must exercise its discretion having regard to all the relevant facts and circumstances. What the relevant facts and circumstances are, which the Court must keep in mind, has been laid down over the years by the Courts in this country in large number of decisions which are well known. It is, therefore, futile to attempt to lay down any invariable rule or formula in such matters.

Counsel for the parties submitted before us that though it has been so understood by Courts in Punjab, the decision of the Punjab and Haryana High Court in *Dharampal's* case only lays down guidelines and not any invariable rule. Unfortunately, the decision has been misunderstood by the Court in view of the manner in which the principles have been couched in the aforesaid judgment. After considering the various decisions of this Court and the difficulties faced by the Courts, the High Court in *Dharampal's* case observed:-

> "We, therefore, direct that life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail pending the hearing of their appeals should they make an application for this purpose. We are also of the opinion that the same principles ought to apply to those convicted by the Courts Martial and such prisoners should also be entitled to release after seeking a suspension of their sentences. We further direct that the period of five years would be reduced to four for females and minors, with at least two years imprisonment after conviction. We, however, clarify that these directions shall not be applicable in cases where the very grant of bail is forbidden by law".

We agree with the submission urged before us that the directions contained in the aforesaid judgment of the High Court are only in the nature of guidelines and the High Court should not be understood to have laid down an invariable rule to be observed with mathematical precision. In fact in the very first paragraph of the judgment the learned Judges observed that they were making "an attempt to frame certain guidelines" for the grant of bail.

A Difficulties may arise if such a direction is treated as an invariable rule in the matter of grant of discretionary relief. The rule laid down in *Dharampal's* case may be inferentially understood to mean that unless a convict has undergone five years imprisonment, he should not be released on bail. This would again lead to travesty of justice, because in a given case having regard to the B evidence on record and the reasoning of the Court convicting the accused, the High Court in an appeal may well be persuaded and justified in granting bail to the appellant even while admitting his appeal.

We, therefore, hold that the High Court of Punjab and Haryana in *Dharampal's* case laid down guidelines which ought to be kept in mind by C Courts dealing with applications for grant of bail in a pending appeal. It does not lay down any hard and fast rule of universal application. As we have observed earlier, it would be futile to lay down any strait jacket formula in such matters.

D So far as the instant appeal is concerned by our order dated May 12, 2005 we have granted bail to the appellant who had remained in custody for about six years and four months. Apart from the facts and circumstances of the case, we also notice the fact that the co-accused had been released on bail by the High Court. The interim order made on May 12, 2005 is made absolute. This appeal stands disposed of in the above terms.

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K.K.T. Appeal disposed of.