

Vinod Kumar Vs. State of Delhi

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Court : Delhi

Decided On : Mar-27-2000

Reported in : 2000IIIAD(Delhi)537; 85(2000)DLT299; 2000(53)DRJ342

Judge : Dalveer Bhandari, J.

Appeal No. : Criminal Misc. No. 1327/2000 in Crl. Appeal No. 239/99

Appellant : Vinod Kumar

Respondent : State of Delhi

Advocate for Def. : Mrs. S. Kohli

Judgement :

ORDER

Dalveer Bhandari, J.

1. In our country, a very large number of extremely poor unfortunate and distressed men, women and children are languishing behind prison bars awaiting for trials in the courts of law for months and years.

2. According to the status report of the Director General of Prisons, filed in pursuance of the order of this Court dated 27.1.2000, most of the undertrial prisoners, presently lodged in Tihar Jails have been charged with the minor offences. Even if ultimately, they are found guilty, would not warrant punishment

for more than a few months, or at the most perhaps for a year or two. These unfortunate forgotten specimen of humanity are languishing in jail, deprived of their liberty, for years without even as much as their trials having commenced. As aptly observed by Hon'ble the Chief Justice Dr. A.S. Anand in a letter to the Chief Justice, Delhi High Court on 29.11.1999 that 'It is neither just nor fair that persons involved in petty offences should suffer incarceration much beyond the ultimate punishment merely on account of the fact that they happen to be poor and underprivileged.'

3. The Hon'ble Supreme Court aptly observed in Hussainara Khatoon's case : 1979 CriLJ1036 that it is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial.

4. The instant case is even more shocking and revolting to the conscience. It is clearly a slur on our administration of justice. Out of these unfortunate undertrials and who have been languishing in jail for years, some fortunate few were ordered to be released on bail during the pendency of their trials by the various courts on certain conditions. But these unfortunate undertrial prisoners could not be released despite valid release orders, not only for days, or months but for years for not fulfilling the conditions attached to the bail orders, the reasons being their extreme poverty and ignorance. In most cases, no one on their behalf has even bothered to move the courts even for modifying, relaxing, reducing or waiving the conditions attached to the bail orders. It is aptly said that the poor perhaps have no friends or relations. Consequently, they are languishing in jails for months and years.

5. The poor find our legal and judicial systems oppressive and heavily weighed against them and a feeling of frustration and despair occur upon them as they find that they are helplessly in a position of inequality with the non-poor. The Court also observed that the bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pretrial release without jeopardizing the interest of justice.

6. As indicated by their Lordships of the Supreme Court in Babu Singh v. State of U.P. AIR 1978 SC 524 that ' a man on bail has a better chance to prepare and present his case than one remanded to custody'. The Apex Court also observed that ' if public justice is to be promoted, mechanical detention should be demoted'.

7. We have two categories of under-trial prisoners the poor and the non- poor. The experience has shown that a non-poor prisoner perhaps does not remain in jail even for a few hours after he/she is directed to be released on bail, irrespective of the onerous conditions attached to the bail orders. Personal bonds and multiple sureties of several lakhs are furnished within hours of passing of release orders, whereas there are a very large number of under-trial prisoners also who are compelled to languish in jail for months and years for not being able to furnish even one surety of Rs. 500/ to Rs.1,000/-. These are clear instances of depriving the under-trials of their freedom and liberty solely on the ground of poverty. Perhaps, these are clear instances of even human rights violation.

8. In such cases of under-trial prisoners, who could not be released despite bail orders, the State must adopt a more pragmatic and a reasonable approach, not only in the interest of the under trial prisoners but also in the interest of the State and all concerned.

9. The State must take into consideration all these factors and in suitable cases must move the courts for modifying/relaxing conditions attached to the bail orders highlighting their extremely poor financial condition and ignorance because of which they are unable to fulfill the conditions attached to the bail orders. If the State undertakes this exercise promptly, a large number of problems faced by all concerned under-trials and convicts would be solved to a large extent.

10. Another factor which must be taken into consideration is the huge public expense involved in keeping these under-trial prisoners in custody. Accordingly to the available data on each under-trial about Rs.2,200 per month is the expense of keeping the under-trial in Tihar Jail. thereforee, long detention of those under-trials not only violates their basic human rights but the state has to bear unnecessary and totally unwarranted huge financial burden. According to the aforementioned letter of the Chief Justice of India, in Delhi Jails alone over 9000 prisoners were

languishing as under-trial prisoners as on 31st July 1999.

11. Our jails are already over-crowded. The fact that hundreds of these under-trials who have been released on bail have also not been enlarged, placed heavier burden on the available infrastructural facilities leading to the most deplorable unhygienic and inhuman conditions in jails. In a barrack which is constructed for 100 inmates, more than 300 inmates are presently lodged in Tihar Jails. The total capacity of Tihar Jails is about 3000 inmates whereas as on date more than 10,000 prisoners are lodged in Tihar Jails and 73% of them are under trial prisoners.

12. The case of Shankar (Crl. M. (M). No. 2287/94), which was decided by this Court on 1st June, 1995, was really an eye-opener. Shankar had sent a letter to the Court that despite bail order he could not be released for a very long period because of non-fulfilling the conditions attached to the bail orders. The Court visualized that because of the poverty, ignorance and illiteracy in our country, there may be many more such unfortunate prisoners who may be languishing in jails despite bail orders. In this background, this Court thought it appropriate and consequently directed the Director General (prisons), Delhi to submit a complete list of all under- trial prisoners lodged in jails of Delhi State, who could not be released on bail, despite bail orders having been passed in their favour. After scrutinizing the list with the help of the officials of the Director General of Prisons and the State counsel hundreds of convicts and under-trial prisoners, who were charged with minor offences were released on bail by modifying the conditions attached to the bail orders.

13. Unfortunately, despite the clear directions in Shankar's case, the State has not moved the Court for modification of the bail orders. therefore, this court has again undertaken this exercise and in pursuance to the directions of this Court, the Director General (Prisons) has filed a detailed status report and submitted that as on 31.1.2000, 252 convicts and under-trial prisoners are languishing in jail despite valid release orders of bail in their favor because they could not fulfill the conditions attached to the bail orders. The status report further indicate that the majority of prisoners are facing trial in small and petty offences and they have

been in jail for several months and years. These jail inmates of their extreme poverty, illiteracy and ignorance, could not fulfill the conditions attached to the bail orders. Most of them do not have any friends or relation to help them in any manner. Unless they are released on their personal bonds by the court on its own initiative they will continue to languish in jail for indefinite period. Trials of these criminal cases often take unduly long time because of inadequate number of judicial officers manning the courts and inadequate infrastructural facilities such as court rooms and supporting staff. The Central and the State Governments must seriously consider these problems in proper perspective and find solution to these problems without losing any further time.

14. Their Lordships of the Supreme Court in the State of Rajasthan Vs . Balchand : 1978 CriLJ195 had observed that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences and intimidating witnesses. The experience reveals that the extremely poor under-trial prisoners like these petitioners are not likely to abuse the indulgence of the court in enlarging them on bail.

15. In Hussainara Khatoon's case (supra) the Supreme Court observed that our legal and judicial system which continually denies justice to the poor by keeping them for long years in pretrial detention, is a highly unsatisfactory legal system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is only deterrent against fleeing from justice.

16. It may be pertinent to observe that despite various general directions by the Lordships of the Supreme Court, the administration had neither comprehended the directions in its correct perspective nor had made efforts to implement them. Otherwise, it would not have been necessary for this Court to pass these orders. therefore, in the matter of these under-trial prisoners, this Court in the larger interest of justice, deems it appropriate to depart from the practice of only giving general directions, but would like to pass fresh bail orders in all such cases after modifying and relaxing the conditions attached to the bail orders so that hundreds

of these languishing under-trial prisoners can be released forthwith who, despite the bail orders could not be released.

17. I have heard the learned counsel appearing for the State. In the interest of justice, I deem it appropriate to modify, the conditions attached to the bail order. Each individual case is dealt with separately and separate bail order is passed modifying the conditions of their release. These under-trial prisoners who are facing trials in relatively minor offences and who have already been granted bail by various courts are released on their furnishing personal bonds.

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