

Kondelu Krupa Rao vs The State Of Andhra Pradesh on 22 January, 2024

Author: U. Durga Prasad Rao

Bench: U. Durga Prasad Rao

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
THE HON'BLE SMT. JUSTICE KIRANMAYEE MANDAVA

I.A.No.3 of 2023
in
Crl.A.No.914 of 2023

ORDER:

(Per Hon'ble KM, J) The petitioner, who is a convict in the P.O.C.S.O Sessions case No.127 of 2015 on the file of the Court of the I Additional District and Sessions Judge, East Godavari District, Rajahmundry, has filed the present application, u/s.389 of Cr.P.C. seeking grant of bail by suspending the sentence imposed in P.O.C.S.O Sessions case No.127of 2015 dated 14- 07-2016.

2. The petitioner was tried for offences punishable u/s. 376(2) (i) of IPC. After full-fledged trial, vide judgment of the Sessions Court dated 09-04-2018, the petitioner was sentenced to undergo imprisonment for life and also to pay fine, for the offence committed under Sec.376(2)(i) IPC and Sec.5(m) and 6 r/w Sec. 18 of POCSO Act., against PW1, and he was further ::2::

sentenced to suffer rigorous imprisonment for five years and to pay fine, for the offence committed u/s. 376(2)(i) r/w. 511 IPC and Sec.5(m) and 6 r/w 18 of POCSO Act., against PW.3.

Aggrieved by the sentence imposed by the learned sessions Judge, the petitioner filed the present appeal with a delay of 1925 days. The delay of 1925 days in filing the appeal was condoned vide order dated 6-12-2023.

3. The brief facts of the case that led to conviction of the appellant herein, as noted from the judgment of the learned Sessions Court are: LW2 & LW3 who are the victim girls, are studying 1st class in MPP Elementary School at Suryaraopeta village, Kakinada Rural. The petitioner/accused and LW4 who is the father of LW3 (Victim girl-2) were having friendly relations and the accused, very often used to visit the house of LW4 and often used to have his meals with LW4. On 20-12-2014, at 6.30 pm, when the accused visited the house of LW1, the victims (LW2 & LW3) were in the veranda, on seeing them he had developed a lustful desire against them and hatched a plan to fulfill his desire. In pursuit of his lustful ::3::

desire, luring them with food stuff, he took the two victim girls towards Light House on the beach Road, Kakinada, and by the side of road, he committed rape on the two victim girls. The two victim girls reached their respective homes late in the evening around 9.00 pm and the LW1 (mother) on noticing that the LW2 was sitting fearfully, and on a closer observation, she could find blood stains on the clothes and on noticing that the 1 st victim girl was bleeding heavily, after informing the same to the parents of the victim girl 2, both the victim girls were taken to a government hospital on the medical-advice of the private medical practitioner. The said private practitioner had opined that the two victim girls were exposed to rape and immediately thereafter they were admitted in Government Hospital, Kakinada. On receipt of the intimation from the hospital and the statements of LWs1 to LW3, a case was registered against the petitioner/accused on 21-12-2014 in Crime No.130/2014 under Sec 376(2)(i) of IPC and Sec. 3(a) and 4 and Sec. 5(m) of POCSO Act. Thereafter, cognizance of the case was taken under Sec. 376(2)(i) of IPC and Sec3(a) and 4 and Sec 5(m) r/w.

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6 and Sec.29 of POCSO Act. In pursuance thereof, a full-

fledged trial was conducted in the case and the petitioner was found guilty of the offences and he was sentenced to suffer imprisonment for life and fine for the offence committed against the Victim girl No.1 and imprisonment for five years in respect of the offence committed against the victim girl No.2, vide judgment dated 14-7-2016.

4. The appellant/accused against the order of conviction, did not file appeal, within the prescribed period of limitation. Now, he files the present appeal with an abnormal delay, along with a bail application. The delay was however, condoned vide our order dated 6-12-2023. The appellant contends that in the absence of any direct evidence in the case, he was falsely implicated and convicted, without considering the valid defenses raised by the appellant/accused and he submits that he has good grounds to succeed in the appeal. Thus, pending disposal of the appeal, he prays for enlargement on bail as he has suffered substantial period of sentence. In support of his contention, he relies on one decisions of the Hon'ble Supreme ::5::

Court in the case of Surinder Singh Alias Shingara Singh Vs. State of Punjab¹, and in the case of Kashmira Singh Vs State of Punjab² and the decision of this Court in the case of Batchu Ranga Rao.

5. The learned Public Prosecutor however has opposed grant of bail to the appellant/accused having regard to the gravity and heinous nature of the offence committed by the appellant/accused.

6. The point for consideration in the present application is whether the appellant is entitled to be enlarged on bail?

7. The Hon'ble Supreme Court in the case of Surinder Singh Vs State of Punjab, relied upon by the petitioner, has observed as under:

"8. It is no doubt true that this Court has repeatedly emphasised the fact that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution. 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 2005 (7) SCC 387 (1977) 4 SCC 291 ::6::

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. It has also been emphasised 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* this Court dealt with such a case. It is observed: (SCC pp. 292-93, para 2) "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 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 ::7::

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.

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, 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."

9. 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 ::8::

down broad guidelines which the 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 straitjacket 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 a 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."

8. In the case of Batchu Ranga Rao Vs. State of A.P, it is held as under:

"On considering their valuable suggestions and after a thorough evaluation of the relevant factors, we are inclined to indicate broad criteria on which the applications for grant of bail pending the Criminal Appeals filed against the conviction for the offences, including the one under Section-302 IPC, and sentencing of the appellants to life among other allied sentences, are to be considered. Accordingly, we evolve the following criteria:

(1) A person who is convicted for life and whose appeal is pending before this Court is entitled to apply for bail after he has undergone a minimum of five years imprisonment following his conviction;

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(2) Grant of bail in favour of persons falling in (1) supra shall be subject to his good conduct in the jail, as reported by the respective Jail Superintendents;

(3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra: The offences relating to rape coupled with murder of minor children dacoity, murder for gain, kidnapping for ransom, killing of the public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs.

(4) While granting bail, the two following conditions apart from usual conditions have to be imposed, viz., (1) the appellants on bail must be present before the Court at the time of hearing of the Criminal Appeals; and (2) they must report in the respective Police Stations once in a month during the bail period.

This broad criteria cannot be understood as invariable principles and the Bench hearing the bail applications may exercise its discretion either for granting or rejecting the bail based on the facts of each case. Needless to observe that grant of bail based on these principles shall, however, be subject to the provisions of Section-389 of the Code of Criminal Procedure."

9. The Hon'ble Supreme Court in the above cases was dealing with grant of bail where the appeal filed by the convict ::10::

is not likely to be disposed of, in the near future, or where the Court is not in a position to hear the appeal of the convict within a reasonable period of time.

10. In the case of Kashmira Singh's case, the Apex Court observed that so long as Court is not in a position to hear the appeal 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 to appeal has been granted to them for appeal against conviction. Referring to the very same decision, the Hon'ble Supreme Court in the case of Surinder Singh observed that all these decisions would only lay down broad guidelines which the Courts must bear in mind while dealing with an application for grant of bail. It has been further observed that none of the decisions laid down any invariable rule for grant of bail on completion of specified period of detention in custody, the Apex Court further observed that in a discretionary matter like grant or refusal of a bail, it would be impossible to lay down any strait jacket formula and Courts must exercise its discretion having regard to the relevant ::11::

facts and circumstances and it has been further observed it would be a futile attempt to lay down an invariable rule or formula.

11. In the facts of the present case, the accused was convicted vide judgment dated 14-07-2016 and he has accepted the said judgment and did not choose to prefer any appeal, he comes forward with the present appeal after lapse of almost nine years and seeks enlargement on bail. Had the appellant approached this Court soon after the passing of the sentence of conviction, his appeal would have been ripen for disposal now. From the decisions of the Hon'ble Apex Court, it can be inferred that languishing in jail for considerable period is not the sole criterion for grant of bail. If the appeal filed by the appellant/convict is not likely to be disposed of in near future, and further, having regard to

the facts and circumstances of the case alone, the cases of the convicts for enlargement on bail are required to be considered. Therefore, this Court is of the view that the appeal of the convict is of the year 2023, and the disposal of the same would take considerable period, and the ::12::

principle laid down by the Hon'ble Supreme Court would not apply to the facts of the present case, since the appellant/accused did not file the appeal immediately after the order conviction.

Therefore, non-disposal of the appeal or non-taking up of the appeal for hearing in the near future, in the facts of the case, cannot be attributed to the Court.

12. Further, the case of the appellant would also not fall under the basic criterion (No.1) laid down by this Court in the case of Batchu Ranga Rao, in as much as the appeal filed by the accused as on the date of the subject application is only one day old., and which cannot be construed in strict-sensu, as "Pending". Therefore, the principle enunciated by the Apex Court and this Court would not apply to the facts of the present case. Apart from the same, this Court in the case of Batchu Ranga Rao prescribed certain exceptions for grant of bail at para 10(3) viz:-

"(3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra: The offences relating to rape coupled with murder of minor children dacoity, murder for gain, kidnapping for ransom, killing of the ::13::

public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs."

13. As contended by the learned counsel for the appellant, though, the appellant has not been charged for the offence of "rape coupled with murder of minor children", as categorized by this Court in the case of Batchu Ranga Rao, the charge of committing rape on two hapless minor children of his friend, for which the appellant was tried and convicted may not be treated as less heinous in nature, entitling him to seek bail.

In that view of the matter, the appellant is not entitled to be enlarged on bail. This application is accordingly dismissed.

----- U . D U R G A P R A S A D R A O , J
KIRANMAYEE MANDAVA, J 22.01.2024 gvk ::14::

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO AND THE HON'BLE SMT.
JUSTICE KIRANMAYEE MANDAVA in 22nd January, 2024 gvk