Hussain And Anr vs Union Of India on 9 March, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1362

Author: Adarsh Kumar Goel

Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.509 OF 2017
(Arising out of Special Leave Petition (Crl.)No. 4437 of 2016)

Hussain and Anr. …Appellants

Versus

Union of India …Respondent

WITH

CRIMINAL APPEAL NO.511 OF 2017
(Arising out of Special Leave Petition (Crl.)No. 348 of 2017)

Aasu …Appellant

Versus

State of Rajasthan …Respondent

J U D G M E N T

ADARSH KUMAR GOEL, J.

I

1. Leave granted. Grievance in these appeals is against denial of bail pending trial/appeal where appellants have been in custody for a long period.

2. In the first case, the appellants have been in the custody since 4th August, 2013 on the allegation of having committed offence under Section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). Their bail application, pending trial, has been dismissed. In the second case, the appellant is in custody since 11th January, 2009. He has been convicted by the trial court under Section 302 IPC and sentenced to undergo life imprisonment. His bail application

has been dismissed by the High Court pending appeal. The appellants contend that, having regard to the long period of custody, they are entitled to bail as speedy trial is their fundamental right under Article 21 of the Constitution.

3. To consider the question as to the circumstances in which bail can be granted on the ground of delayed proceedings when a person is in custody, notice was also issued to learned Attorney General and Mr. Siddharth Luthra, Senior Advocate was appointed Amicus Curiae.

4. We have heard learned counsel for the parties, the learned amicus and the learned Additional Solicitor General.

5. During the hearing reference has been made to the decisions of this Court dealing with the issue and reference has also been made to Section 436A Cr.P.C. which provides for grant of bail when a person has undergone detention upto one half of maximum prescribed imprisonment. It was submitted that the said provision applies only during trial and the first case is not covered by the said provision as the appellant therein has not undergone the requisite detention period to claim bail under the said provision.

6. With regard to grant of bail, pending appeal, reference has been made to decisions of this Court in Akhtari Bi (Smt.) v. State of M.P.[1] and Surinder Singh alias Shingara Singh v. State of Punjab[2] which provides that if the appeal is not heard for 5 years, excluding the delay for which the accused himself is responsible, bail should normally be granted. The second case is not covered by the said judgment as the pending appeal in the High Court is of the year 2013.

7. In Abdul Rehman Antulay and ors. v. R.S. Nayak and anr.[3] while holding that speedy trial at all stages is part of right under Article 21, it was held that if there is violation of right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time. In the light of these principles, the present appeals can be disposed of by directing that the pending trial in the first case and the appeal in the second case may be disposed of within six months. We order accordingly and dispose of the matters to the extent of grievance in the two cases.

II

8. However, since the issue is arising frequently, inspite of earlier directions of this Court, further consideration has become necessary in the interest of administration of justice and for enforcement of fundamental right under Article 21.

9. As already noticed, speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, setting-up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures as are necessary for speedy trial[4].

10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts[5] are as follows:

> "2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact- situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases. ..." (emphasis added)

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases[6].

12. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice. Directions of this Court in Noor Mohammed v.

Jethanand and anr.[7] are as follows:

> " 34. ... ...Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more."

13. In Thana Singh v. Central Bureau of Narcotics[8] this Court directed that liberal adjournments must be avoided and witnesses once produced must be examined on consecutive dates. Directions were also issued for setting up of sufficient laboratories, for disposal of seized narcotics drugs and for providing charge-sheets and other documents in electronic form in addition to hard copies of same to avoid delay.

14. In Akhtari Bi (supra) this Court observed as under:

> "5. ... ...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. 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 purpose."

15. Again in Imtiyaz Ahmad v. State of Uttar Pradesh and Ors.[9] it was observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery. These observations have been reiterated in recent Constitution Bench judgment in Anita Kushwaha etc. etc. v. Pushap Sudan etc. etc.[10]. In the said judgment it was noticed that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

16. In Bhim Singh V. Union of India[11], it was observed that central government must take steps in consultation with the state governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously. In the same case, in a further order[12] it was noted

that more than 50% of the prisoners in various jails are undertrial prisoners. In spite of incorporation of Section 436A in Cr.PC. undertrial prisoners continue to remain in prisons in violation of the mandate of the said section. Accordingly, this court directed jurisdictional Magistrate/Chief Judicial Magistrate/Session judge to hold one sitting in a week in each jail/prison for 2 months for effective implementation of Section 436A. Again in Re: Inhuman Conditions in 1382 Prisons[13] reference was made to the advisory issued by Ministry of Home Affairs to all States for implementation of Section 436A, Cr.PC. stipulating constitution of a review committee in every district under the chairmanship of the District Judge. It was noted that 67% of the prisoners in the jails were undertrials prisoners.

III

17. In Imtiyaz Ahmad (supra) this Court noted that serious cases involving murder, rape, kidnapping and dacoiting were pending for long period. In some cases proceedings are delayed on account of stay orders. Out of the said cases, in 9 per cent cases stay was operating for more than 20 years, in 21 per cent stay was operating for more than 10 years. Having regard to the situation noticed in the judgment, this Court directed the High Courts to dispose of cases in which proceedings were stayed preferably within six months from the date of stay orders. The Law Commission was directed to make recommendation for measures to be adopted by way of creation of additional courts and the like matters. The Law Commission made its recommendations in its 245th Report which was examined by the National Court Management Systems Committee (NCMSC) to determine additional number of courts required. The said report was thereafter considered by this Court in judgment dated 2nd January, 2017 in Imtiyaz Ahmad v. State of U.P. & Ors. [Criminal Appeal No. 254-262 of 2012]. After noticing the stand of the Ministry of Law and Justice on the subject of creation of additional posts, this Court also noted the recommendations of the 14th Finance Commission whereby additional fiscal allocation was provided. In that context, the Prime Minister's letter to the Chief Ministers calling upon them to allocate funds in the State Budgets was also referred to. Further follow up letter of the Law Minister and Resolution of Chief Justices' Conference held in April, 2016 were also referred to. Thereafter, this Court issued directions for computing the required judge strength of the district judiciary and also directed the State Governments to take steps for enhancing the judge strength accordingly. The directions are as follows:

> "22. Having regard to the above background, we now proceed to formulate our directions in the following terms :
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> i) Until NCMSC formulates a scientific method for determining the basis for computing the required judge strength of the district judiciary, the judge strength shall be computed for each state, in accordance with the interim approach indicated in the note submitted by the Chairperson, NCMSC;
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> ii) NCMSC is requested to endeavour the submission of its final report by 31 December 2017;

iii) A copy of the interim report submitted by the Chairperson, NCMSC shall be forwarded by the Union Ministry of Law and Justice to the Chief Justices of all the High Courts and Chief Secretaries of all states within one month so as to enable them to take follow-up action to determine the required judge strength of the district judiciary based on the NCMSC interim report, subject to what has been stated in this judgment;

iv) The state governments shall take up with the High Courts concerned the task of implementing the interim report of the Chairperson, NCMSC (subject to what has been observed above) and take necessary decisions within a period of three months from today for enhancing the required judge strength of each state judiciary accordingly;

v) The state governments shall cooperate in all respects with the High Courts in terms of the resolutions passed in the joint conference of Chief Justices and Chief Ministers in April 2016 with a view to ensuring expeditious disbursal of funds to the state judiciaries in terms of the devolution made under the auspices of the Fourteenth Finance Commission;

vi) The High Courts shall take up the issue of creating additional infrastructure required for meeting the existing sanctioned strength of their state judiciaries and the enhanced strength in terms of the interim recommendation of NCMSC;

vii) The final report submitted by NCMSC may be placed for consideration before the Conference of Chief Justices. The directions in (i) above shall then be subject to the ultimate decision that is taken on receipt of the final report; and

viii) A copy of this order shall be made available to the Registrars General of each High Court and to all Chief Secretaries of the States for appropriate action." The said matter now stands adjourned to July, 2017.

18. During Joint Conference of Chief Ministers of States and Chief Justices of High Courts held in April, 2015, a decision was taken that all High Courts will establish Arrears Committees and prepare a plan to clear backlog of cases pending for more than 5 years. Such Committees have reportedly been established. In Chief Justices' Conference held in April, 2016 under Item No. 8 inter alia the following resolution was passed:

> " [8] DELAY AND ARREARS COMMITTEE:
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> xxx xxx xxx Resolved that
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> (i) all High Courts shall assign top most priority for disposal of cases which are pending for more than five years;
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> (ii) High Courts where arrears of cases pending for more than five years are concentrated shall facilitate their disposal in mission mode;

(iii) High Courts shall progressively thereafter set a target of disposing of cases pending for more than four years;

(iv) while prioritizing the disposal of cases pending in the district courts for more than five years, additional incentives for the Judges of the district judiciary be considered where feasible; and

(v) efforts be made for strengthening case-flow management rules."

19. The position of five year old cases continues to be alarming in many States. Total number of more than five year old cases in subordinate courts at the end of the year 2015 is said to be 43,19,693 as noted in para 9 of the judgment of this Court dated 2nd January, 2017 in Imtiyaz Ahmad v. State of U.P. & Ors. [Criminal Appeal No. 254-262 of 2012]. Number of undertrials detained for more than five years at the end of the year 2015 is said to be 3599.[14] Number of appeals pending in High Courts where detention period is beyond five years may be still higher.

20. It appears that annual action plans have been prepared by some High Courts with reference to the subject of discussion in the Chief Justices' Conference. Reference to action plan of the Punjab and Haryana High Court for the year 2011-2012[15] shows that undertrials who were in custody for more than two years as on 1st April, 2011 in Session Trial cases and those in custody for more than six months in Magisterial Trial cases were targeted for disposal, apart from five year old cases and other priority cases. Similar targets were fixed for subsequent years and result reflected in the pendency figures shows improvement in disposal of five year old cases and cases of undertrials in custody beyond two years in Session Trial cases and six months in Magisterial Trial cases in subordinate courts in the jurisdiction of Punjab & Haryana High Court.[16] Reportedly, success is on account of monitoring inter alia by holding quarterly meetings of District Judges with Senior High Court Judges as well as constant monitoring by concerned Administrative Judges[17]. Presumably, there is similar improvement as a result of planned efforts elsewhere. In view of successful implementation of plan to dispose of cases of undertrials in custody in two years in Session Trial cases and six months in Magisterial trials, we do not see any reason why this target should not be set uniformly. The same need to be regularly monitored and reflected in performance appraisals of concerned judicial officers. Handicaps pointed out can be tackled at appropriate level. Accordingly, we are of the view that plan of each High Court should include achieving the said target and not the target of five years for undertrials in custody. Of course, if such cases can be disposed of earlier, it may be still better. Plans can be revised as per local conditions. We also feel delay in disposal of bail applications and cases where trials are stayed are priority areas for monitoring. Timeline for disposal of bail applications ought to be fixed by the High Court. As far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in High Courts within two-three weeks. Posting of suitable officers in key leadership positions of Session Judges and Chief Judicial Magistrates may perhaps go a long way in dealing with the situation. Non performers/dead word must be weeded out as per rules, as public interest is above individual interest.

21. Another suggestion which cropped up during the hearing of the present case relates to remedying the situation of delay in trials on account of absconding of one or the other accused during the trial. In this regard our attention has been drawn to an amendment in the Code of Criminal Procedure, 1898 of Bangladesh by way of adding Section 339B to the following effect:

> "Trial in absentia [339B. (1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation], direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.
>
> (2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence." (emphasis added)

22. It is for the concerned authority to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial.

23. Learned Amicus Curiae as well as learned Additional Solicitor General have suggested that monitoring by all High Courts is necessary to ensure minimizing adjournments at all levels, taking steps to remove obstacles in speedy trials including setting up of adequate number of laboratories, use of Video Conferencing to examine scientific experts or otherwise, appointment of public prosecutors, compliance of Section 207/208 Cr.P.C. by scanning/digitizing police reports, introduce system for electronic service of summons (wherever necessary), issuing timelines for disposal of bail matters at all levels. It has also been suggested that suitable amendments ought to be made in the Code of Criminal Procedure for permitting tendering evidence of medical witnesses on the pattern of Section 293 Cr.P.C. While we have discussed some of the issues germane to the subject of speedy trials, in view of directions already issued by this Court, issuance of further directions and monitoring of directions already issued is left to the concerned High Courts.

24. In view of the above, we do consider it necessary to direct that steps be taken forthwith by all concerned to effectuate the mandate of the fundamental right under Article 21 especially with regard to persons in custody in view of the directions already issued by this Court. It is desirable that each High Court frames its annual action plan fixing a tentative time limit for subordinate courts for deciding criminal trials of persons in custody and other long pending cases and monitors implementation of such timelines periodically. This may perhaps obviate the need for seeking directions in individual cases from this Court. We also feel that it is desirable for Chief Justices of all the High Courts to take other steps consistent with the directions already issued by this Court for expeditious disposal of criminal appeals pending in High Courts where persons are in custody by

fixing priority having regard to the time period of detention. We also reiterate the directions for setting up of adequate number of forensic laboratories at all levels. Specification of some of these issues is in addition to implementation of other steps including timely investigation, timely serving of summons on witnesses and accused, timely filing of charge-sheets and furnishing of copies of charge-sheets to the accused. These aspects need constant monitoring by High Courts.

25. One other aspect pointed out is the obstruction of Court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in Ex. Captain Harish Uppal versus Union of India[18], such suspension of work or strikes are clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references can be once in while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all concerned authorities – the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice.

26. Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial – vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. Inspite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. Presiding Officer of a court cannot rest in the state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring.

27. To sum up:

(i) The High Courts may issue directions to subordinate courts that –

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

(emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (supra) .

28. Accordingly, we request the Chief Justices of all High Courts to forthwith take appropriate steps consistent with the directions of this Court in Hussain Ara Khatoon (1995) 5 SCC 326) (supra), Akhtari Bi (Smt.) (supra), Noor Mohammed (supra), Thana Singh (supra), S.C. Legal Aid Committee (supra), Imtiaz Ahmad (supra), Ex. Captain Harish Uppal (supra) and Resolution of Chief Justices' Conference and observations hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases of undertrials pending in subordinate courts and appeals pending in the High Courts.

We place on record our appreciation for the valuable assistance rendered by Mr. Atmaram N.S. Nadkarni, learned Additional Solicitor General and Mr. Siddharth Luthra, learned Senior Advocate.

A copy of this order be sent to all the courts.

.....J. [Adarsh Kumar Goel] .....J. [Uday Umesh Lalit] NEW DELHI;

MARCH 9, 2017.

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[1] [2] (2001) 4 SCC 355 [3] [4] (2005) 7 SCC 387 [5] [6] (1992) 1 SCC 225 – Para 86 [7] [8] Hussainara Khatoon and ors (IV) v. Home Secreta?