

MISCELLANEOUS CRIMINAL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

HARBHAJAN SINGH and others,—Appellants.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 909 of 1977.

in

Criminal Appeal No. 721 of 1975.

March 3, 1977.

Code of Criminal Procedure (2 of 1974)—Section 389—Delay in hearing appeals—Whether a factor to be considered for the grant of bail.

Held, that the administration of Criminal justice is a matter of substance and not merely one of academics. It would afford scant satisfaction to an accused if after serving the sentence his appeal succeeds and he is merely acquitted of the charge. In an issue of this nature, the attitude of the Court cannot remain static and the fact that an accused would have undergone nearly the whole, or in any case, a substantial part of his sentence cannot be ignored nor can it be said that delay in the hearing of appeals is irrelevant in the matter of grant of bail.

Petition under section 389 of the Code of Criminal Procedure praying that the appellants-petitioners be released on bail during the pendency of the appeal against the order of Shri Jai Singh Sekhon Sessions Judge, Patiala, dated 22nd April, 1975 convicting the appellants.

S. S. Kang, Advocate, for the appellants.

D. N. Rampal, A.A.G., for the Respondent.

JUDGMENT

S. S. Sandhawalia, J. (Oral).

(1) Whether the inevitable delay in the hearing of the appeals in life sentence cases within this Court is by itself a factor to be taken into account for the grant of bail to the convicts is the slightly interesting question which has arisen for consideration in this application for bail moved on behalf of Sucha Singh and Jit Singh appellants.

Harbhajan Singh, etc. v. The State of Punjab (S. S. Sandhawalia, J.)

(2) As many as 11 accused persons including the two petitioners herein were brought to trial before the Court of Session at Patiala on charges of murder and other allied offences. The learned Sessions Judge by his judgment, dated the 22nd April, 1975, acquitted three of the co-accused but convicted the remaining eight. All the convicts, however, were acquitted of the charge under section 302 read with section 149, Indian Penal Code, but were held guilty under section 364/149, Indian Penal Code only. The two petitioners along with three coaccused stand sentenced to seven years rigorous imprisonment each on the ground of their relatively tender age but the remaining three convicts were sentenced to undergo life imprisonment. The conviction and sentences on minor offences have also been recorded but have been directed to run concurrently.

(3) The two peitioners along with their co-accused filed appeals against their conviction and sentence. Their prayer for bail earlier was, however, rejected by the Division Bench on 22nd July, 1975, with the following observations:—

“Heard. No ground for bail. Dismissed.”

(4) In this second application for bail, the learned counsel for the petitioners, contends that both the petitioners were arrested as far back as the year 1974 and have undergone nearly three years of their sentence till now. It is pointed out that the present appeal owing to the fact that it is connected with the appeal against the life sentence of other co-accused persons is not likely to be heard for the next two or three years. On these premises the counsel forcefully contends that the petitioners would virtually have undergone the whole of the sentence by the time the appeal is likely to be heard and this is so particularly in view of some remissions available to them for good conduct within the jail.

(5) Mr. D. N. Rampal on behalf of the respondent-State contends that even the fact that the petitioners would have undergone the whole of their sentence by the time their appeal is likely to be listed is irrelevant to the question of granting bail. He submits that earlier the Motion Bench had declined to extend this concession to the petitioners on merits. He, in effect, contends that the considerations of delay are entirely extraneous to the issue.

(6) I am unable to subscribe to any such abstruse proposition which is sought to be advanced on behalf of the respondent-State. To my

mind, the administration of criminal justice is a matter of substance and not merely one of academics. It would afford scant satisfaction to the petitioners if after serving the sentence of seven years their appeal succeeds and they are merely acquitted of the charge.

(7) I believe that in an issue of this nature, the attitude of this Court cannot necessarily remain static. It is not possible to lose sight of the fact that in normal routine at present the criminal appeals filed in the year 1973 are as yet being listed for hearing. Indeed, as many as 40 life sentence appeals of that year are still pending disposal. In order to avoid any invidious distinctions this Court has rightly adhered to the practice that normally all these life sentence appeals are to be listed and heard strictly in accordance with their number and in the order in which they are filed. That being so, the case of the petitioners connected as it is with their co-appellants who have been sentenced to life imprisonment is unlikely to be listed for hearing till the passage of another year or two. Nor do we see the chance of any favourable dramatic change in the context of hearing these appeals in the foreseeable future. That being so, the petitioners, who have been sentenced to seven years' imprisonment would have undergone nearly the whole, or in any case, a substantial part of their sentence by that time. That is a factor which we are unable to ignore in the present case. Nor can we accede to the stand of the respondent that the delay in this context is irrelevant to the issue.

(8) The view we are inclined to take finds tacit support from the Full Bench decision of this Court in *State of Punjab vs. Bachittar Singh Lal Singh and others* (1). Though that was a case regarding the grant of bail to the accused persons, who were acquitted after trial upon a capital charge (against whom State appeals directed against their acquittal stood admitted in the Court) yet the rationale of that judgment on the point of delay, etc., is equally attracted in a case of the present kind.

(9) I am of the view that for the aforesaid reasons the two petitioners are entitled to the concession of bail during the pendency of their appeal. They shall be released on furnishing adequate security to the satisfaction of the Chief Judicial Magistrate, Patiala, March 14, 1977.

(1) 1972 Cr. L.J. 341.