

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 46

Case :- CRIMINAL APPEAL No. - 2773 of 2005

Appellant :- Gobardhan Singh And Another
Respondent :- State Of U.P.
Counsel for Appellant :- P.K. Singh, Manish Chand Umari
Counsel for Respondent :- Govt. Advocate

Hon'ble Amar Saran, J
Hon'ble (Mrs) Sunita Agarwal, J

".....An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in courts of law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But, are we not denying human rights to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedoms from these neglected and helpless human beings who have been condemned to a life of imprisonment and degradation for years on end? Are expeditious trial and freedom from detention not part of human rights and basic freedoms? Many of these unfortunate men and women must not even be remembering when they entered the jail and for what offence. They have over the years ceased to be human beings: they are mere ticket numbers. It is high time that the public conscience is awakened and the Government as well as the judiciary begin to realise that in the dark cells of our prisons there are large numbers of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice -- a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy." - Justice P.N. Bhagwati speaking for himself and Koshal J in Hussainara Khatoun (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81, at page 83

We have heard Sri Pravin Kumar Singh learned counsel for the appellant, and the learned AGA in this bail prayer on behalf of the appellants Govardhan Singh and Ganga Devi who have been convicted by the Additional Sessions Judge, Fast Track Court No. 2, Shahjahanpur by her judgment dated 28.6.2005 sentencing the two appellants to imprisonment for life under section 304 B IPC, 3 years R.I. with fines of Rs. 2000 each under section 498 A IPC and 2 years R.I. under section 34 of the Dowry Prohibition Act. It may be mentioned that the order sheet discloses that the learned Counsel for the appellant Sri Pravin Kumar Singh had appeared only once earlier when he filed the appeal on 14.7.2005. He never appeared thereafter to press the bail prayer. There was even an order dated 30.6.2008 to the effect that although the appellant was in jail since his appeal was filed, his counsel has not appeared even when the case

was called out in the revised list and that the case be listed in ordinary course. When the case was called out we therefore summoned Sri P.K. Singh who appeared and informed us that although some pairokar of the appellants had taken away the case papers about a year back, but he was prepared to press the prayer for bail on behalf of the appellants. We appreciate this. The cause list mentions the name of another counsel, but he did not appear at all. Since it appeared that the counsel were not appearing because the appellants were too poor to pay their settled fee, we proceeded to examine the judgement and record with the help of Sri P.K. Singh, the appellant's earlier counsel, and learned AGA Sri Vimlendu Tripathi who ably assisted us, for considering the prayer for bail and issuing some further directions. The FIR of the incident was lodged on 16.6.91 at 2.30 pm at P.S. Khutar by Shivraj Singh, father of the deceased Smt. Usha alleging that the appellant Govardhan @ Guddu had married the deceased two years earlier. Govardhan, the appellant Ganga Devi, the mother-in-law of the deceased and Padam Singh, her father-in-law (who died during trial) used to mistreat her for dowry. The deceased had been brought back home to her maternal home. But on the intervention of Madan Singh and Karim Bux she was sent back to her marital home on the assurance that the accused would not beat her. However on 15.6.91 they badly assaulted the deceased, and strangled her by putting a noose around her neck. Dark marks by the assault were visible on her body. The post mortem report and the evidence of PW 5 Dr. K.G. Gupta shows that Smt. Usha had the following injuries caused by some blunt object: (1) a 10 cm x 8 cm contused swelling on the right side of the face, which was covering the mid-portion of the maxillary, temporal and orbital area fracturing the temporal, orbital and frontal bones with laceration of the brain membranes, (2) An abrasion 1 cm x 1 cm in front of the tragus of the left ear and (3) a contused swelling 3 cm x 3 cm in front of the neck fracturing the cricothyroid bone. The cause of death was due to injuries and asphyxia.

It was contended that this was not a case where the deceased appears to have been shot, stabbed, burnt or poisoned. It appears that the cause of death was a violent assault on the deceased, which seemed more to be an act of domestic violence perpetrated by a man frustrated by unremitting poverty, rather than a murder for dowry. Significantly what was demanded as dowry was not mentioned in the FIR, though later it has come in the evidence of PW 1 Shivraj Singh and others that the accused used to say that if the appellant Govardhan had got married in Bareilly he would have got Rs. 20,000. The poverty of the appellants is also apparent from the non-prosecution of the bail application in this Court for so many years. The charge in this case was also initially framed only under section 304, part II IPC on 28.3.95 by the Sessions Judge, Shahjahanpur, although there is another undated charge against the appellants on record, under sections 498 A, 304 B IPC and 3/4 of the Dowry Prohibition Act framed by the I Additional Sessions Judge to whom the case was later transferred. We find that the appellant Smt. Ganga Devi, the mother-in-law of the deceased Usha Devi, (who was bailed out during trial) is in jail now since 28.6.2005, the date of the judgement by the trial Court, i.e. for a period of 8 years and 4 months. The appellant Govardhan, was taken into custody on 22.6.91. He was granted bail after 5 months and 6 days on 28.11.91 by the Sessions Court on the ground of parity with the other co-accused, the appellant Ganga Devi and Padam Singh, who were assigned a common role and had earlier been granted bail during trial. Owing to his absence on some dates, the appellant Govardhan was taken into custody on 5.10.2001 but was granted bail after 2 months and 8 days on 13.12.2001. He was again taken into custody on 10.9.2002. Although we find that the appellant Govardhan was granted bail on 2.7.03 as his non-appearance was held due to illness, but he appears never to have been released thereafter as he may have been unable to arrange for the required personal bond and two sureties of Rs. 50,000 each as was directed by the trial Judge. In all, Govardhan therefore appears to have spent about 12 years in jail together with the admissible remissions. Looking to the enormous pendency of over 31000 division bench criminal appeals from convictions alone and a total number of over 1,24,700 appeals, if all single judge and division bench criminal appeals, government appeals, appeals under section 372 Cr.P.C against acquittals and jail appeals are taken into account (as per figures given by the Computer section) and their slow disposals due to the crippling shortage of Judges in this High Court, we see no prospect of an early

hearing of this appeal. We also find that the age of Smt. Ganga Devi was mentioned as 88 years in her statement under sections 313 Cr.P.C on 27.10.2004. Though if this appellant is still alive 9 years thereafter, the age of 88 years mentioned by the appellant in her 313 Cr.P.C statement would appear to be an exaggeration and incorrect, as this age is also not confirmed by any medical examination or other documentary record. But it could safely be assumed that by any estimate at present the age of Smt. Ganga Devi would certainly exceed 80 years. When dealing with the question of sentence it is noted in the trial court judgement that the appellant Govardhan had married another woman from whom he had produced two children. But this woman had left her children and Govardhan and had gone away some time after the marriage. There is also an application of Smt. Ganga Devi (129/kha) on record dated 28.6.05, which mentions that as the appellant Smt. Ganga Devi had been awarded life imprisonment she may be allowed to keep her two grandsons Himanshu, aged 10 and Shishu aged 3 years with her in jail as there was no other person to look after them. On this application, on the date of judgement, i.e. on 28.6.05 itself, the convicting judge had directed the Jail Superintendent to allow the two children to stay in jail with the appellant Ganga Devi. But these children after crossing the permissible age (when children without parental care at home are allowed to live with a guardian woman prisoner), the children would in all probability have now been shifted to some State run children's home. In *Amar Singh v State of Rajasthan*, (2010) 9 SCC 64, which was a case under section 304 B IPC where the deceased wife had been strangled to death before being burnt, the Apex Court reduced the sentence of imprisonment for life to 10 years R.I. which the appellant had already undergone, because there was no specification of the actual role played by the husband, and also as no charge had been framed under section 302 IPC. *Amar Singh* placed reliance on *Shanti v. State of Haryana*, (1991) 1 SCC 371 where the sentence of imprisonment for life u/s 304 B IPC awarded to the mother-in-law and sister-in-law of the deceased by the High Court was reduced to 7 years, as the role played by each of the accused was not elucidated. In this view of the matter we are of the opinion that the appellants have made out a case for bail. Let the appellants Govardhan Singh @ Guddu and Smt. Ganga Devi @ Toba Devi convicted in S.T. No. 89/95, under sections 304 B, and 498 A IPC and $\frac{3}{4}$ of the Dowry Prohibition Act, P.S. Khutar, District Shahjahanpur be released on bail to the satisfaction of the Court concerned. The realisation of fine awarded to the appellants shall also remain stayed during the pendency of the appeal. It is also made clear that in view of the apparent poverty of the appellants the concerned Court should release the appellants on moderate bail bonds with sureties, (if the appellants are at all in a position to arrange for persons to stand sureties for them) or on a personal bond and to ensure that the appellant's are not denied release on account of failure to arrange the requisite bail bonds or sureties. The Court concerned shall also provide the appellants legal aid, in case they are unable to arrange for a counsel to complete the formalities for being released on bail. In *Moti Ram & Ors. v. State of M.P.*, (1978) 4 SCC 47 and *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81 the Apex Court has reproached subordinate Courts for considering the obligation to pay a sum of money on forfeiture of the bonds or sureties for non-appearance to be the only means for enforcing the attendance of the accused to face trial or to receive sentence, and for fixing bail amounts only in terms of the nature of the crime, which approach favours the wealthy and discriminates against the impecunious litigant, and eschews other criteria, such as the roots of an accused in the community, his financial standing, or other features, such as the incapacity of an accused to abscond on account of his young or old age, or being a woman, or physically infirm or ailing. For failure of a penurious accused to arrange for the heavy bail amount or local sureties, he is forced to remain in jail for long periods of time even after being granted bail. Krishna Iyer J speaking for the bench in paragraph 30 in *Moti Ram* (supra) has directed: "Even so, poor men-Indians are in monetary terms indigents, young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances put whatever reasonable condition you may." This is not just an isolated case. We realize that there are a large number of such cases of forgotten "nameless" prisoners who have become "ticket numbers" and are languishing in jails for prolonged periods of time, as under trials (UTs) or as convicted prisoners whose appeals are pending

almost interminably before Higher Courts, who may or may not have filed bail applications and who have become very old, or are ailing from an incurable disease, or who may even have become immobile or have lost any capacity to commit a further crime. The complainant (if any) has lost any interest in prosecuting them or in keeping them in jail any longer. Usually the families of such accused have been destroyed, or reduced to such abject poverty, as happens when a family member contracts a serious disease, that they cannot pay counsel's fee or incur the recurring unavoidable expenditures in Court offices to get applications and affidavits prepared or the matters listed, and the bail or case disposed of. The relatively luckier children and dependents may perhaps have been provided with a roof over their heads by a grudging relative, or they may have been placed in a State or private run children's home. Others may simply have been abandoned to the street. The daughters in the family may not have been married off, and may be getting exploited by some social deviant in the family or outside. Keeping such prisoners in jail any further, in the already overcrowded jails, serves no useful purpose and is an unnecessary burden on the State and the tax payer. As held in a catena of significant Apex Court decisions, inter alia in Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, (1980) 1 SCC 98, Khatri II v. State of Bihar, (1981) 1 SCC 627, M.H. Hoskot v. State of Maharashtra, 1978 (3) SCC 544, Suk Das v. UT of Arunachal Pradesh, (1986) 2 SCC 401 and more recently in Rajoo v. State of M.P., (2012) 8 SCC 553, Mohd. Hussain @ Zulfikar Ali v. State (Govt. of NCT, Delhi), (2012) 2 SCC 584, Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1, Mohd. Sukur Ali v. State of Assam, (2011) 4 SCC 729, A.S. Mohammed Rafi v. State of T.N., (2011) 1 SCC 688 and in the light of the Constitutional obligations under Articles 39 A, 21 and 22(1) and the statutory obligations under sections 12 and 13 of the Legal Services Authorities Act and section 304 of the Code of Criminal Procedure, that no procedure which denies legal assistance or lack of equal opportunity to contest his case to an economically or otherwise disabled prisoner or which keeps a prisoner in an incommunicado situation unaware of his legal rights can be considered just, reasonable and fair, and the right to free legal service is to be made available to prisoners at all stages, including the pre-trial stage, and thereafter for contesting the trial and the appeal and also for moving applications for bail. Looking to the conditions of poverty and illiteracy in India, a mandate is placed on the courts to proactively inform the prisoner about his entitlement for free legal aid. Even where the counsel for an accused does not appear during trial or during pendency of an appeal, the prisoner can be offered legal aid to press his bail or conduct his trial or appeal. Section 12 (g) of the Legal Services Authorities Act, 1987 entitles any person in custody for free legal services and it is not essential that such a prisoner further produce evidence of his financial incapacity. The State's financial constraints have not been accepted to be a ground for denying free legal aid. Legal aid is to be given for all classes of offences, including those implicated for terror crimes, though in our view differential priorities could be fixed, about the categories of prisoners who would have the first claim on free legal services. We therefore issue the following directions for the I.G. (Prisons), and the District Judges and the Legal Services and other authorities: Directions for Inspector General (Prisons) and other jail authorities

1. The Inspector General (Prisons), U.P. to send details in tabular form of all prisoners in U.P. jails, who are over 70 years in age mentioning: a) the prisoner's name, b) the jail where he is detained, c) age, d) basis of age estimate, i.e. whether 313 Cr.P.C statement, or medical examination - in jail or by Court orders, or any other material, e) the total period spent in jail, f) the date from which he is in jail, with breakup dates of earlier periods in jail, g) his status, i.e. whether he is a undertrial (UT) or a convicted prisoner, h) the particulars of the trying/convicting Court, i) Case/ S.T. No., j) date of offence, k) the sections under which he is being tried/ convicted, l) if convicted, date of order and m) the period of sentence awarded, n) if convicted, whether appeal filed, o) Appeal number, p) whether bail application is pending, as UT or as convicted prisoner, q) the Court where the bail application is pending (i.e. before Magistrate, Sessions, or High Court), r) the latest report about his health from his jail, identifying disease if any, stage and period since which suffering, whether the prisoner can move without help, s) whether he desires legal aid for the purpose of bail or for disposal of his case. Separate lists as aforesaid be

prepared for prisoners over 75 years in age and for prisoners above 70 years in age. 2.A list containing the same details, but without the age restriction be furnished for all under trial (UT) or convicted women prisoners (whose appeals are pending or lie before superior Courts, i.e. excluding those women prisoners who are serving out their final sentences after conclusion of trials and appeals at all levels) who are in jail for more than 10 years (in cases other than under section 304 B IPC). 3.A similar list on the same lines as in direction 2 above be furnished for male prisoners who have spent more than 12 years in jail. 4.A separate list be also prepared for women prisoners who have been convicted or are being tried for offences under section 304 B IPC and allied sections who are in jails for more than 7 years. Apart from the aforesaid information this list shall also mention the relationship of the prisoner with the deceased. 5.A list be prepared of prisoners who have been granted bail from various Courts, but who have not been released from jail for periods of over two months after the bail order, because of their failure to obtain required sureties or for verification of their personal or sureties' solvency, mentioning the crime sections, whether UTs or convicted prisoners, date of bail order, Court granting bail, period for which they are in jail after obtaining the bail order. 6.The Inspector General (Prisons), U.P. shall cross-check this information, and obtain further details as required in particular cases from the District Judges of the concerned districts where the prisoner is being tried/ convicted.

Directions for District Judges, (Chairpersons of District Legal Services Authorities) and other judicial and legal services authorities

1.District Judges are directed to cross check the information relating to the prisoners, and to ensure that all the required information sought as above by I.G. (Prisons)/ Superintendents of jails in their districts which is available at the district court level, be furnished to the I.G./ Jail Superintendent for forwarding to this Court. The District Judges may also forward the copy of the information furnished to the I.G./Jail Superintendent to the High Court Registry, which shall be placed before this bench after being collated by the registry.

2.The District Judges shall also ensure that Jail visitor lawyers on the panel of legal aid lawyers pay regular visits to the District or Central jails in the district at least twice in a month, for taking up cases of prisoners who want legal aid and who have spent more than 5 years in jail. Efforts should be made for appointing women lawyers in the panel of jail visitors who could facilitate interviewing and providing legal services to neglected women prisoners.

3.Legal aid, by way of moving or pressing bail applications or for conducting trials on request be offered even to under trial prisoners or prisoners convicted by Magistrates or Assistant Sessions Courts whose appeals are pending at the district Court level who have engaged lawyers, but whose lawyers are not appearing or pressing their bails or conducting their trials, or the prisoners are unable to afford further fees for their lawyers.

4.Where prisoners are unable to obtain bail for want of adequate sureties or lack of proper verification for 3 months after the bail order, the Sessions or the Magistrates Courts may consider either reducing the bail amount, or releasing the prisoner on a personal bond, where the bail bonds have not been fixed by the superior Court, if the prisoner has roots in the community, and does not have criminal antecedents, or is extremely poor, or a young or very old person, or a woman or a person suffering from some serious ailment or infirmity. If the release of the prisoner is being held up for want of local sureties, the concerned courts could consider doing away with this requirement.

5.Priority for receiving legal aid services shall be given by local legal aid counsel to i) older prisoners, ii) who have served longer periods in jail, iii) who are in jail for over 5 years as UTs in less serious cases, and cases where the optional sentences are not a minimum life sentence or a death sentence, (i.e. which are not cases under sections 302, 303, 396 or 364 A IPC or the newly introduced provisions under the Criminal Law Amendment Act, 2013, such as the provision for imprisonment for the whole of a persons natural life for being involved in repeated trafficking of a minor, or for the remaining natural life or death under section 376 E for repeated involvement in offences under sections 376, 376 A or 376 D IPC), iv)

ailing prisoners, v) women prisoners, vi) indigent prisoners vi) Scheduled Castes and Tribes and other categories eligible for legal aid under the Legal Services Authorities Act, vii) first time offenders, engaged in sudden unpremeditated crimes, viii) Lower priority for legal aid be given to cases of repeat offenders with criminal antecedents, or professional criminals, economic offenders or persons committing brutal crimes, or crimes against vulnerable women or children, or terror crimes, or diabolically planned and executed crimes.

6. Legal aid and jail visitor counsel be directed to interview and obtain information from prisoners who ask for and are offered legal aid regarding background of the case, the period of the prisoners stay in jail and other aspects as enumerated above in direction No. 1 for the I.G. (Prisons), including the stage of the case, reasons for non-appointment or non-appearance of engaged counsel, other personal or familial difficulties. He should further obtain information about the prisoners' health status and jail conduct from the jail authorities.

7. Even for cases where the bail applications do not lie or are not pending at the district court level, and the prisoner who has been in jail for more than 5 years as an under trial or a convicted prisoner whose appeal/ bail is pending or has to be filed before the High Court informs the jail visitor counsel or other judicial authorities visiting the jail that he requires legal aid at the High Court level, and in the opinion of the legal aid jail visitor or jail visiting judicial authority, his case could be recommended for legal aid to the High Court, in accordance with the criteria mentioned in the Legal Services Authorities Act, and set out hereinabove, the legal aid counsel may forward the prisoner's request through the District Legal Services Authority, to the High Court Legal Services Authority. The District Legal Services Authority shall also keep the UP State Legal Services Authority informed regarding such requests.

8. Chair Persons (District Judges) or Secretaries (usually Civil Judge Senior Division) district Legal Services Authority are to monitor the conduct of legal aid and jail visiting counsel for a) regularity of visits to jails, b) enthusiasm and ability for tackling the cases where legal aid is offered, including by cross-checking with Courts where the legal aid counsel moves bail or other application for prisoner seeking legal aid, c) find out whether any illegal demands or payments for money have been made by the Counsel, d) remove or blacklist legal aid counsel who are not sincere about their duties, or are trying to obtain money from prisoners or their relatives, by obtaining feed back from time to time directly or through the CJM or other jail visiting judicial officer from the prisoner, e) a certificate of excellence may be awarded to legal aid counsel who perform legal aid duties with regularity, enthusiasm, ability and honestly. f) Secretary, district Legal Services Authority to ensure that legal aid counsel are paid expenses for moving applications, and fees.

9. The U.P. State Legal Services Authority (UPSLSA) shall also earmark a budget for prosecuting bails and incurring other expenditures for indigent or otherwise eligible accused in jail who seek legal aid, and take up the matter with the High Court if required.

10. It is suggested to the Chief Justice and the Registry that the District Legal Services Authority Secretary should not only be the Civil Judge (Senior Division), who is usually overburdened by excess work, but he could be any senior level Magistrate who has a special interest in providing legal services, and he could either exclusively devote himself or at least a few full days in the week be assigned for this work.

11. Feed back should be sent by the District Judges after collecting responses from the concerned and other judicial officers and also by the Member Secretary UPSLSA regarding the extent they have been able to carry out the directions in this order, and the impediments faced or foreseen in carrying out the directions mentioned hereinabove and also to recommend other measures for improving the legal services machinery.

Registrar General, High Court, Allahabad is directed to place copies of the order before their Lordships, Hon'ble the Chief Justice, Hon'ble Chairperson of the State Legal Services Authority and the Hon'ble Judge chairing the High Court Legal Services Authority, and at the earliest to forward copies of this order to the Member Secretary (UPSLSA), all the District Judges, (who are ex-officio chairpersons, of District Legal Services Authorities), I.G. (Prisons), U.P., Member Secretary, National Legal Services Authority,

(NALSA), New Delhi, Director JTRI, Lucknow, Director, National Judicial Academy, Bhopal. Let copies of the order be also furnished to the learned Government Advocate and learned AGA, Sri Vimlendu Tripathi for eliciting the response of the State government on these directions. Compliance reports and feed back be called for from the I.G. (Prisons), U.P., all District Judges, and Member Secretary, UPSLSA by the next listing. District Judge, Shahjahanpur may also inform the Court on the next listing whether the two appellants have been released from jail pursuant to this order granting bail in this criminal appeal. List on 25.10.2013 for further orders and submission of compliance reports.