

Mohammad Faique @ Aayan Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 10, 2025

Acts Referred: Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 483

Code of Criminal Procedure Act, 1973 " Section 154

Indian Penal Code, 1860 – Section 147, 149, 302, 307

Hon'ble Judges: Vivek Singh Thakur, J

Bench: Single Bench

Advocate: Kulwant Singh Gill, Varun Chandel, Sanjay Kumar

Final Decision: Allowed

Judgement

Vivek Singh Thakur, J

1. Petitioner, herein, is in judicial lock-up in case FIR No.7 of 2020 dated 21.1.2020, under Sections 302, 147, 149 of the Indian Penal Code

(Āçâ, -ĒœIPCĀçâ, -â,,ç for short), registered in Police Station Parwanoo, District Solan, Himachal Pradesh. He has approached this Court, under Section 483 of

the Bhartya Nagrik Suraksha Sanhita, 2023 (for short BNSS), seeking regular bail in the matter.

2. In status report, filed on behalf of respondent-State, statement of complainant Rajan Kumar Singh has been reiterated, on the basis of which FIR

was registered against the petitioner and other co-accused.

3. According to status report, on 21.1.2020, an information was received from ESI Hospital, Parwanoo, in Police Station Parwanoo that a person

injured in a quarrel has been brought to the hospital for treatment, whereupon HC Vinod Kumar alongwith others had rushed to the hospital. where

statement of complainant Rajan Kumar Singh was recorded under Section 154 Cr.P.C., wherein he had stated that on that day, i.e. 20.12.2020, at

about 11 p.m., when he was sitting in his vehicle at Sector-6 Parwanoo, near Negi Petrol Pump, he had received a call on his mobile phone from Raju.

who was friend of crane owner Pushap Behl, requesting him to accompany Madan Lal in the crane, loaded with a vehicle, upto Delhi. Complainant

had agreed for that and had come near the crane whereon vehicle of Delhi bearing registration No.DL-6CM-4200 was loaded an crane driver Madan

Lal was standing near the crane and a white coloured taxi and 5-6 young men standing around the taxi, were also there and the taxi driver was

demanding fare, which was paid by one of those young men. Thereafter, the taxi driver left the place. Immediately thereafter, the man, who had paid

the fare to the taxi driver, had started asking Madan Lal to drop them at Delhi immediately at that time, whereupon complainant had enquired Madan

Lal about the status of fuel in the crane and Madan Lal had replied that fuel tank was to be filled. Thereafter, complainant Madan Lal and a young

man of Delhi vehicle boarded the crane and other persons sat in the vehicle loaded on the crane and crane was taken to Negi Petrol Pump and fuelled

for â,12000/- paid by the occupants of Delhi vehicle and then they started towards TTR to proceed to Delhi, but suddenly it started raining heavily and

upon this complainant Rajan Kumar Singh had parked the crane at a distance of 35-40 metres from the Petrol Pump on the right side of the road. On

asking by young man, sitting in the crane, for reason to stop, Madan Lal had told that neither the wipers nor one of the head lights of the crane were

working and there was some defect in the crane. It was further told by the deceased that he will take them to Delhi next morning but the young men

did not accept that and had started scuffling and arguing with deceased Madan Lal in the crane itself, whereupon Madan Lal had telephonically

informed owner of crane Pushap Behl that there was a defect in the crane and that the occupants of the car had been forcing him to move for Delhi

and arguing and beating him, whereupon the crane owner had asked Madan Lal to lock the crane and to sleep in any other vehicle with further

assurance that he had been coming on the spot, whereupon complainant Rajan Kumar Singh and Madan Lal got down from the crane and the persons

from the Delhi Vehicle had also deboarded the crane and car and started beating Madan Lal by saying that in case he did not move for Delhi at once

then they would throw him from the road in gorge, whereas Madan Lal had asked them to talk with owner of the crane who was coming there. Upon

this, petitioners picked up Madan Lal and threw him in the gorge and had tried to overpower complainant also by saying that he was also to be thrown

in the gorge, whereupon complainant ran towards the Petrol Pump and had narrated the incident to persons deputed there and simultaneously he had

also informed crane owner Pushap Behl about the incident. Thereafter, crane owner had arrived at the Petrol Pump in his own vehicle, accompanied

by Tanuj Behl and Pankaj Kumar, and complainant had also joined him and when they reached on the spot, petitioners had already left the place.

Thereafter, complainant Rajan Kumar Singh, Tarun Behl, Pankaj Kumar and crane owner Pushap Behl had gone to the gorge in search of Madan Lal

where Madan Lal was found lying injured, from where Madan Lal was taken to ESI Hospital, Parwanoo, whereupon information was sent to Police

Station Parwanoo, which led to recording of statement of complainant Rajan Kumar Singh, under Section 154 Cr.P.C, on the basis of which FIR No.7

of 2020, dated 21.1.2020, under Sections 307, 147 & 149 IPC was registered.

4. Injured Madan Lal (now deceased) was referred for treatment from ESI Hospital Parwanoo to PGI Chandigarh, where he was declared brought

dead and after his death case under Section 307 IPC was converted into Section 302 IPC.

5. Petitioner was arrested by the police party on 23.1.2020 from Delhi and he was identified along with other co-accused by complainant Rajan

Kumar Singh in Identification Parade conducted in District Jail Solan, in presence of Executive Magistrate/Tehsildar.

6. It is case of prosecution that one of the co-accused had also called the police, threatening to kill deceased Madan Lal by throwing him in the gorge

on his refusal to take them to Delhi immediately at that time. Conversation of that call was recorded by the police. CD thereof has prepared and

placed on record of the Trial Court.

7. During investigation, DVDs of CCTV footage have also been taken in possession by the police wherein it is visible that at about 10.05 pm crane

loaded with a car had arrived at Petrol Pump for filling fuel and in that footage petitioner, other co-accused, complainant and deceased are also visible

and further that in the CCTV footage, at 11 pm, complainant Rajan Kumar Singh can be seen running towards and inside the Petrol Pump.

8. Present petition has been filed seeking enlargement of petitioner on bail on the ground of delay in trial, as it has been contended on behalf of

petitioner that even after detention of about 5 years, out of 45 witnesses only 4 witnesses have been examined after framing charges on 15.9.2023.

9. It has been contended on behalf of petitioner that all accused in present case are undertrial prisoners and despite that statements of witnesses have

not been recorded and case now has been listed for recording evidence of 3 witnesses on 4.3.2025 and keeping in view the pace of the trial, there is

no likelihood of completion of trial in near future. It has been further submitted that there is no role of the petitioner in delaying the trial and, therefore,

he is entitled for bail.

10. To substantiate plea to enlarge the petitioner on bail, learned counsel for the petitioner has relied upon order dated 5.7.2023 passed in Cr.MP (M)

No. 1501 of 2023, titled as Ram Singh @ Kaka Vs. State of H.P., wherein accused under Section 302 IPC has been enlarged on bail on 5.7.2023

after remaining in jail for 3 years 2 months.

11. Learned counsel for the petitioner has also referred order dated 16.9.2023 passed in Cr.M.P. (M) No. 1494 of 2023, titled as Rampal @

Ramphal Vs. State of H.P., wherein accused under Section 302 IPC has been enlarged on bail after remaining in custody for 4 years 9 months by

considering plea of the petitioner regarding delay in trial.

12. Learned counsel for the petitioner has referred order dated 20. 10.2023 passed in Cr.M.P. (M) No. 2481 of 2023, titled as Sanma Vs. State of

H.P., wherein accused under Section 302 IPC has been released on bail after 3 years 3 months detention considering the fact that only 22 witnesses

out of 30 witnesses were examined by that time.

13. Learned counsel for the petitioner has further relied on order dated 4.11.2023 passed in Cr.M.P. (M) No. 2618 of 2023, titled as Jasbir Singh

Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 3 years 5 months detention considering the fact that only

16 witnesses out of 39 witnesses were examined by that time.

14. Learned counsel for the petitioner has further relied on order dated 6.10.2023 passed in Cr.M.P. (M) No. 2461 of 2023, titled as Balwinder

Singh @ Kadu Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 3 years 1 month detention considering the

fact that only 12 witnesses out of 34 witnesses were examined by that time.

15. Learned counsel for the petitioner has further referred order dated 21.8.2023 passed in Cr.M.P. (M) No. 1942 of 2023, titled as Robin Patrwai

Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 2 years 2 months detention considering the fact that only

10 witnesses out of 51 witnesses were examined by that time.

16. Learned counsel for the petitioner has further referred order dated 1.9.2023 passed in Cr.M.P. (M) No. 1216 of 2023, titled as Rakesh Kumar

Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 4 years detention considering the fact that only 13

witnesses out of 47 witnesses were examined by that time.

17. Learned counsel for the petitioner has further relied on order dated 24.7.2023 passed in Cr.M.P. (M) No. 1217 of 2023, titled as Kulveer Singh

Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 1 year detention considering the fact that no witnesses out

of 30 witnesses were examined by that time.

18. Learned counsel for the petitioner has further relied on order dated 3.8.2023 passed in Cr.M.P. (M) No. 1631 of 2023, titled as Mahammad

Aadil Vs. State of H.P., wherein accused under Section 302 IPC has been released on bail after 2 years 5 months detention considering the fact that

only 1 witness out of 50 witnesses were examined by that time.

19. Learned counsel for the petitioner has also referred judgment rendered by the Supreme Court in Special Leave to Appeal No. 1627 of 2022, titled

as Indrani Pratim Mukerjea Vs. Central Bureau of Investigation, wherein accused under Section 302 IPC has been released on bail after 6 ½ years.

20. Reliance has also been placed upon order dated 15.2.2023 passed by the Supreme Court in Special Leave to Appeal (Crl.) No. 11714 of 2022,

titled as Mukesh Kumar Vs. The State of Rajasthan & another, whereby an accused under Section 302 IPC was released on bail, after custody of 15

months, in case FIR No. 164 of 2020, dated 8. 6.2020 registered under Section 307 IPC, but converted into Section 302 IPC on account of death of

injured person on account of injuries caused in the incident of free fight, wherein cross FIRs were registered by and on behalf of both sides.

21. Further reliance has been placed on order dated 28.6.2023 passed in Cr.M.P. (M) No. 1326 of 2023, titled as Daljeet Rana alias Kaka Vs. State

of H.P., wherein co-accused in murder case was enlarged on bail after 1 year 6 months in case FIR registered for causing death by gun bullet fired by

another co-accused.

22. Reliance has also been placed on order dated 29.8.2023 passed in Cr.M.P. (M) No. 2085 of 2023, Ghanshyam Vs. State of H.P.; order dated

13.10.2023, passed in Cr.M.P. (M) No. 2540 of 2023, titled as Subhadra Kumari Vs. State of H.P.; and order dated 18.10.2023 passed in Cr.M.P.

(M) No. 2606 of 2023, titled as Lata Devi Vs. State of H.P., in case of common FIR, wherein husband of Lata Devi had expired for receiving injuries

in a quarrel taken place in the family and deceased was under influence of intoxication.

23. Reliance has also been placed on behalf of petitioner on order dated 9.9.2024 passed by the Supreme Court in Special Leave to Appeal (Cr.) No.

8523 of 2024, titled as Balwinder Singh Vs. State of Punjab & Another, whereby petitioner, an accused under Section 302 IPC, despite having direct

role in shooting the victim, was enlarged on bail after detention of 4 years 3 months with observation that trial was unlikely to be concluded on a near

date, whereas out of 47 witnesses 21 prosecution witnesses have already been examined and 9 were given up and only 17 witnesses were to be

examined.

24. Learned counsel for the petitioner has also referred order dated 6.10.2023 passed in Special Leave to Appeal (Crl.) No. 6505 of 2023, titled as

Praveen Rathore Vs. The State of Rajasthan & Another, wherein petitioner, an accused under Section 302 and 120B IPC, after detention of 4 years 6

months was enlarged on bail by observing that crucial witnesses had already been examined and out of 76 witnesses 53 witnesses had already been

examined with further observation that conclusion of trial will take some reasonable time.

25. Reliance has been placed on order dated 13.8.2024 passed by the Supreme Court in Special Leave Petition (CRL.) No. 8518 of 2024, titled as

Manishbhai Kalubhai Lathiya Vs. State of Gujarat, wherein petitioner, an accused under Section 302 IPC, was enlarged on bail after detention of 2

years 9 months by considering delay in conducting the trial.

26. Reliance has also been placed on judgment of Bombay High Court dated 25.9.2024 passed in Criminal Bail Application No. 1537 of 2021, titled as

Vipul Amrutlal Patel Vs. State of Maharashtra & Another, reported in 2024(4) BomCR (Cri) 328.

27. Order dated 26.11.2024 passed in Cr.MP(M) No. 2530 of 2024, titled as Ashok Kumar @ Governor Vs. State of H.P. has also been referred by

learned counsel for the petitioner, wherein petitioner an accused under Section 302 IPC was enlarged on bail after detention of about 4 years 2 months

by taking into consideration the fact that only 5 witnesses had been examined till then out of 38 witnesses and there was no likelihood of earlier

conclusion of trial.

28. Order dated 3rd September, 2024 passed in Cr.MP (M) No. 1584 of 2024, titled as Krishan Kumar Vs. State of H.P. has also been referred by

learned counsel for the petitioner, wherein petitioner an accused under Section 302 IPC was enlarged on bail after detention of 5 years 5 months by

considering the fact that out of 48 witnesses only 16-18 witnesses had been examined and there was no likelihood of conclusion of trial in near future.

29. Reliance has been placed by learned counsel for the petitioner on order dated 18.9.2024 passed in Cr.MP (M) No. 1804 of 2024, titled as

Suryakant Vs. State of H.P., wherein petitioner, an accused under Section 302 IPC, has been enlarged on bail by co-ordinate Bench on the ground of

delay in trial after custody of more than 3 years 10 months by taking into consideration the fact that there was no likelihood of conclusion of trial in

near future as 23 witnesses were yet to be examined.

30. Reliance has been placed on order dated 14.6.2024 passed in Cr.M.P (M) No. 1103 of 2024, titled as Akhil Kaushal Vs. State of H.P., wherein

petitioner, an accused under Section 302 IPC, has been enlarged on bail after detention of 6 years by taking into consideration the fact that out of 25

witnesses only 12 witnesses had been examined and there was no likelihood of conclusion of trial in near future.

31. Learned counsel for the petitioner has put reliance on order dated 3.7.2024 passed by the Supreme Court in Criminal Appeal No. 2787 of 2024,

titled as Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another, wherein petitioner, an accused under Section 489B, 489C, 120B read with

Section 34 IPC for commission of offence of smuggling of consignment of counterfeit notes from Pakistan to Mumbai, has been enlarged on bail after

detention of 4 years 5 months on the ground of delay in trial.

32. Reliance has also been placed on judgment dated 5.4.2024 passed by the Supreme Court in Criminal Miscellaneous Bail Application No. 7691 of

2023, titled as Naresh Kumar Vs. State of Rajasthan, wherein petitioner, an accused under Section 302 IPC, has been enlarged on bail on the ground of

delay in conclusion of trial.

33. Judgment dated 18.12.2024 passed by the Supreme Court in SLP (Crl.) No. 12939 of 2024, titled as Siddhant @ Sidharth Balu Taktode Vs. The

State of Maharashtra and Another, has also been relied by learned counsel for the petitioner, whereby petitioner an accused under the provisions of

Maharashtra Control of Organised Crime Act, 1999 has been enlarged on bail after detention of more than 5 years on the ground of delay in trial as

despite 5 years of detention, charges have not been framed.

34. Learned counsel for the petitioner has placed reliance upon judgment passed by the Supreme Court in Shaheen Welfare Assn. Vs. Union of India,

(1996) 2 SCC 616: 1996 SCC (Cr.) 366 wherein it has been held that a person cannot be kept behind bars when there is no prospect of trial being

concluded expeditiously with following observation:-

“8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal Cr.MP (M) No. 2935 of

2023 liberty for a considerable length of time without any prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and

the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such

deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be

arrived at within a reasonable time some relief becomes necessary.”

35. Learned counsel for the petitioner has placed reliance upon judgment of the Supreme Court in Jagjeet Singh vs. Ashish Mishra, (2022) 9 SCC

321: (2022) 3 SCC (Cri) 560: 2022 SCC OnLine SC 453w, herein it has been observed that no accused can be subjected to unending detention

pending trial. Reference to following para has been emphasized:-

“40. Having held so, we cannot be oblivious to what has been urged on behalf of the respondent-accused that cancellation of bail by this Court is likely to

be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent

provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no

accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory

provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a

reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the

right of liberty guaranteed under Article 21 of the Constitution (see Union of India v. K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713, paras 15 and

17]).

36. Reliance has also been placed on the order dated 17. 9.2021 passed by the Supreme Court in C hintan Vidya Upadhyay Vs.

State of Maharashtra, SLP Criminal No. 2543 of 2021, where an accused in custody for 6 years was enlarged on bail in a case registered for

commission of offence punishable under Section 302 IPC.

37. So far as orders/judgments relied upon by learned counsel for the petitioner are concerned, I am in agreement with the plea of learned Additional

Advocate General that each and every case has to be considered on its own merit and in some cases bail has been granted keeping in view nature of

role alleged to have been played by the accused therein and considering direct or circumstantial evidence therein and, therefore, the bail granted in

some cases having a lesser period of detention, may not be relevant for the purpose of adjudication of present case, because the bail granted in some

of cases cannot be said to be a bail granted in similar circumstances.

38. Petitioner had approached this Court earlier also by filing Cr.M.P.(M) No. 1512 of 2020, which was dismissed on 6th January, 2021.

39. It has been submitted that petitioner was denied temporary bail by this Court vide order dated 3.5.2024 passed in Cr.M.P. (M) No.744 of 2024,

however, vide order dated 15.6.2024 passed in Cr.M.P. (M) No. 1001 of 2024, he was enlarged on temporary bail in the month of June, 2024 for

treatment of his ailing wife and during that period petitioner did not indulge in any unlawful activity and did not violate any terms and conditions

imposed upon him for enlarging him on interim bail and he had surrendered before the concerned Jail Superintendent in terms of condition of grant of

temporary bail.

40. It has been further submitted that the petitioner is permanent resident of India having his family and, therefore, there is no possibility of his fleeing

from justice.

41. It has been further submitted that petitioner is under-trial prisoner whose guilt is yet to be proved and continuation of his detention will amount to

conviction and sentence without subjecting to trial particularly keeping in view the pace of trial.

42. It has been further submitted on behalf of the petitioner that petitioner is ready to abide by any condition for enlarging him on bail and he is also

ready and undertakes to furnish bail bonds, with surety of local persons, to the satisfaction of Trial Court to assure his presence and also his availability

during the trial and thereafter.

43. It has been submitted by learned Additional Advocate General that pace of trial is also affected by the conduct of the petitioner/accused as on

4.1.2024 witnesses were present in the Court, but could not be examined as except the petitioner all other accused persons were unrepresented and

they sought time to engage counsel. Further that on 4.12.2024 matter was adjourned on the ground that Advocate of three accused, who had to come

from Aligarh, was not available on that date and, therefore, petitioner is not entitled for bail on ground of delay in trial.

44. Learned counsel for the petitioner has pointed out that charges were framed on 15.9.2023 and case was fixed for recording evidence on

16.11.2023 and on that date no prosecution witness was present. Further that on 4.1.2024 though examination of witness was deferred but not at the

instance of petitioner. Further that on 1.5.2024 statement of only one witness was recorded in examination-in-chief, but was deferred on request of

Public Prosecutor on the ground that Court time was over.

45. Referring order dated 29.6.2024 passed by the Trial Court, it has been submitted on behalf of petitioner that there is no possibility of conclusion of

trial in near future, as it has been categorically recorded by the Trial Court that long dates were given because earlier docket for recording evidence

was full.

46. It has been further submitted by learned counsel for the petitioner that on 4.12.2024 case was transferred from Additional Sessions Judge-I to

Additional Sessions Judge-II and there was no certainty that statements of witnesses would be recorded on that date and, therefore, absence of

Advocate of other three co-accused cannot be considered a deliberate or intentional absence for causing delay in trial.

47. Taking into consideration the entire facts and circumstances, but without commenting on merits thereon and taking into account factors and

parameters, as propounded by the Supreme Court and this Court, required to be considered at the time of adjudication of bail application, I am of the

opinion that petitioner may be enlarged on bail in present case at this stage.

48. Accordingly, present petition is allowed and petitioner is ordered to be enlarged on bail, subject to his furnishing personal bond in the sum of

â,12,00,000/- (Rupees Two lakh only) with two sureties, each in the like amount, one of which, as undertaken by the petitioner shall be local to the

satisfaction of trial Court/Sessions Judge within two weeks, and upon such further conditions as may be deemed fit and proper by the trial Court,

including the conditions enumerated hereinafter, so as to assure presence of the petitioner at the time of trial:-

(i) That the petitioner shall make himself available to the Police or any other Investigating Agency or Court in the present case as and when required;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

him/her from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate

the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;

(viii) that the petitioner shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during

trial; and

(ix) the petitioner shall not leave India without permission of the Court.

49. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner, enlarged on bail, as

deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to

impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

50. In case the petitioner violates any conditions imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may

approach the competent Court of law for cancellation of bail, in accordance with law.

51. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-

IV.7139 dated 18.03.2013.

52. Observations made in this petition hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of

the bail application.

53. The petition stands disposed of in the aforesaid terms.