

Anil v. State of Haryana , (2022-2)206 PLR 197

PUNJAB AND HARYANA HIGH COURT

Before : Justice Tejinder Singh Dhindsa and Justice Pankaj Jain.

ANIL and another – Appellant,

versus

STATE OF HARYANA – Respondent.

CRM-19656-2021 in CRA-D-14-DB-2017

Criminal Procedure Code, 1973 (II of 1974) S. 389 - Applicants case does fall within the parameters laid down by this Court in ‘*Dharampal v. State of Haryana*’, 1999 (4) RCR (Criminal) 600 but it is trite that the directions contained in *Dharampal’s* case (supra) are only in the nature of guidelines and the same should not be observed as an invariable rule. ‘*Mahipal v. Rajesh Kumar*’, (2020) 2 SCC 118, referred.

Cases referred to:

1. 1999 (4) RCR (Criminal) 600, *Dharampal v. State of Haryana*
2. (2020) 2 SCC 118, *Mahipal v. Rajesh Kumar*

Mr. Naresh Jain, for the applicant/appellant No.1. *Mr. Ankur Mittal*, Addl. Advocate General, Haryana with *Mr. Saurabh Mago*, Asstt. Advocate General, Haryana for the respondent/State. *Mr. Keshav Pratap Singh*, for the complainant.

(29.03.2022) – By way of the present application filed under Section 389 Cr.P.C., applicant/appellant No.1 namely Anil son of Vijay Singh seeks suspension of sentence, during the pendency of the present appeal.

2. He has been convicted in FIR No.222 dated 31st August 2013 (registered under Section 147, 148, 149, 302 and 216 of the Indian Penal Code, at Police Station Bhattu Kalan) and has been sentenced to undergo rigorous imprisonment for life for commission of offence punishable under Section 302 read with Section 34 IPC vide judgment and order dated 30th September, 2016

3. Custody Certificate has been placed on record. Applicant/ appellant No.1 is stated to have undergone actual sentence of 6 years, 9 months and 4 days.

4. Counsel for applicant/appellant No.1 submits that keeping in view the period of custody, the applicant is entitled for the concession of suspension of sentence in the light of ratio of

law laid down by this Court in '*Dharampal v. State of Haryana*', 1999 (4) RCR (Criminal) 600.

5. Further, it has been submitted that applicant/appellant No.1 cannot be said to have actively participated in the crime as no injury on the body of the deceased has been attributed to him. The only role assigned to the present applicant/appellant is that he had driven the motor cycle to the Tehsil complex on which the co-convicts were pillion riders. Thus, he claims that applicant/appellant No.1 having already undergone custody of more than 6 years and 9 months deserves concession of suspension of sentence.

6. The prayer made by applicant/appellant No.1 has been vehemently opposed by the State Counsel as well as the Counsel for the complainant.

7. Ld. State Counsel as well as Counsel for the Complainant have argued that the nature of the offence and the manner in which it was given effect to, dis-entitles applicant/appellant No.1 from grant of the concession of discretionary relief. It has been further argued that the conduct of the convict is enough to dismiss the present application.

8. Having heard counsel for the parties, we find that as per Prosecution two motorcycles entered the Panchayat Bhawan, one of the motorcycle was driven by Anil s/o Vijay r/o Bhattu Kalan and Vijay Singh s/o Nathu Ram and Ravi s/o Vijay Singh were sitting as pillion riders, whereas the other motorcycle was driven by Chintu @ Sukhdeep s/o Shankar Lal and Suresh s/o Raj Kumar and Shankar Lal s/o Nathu Ram were sitting as pillion riders. They all after getting down from their motorcycles came towards them. Ravi and Vijay were armed with Gandasi. Shankar and Suresh caught hold of the hands of the deceased from behind and Shankar exhorted that this advocate be killed, upon which Vijay attacked the deceased with the Gandasi, which hit the deceased on right side of his neck and thereafter Ravi also with the Gandasi, which he was holding in his hand, gave a blow on right side of the neck of the deceased. A third blow was again given on the neck of the deceased. He (complainant) further got recorded that the neck of the deceased hung on one side. On their raising alarm, the assailants fled from the spot with their respective weapons on their respective motorcycles.

9. It has also come on record that co-convict Ravi i.e. brother of the present applicant/appellant, attacked sons of deceased on 3rd December, 2008. FIR No.235 dated 3rd December, 2008 was registered against the offenders for the offences punishable under Sections 435, 323, 506, 452 of the IPC, at Police Station Bhattu Kalan, District Fatehabad. Ravi was convicted on 5th August, 2013 in the said FIR and the same was upheld up to this Court. Ravi while on bail in the said FIR along with his father attacked Suresh Kumar (now deceased) and caused as many as 21 injuries on 8th April, 2009. Both Ravi and his father (the co-convicts/ brother and father of the present applicant) were convicted on 14th December, 2011 in FIR No.74 dated 8th April, 2009 of Police Station Bhattu Kalan, for the offences punishable under Section 307/34 IPC. Their sentence was suspended by this Court on 3rd September, 2012. While on bail the aforesaid Ravi, Vijay along with present applicant namely Anil gave effect to the present occurrence in which deceased Suresh Kumar lost his life. It is matter of record that the present applicant/appellant No.1-Anil

along with his brother Ravi absconded and were declared Proclaimed Offenders on 20th February, 2014. It was only Vijay who could be put to trial and was convicted on 14th November, 2014. Thereafter the present applicant Anil along with his brother were arrested in the present FIR, on 25th June, 2015 and put to trial. After trial the Court convicted both of them for the offences punishable under Section 302/34 of the IPC for having committed murder of deceased Suresh Kumar.

10. Undoubtedly, applicant/appellant No.1 has undergone custody of more than 6 years and 9 months and the same does fall within the parameters laid down by this Court in *Dharampal's case* (supra) but it is trite that the directions contained in *Dharampal's case* (supra) are only in the nature of guidelines and the same should not be observed as an invariable rule. Apex Court in the case of '*Mahipal v. Rajesh Kumar*', (2020) 2 SCC 118 held that –

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v Sudarshan Singh* (2002) 3 SCC 598, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail."

11. The second limb of the argument raised by the counsel for applicant/appellant No.1 that since applicant has not been accused of causing injury to the deceased thus, he cannot be penalized for the offence punishable under Section 302 read with Section 34 of the IPC also deserves to be rejected. The same plea was raised before Trial Court also. It has been analyzed and answered. The evidence has been considered by the Ld. Trial Court and as per settled law, the findings returned by the trial Court cannot be interfered at the stage of considering the application under Section 389 Cr.P.C.

12. Keeping in view the aforesaid facts, the applicant is not entitled for grant of suspension of sentence at this stage. Consequently, the instant application is dismissed.

13. However, keeping in view incarceration suffered by the applicant/appellant No.1, the Registry is directed to list the main appeal along with connected appeal(s), if any, in the month of July, 2022 for final disposal.

SS - Application dismissed.