Dilawar vs The State Of Haryana on 1 May, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2269, 2018 (16) SCC 521, AIR 2018 SC(CRI) 764, (2018) 2 CRILR(RAJ) 437, (2018) 71 OCR 858, (2018) 7 SCALE 457, 2018 CRILR(SC&MP) 437, 2018 CRILR(SC MAH GUJ) 437, (2018) 190 ALLINDCAS 189 (SC), 2018 ALLMR(CRI) 2678, (2018) 2 CURCRIR 209, (2018) 105 ALLCRIC 289, (2018) 3 CRIMES 122(2)

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Bench: Indu Malhotra, Adarsh Kumar Goel

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

M.A. NO.267 OF 2017 IN SLP (CRL.) NO.657 OF 2017

DILAWAR …Petitioner

Versus

The State of Haryana & Anr. …Respondents

ORDER

1. This application has been filed by CBI in a disposed of matter for modification of order of this Court dated 31 st January, 2017.

2, FIR No.118 dated 27th February, 2016 was registered with the Police Station, Urban Estate, Rohtak alleging mob violence in 'jat agitation'. The petitioner was one of the accused arrested on 20th April, 2016 and was said to be in custody since then. The state police, after completing the investigation, filed chargesheet on 27th May, 2016 before the Court. However, the investigation was thereafter transferred, on 30 th September, 2016, to the CBI along with several other cases. Court proceedings were also transferred from regular courts to the CBI Court at Panchkula. The petitioner applied for bail before the Additional Sessions Judge, Rohtak which was dismissed on 12th July, 2016. Though some of the co-accused were granted bail by the High Court, bail application of the petitioner was dismissed by the High Court on 2 nd December, 2016. The High Court observed that prima facie the petitioner appeared to be the leader of the mob which indulged in arson, loot and

mischief of burning of the house of a Cabinet Minister. When the matter came up before this Court against the order declining bail by the High Court, this Court while not granting bail directed that the trial be concluded as far as possible within six months.

3. In the present application it is stated that CBI is conducting investigation and has taken over only on 6 th October, 2016. There is voluminous task which is time consuming. Thus, trial cannot commence unless report under Section 173 Cr.P.C. filed by the CBI which will take long time.

4. From the above narration of facts, it is clear that even if CBI commenced investigation on 6th October, 2016, one and a half years have already gone by. There is no indication as to what proceedings have been taken by the CBI so far and why more time will be required and how much more time will be required. No investigating agency can take unduly long time in completing investigation. Speedy investigation is recognized as a part of fundamental right of fair procedure under Article 21 of the Constitution.

5. Accordingly, when the matter came up for hearing on the last date, learned ASG sought time to assist the Court as to whether there should be timelines for completing investigation. In the present case, since accused has been in custody for more than two years and investigation is pending with the CBI for more than one and a half years, we are of the view that CBI must complete investigation at the most within next two months so that trial can commence latest by July 10, 2018 and concluded by the end of the year. Since order declining bail was passed on 30th January, 2017 and more than one year has gone by, it will be open to the petitioner, if he is still in custody, to move a bail application before the trial court in accordance with law. This application will stand disposed of accordingly except for consideration of the issue indicated hereafter.

6. We have come across number of cases where investigations remain pending for unduly long time which is not conducive to administration of criminal justice. There is, thus, clear need for timelines for completing investigation and for having in-house oversight mechanism wherein accountability for adhering to laid down timelines can be fixed at a different levels in the hierarchy.

7. It is not necessary to refer to all the decisions of this Court articulating the mandate of the Constitution that there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation. This obligation flows from the law laid down by this Court inter-alia in Maneka Gandhi versus Union of India1, Hussainara Khatoon (I) versus Home (1978) 1 SCC 248 Secy., State of Bihar2, Abdul Rehman Antulay versus R.S. Nayak3 and P. Ramachandra Rao versus State of Karnataka4.

8. There is undoubted need for a mechanism to take remedial steps if there is undue delay in investigation. Section 57 Cr.P.C. puts a bar on detention by a police officer beyond 24 hours excepting time necessary for the journey from the place of arrest to the Magistrate's court. Section 167(1) Cr.P.C. provides that where investigation cannot be completed within 24 hours, the accused has to be produced before the Magistrate and further detention of the accused has to be authorized by the Magistrate. It is well established that authorization for such detention has to be given having regard to the progress in investigation. Even a Magistrate cannot authorise detention in police custody beyond 15 days. After judicial custody for more than 90 days in serious cases stipulated therein and 60 days in other cases, there is a provision for mandatory default bail requirement if there is delay in investigation beyond the said period. In summons case, if investigation is not concluded within six months, the (1980) 1 SCC 81 (1992) 1 SCC 225 (2002) 4 SCC 578 same has to be stopped unless continuation is found necessary5. However, there is no express outer limit for investigation in other cases but delay in investigation may affect reasonableness of procedure specially when a person is in custody and is unable to furnish bail. Hence the need to lay down timelines for completing investigation with a view to give effect to the mandate of Article 21 of the Constitution. This aspect has also been discussed in the Law Commission's Report including the 14th report (1958) and 154th Report (1996) as noticed by this Court6.

9. In view of the above, we implead Union of India as a party. We have asked learned ASG to represent the Union of India. We direct the Ministry of Home Affairs to have inter action on the subject with all the Central and State investigating agencies on or before May 31, 2018 either on video conferencing or in person. The points emerging from the inter action may be recorded and examined by an appropriate committee which may constituted for the purpose. The said committee may give its report latest by June 30, 2018. We direct the MHA to place on record among other data, the figures of all pending investigations beyond one year and action plan to complete 167(5) Cr.P.C.

Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67, paras 30 and 31.

them in a proposed time frame. With regard to State agencies also such information may be collected and furnished by the MHA.

Put up the matter for further consideration on 3 rd July, 2018.

.....J. (Adarsh Kumar Goel) .....J. (Indu Malhotra) New Delhi;

May 01, 2018.