Court No. - 6

Case :- CRIMINAL MISC. BAIL APPLICATION No. - **45784 of 2020**
Applicant :- Ajeet Chaudhary
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Ajeet Srivastava,Raghuvansh Misra
Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

1. The narrative is being structured in the following framework to facilitate the discussion:

I.	Defining the controversy and its origins
II.	Submissions of learned counsels
III.	Right of bail
IV.	SC & ST Act- Relevant provisions: Discussion
V.	Final Directions
VI.	Review of Compliance of Directions
VII.	Consideration of Bail Application on merits

I. Defining the controversy and its origins

2. The amendments to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989[1] made in the year 2016, brought in their wake an alteration in the practice and procedure for hearing of bail applications.

1 ***hereinafter referred to as the "Act"***

3. Learned counsels for the applicants in all connected bail applications pointed out certain anomalies in the practices of hearing of bail applications/bail appeals under the Act. This has created inconsistencies in the procedure for hearing of bail applications/bail appeals, uncertainty in the period of maturation of bail applications/bail appeals, and deferment of hearing of bail applications/bail appeals under the Act for undefined periods.

4. This issue is common to all bail applications before this Court. The individual bail applications will be decided on the respective facts of each case by separate orders.

5. Considering the importance of the issue raised by the learned counsel for the applicants in all the bail applications, the Court had requested the learned members of the Bar to assist the Court in defining and resolving the controversy.

6. Shri Manish Goyal, learned Additional Advocate General was also requested to take appropriate instructions from the State Government and make submissions before the Court.

7. Simply put the questions of law which arise for determination are these:

> **I.** What is the agency and mode for service of notice of bail applications/bail appeal upon the victim under the Act (as amended from time to time)?

II. What is the time period for maturation of a bail application/bail appeal before the High Court which implements the mandate of the Act (as amended from time to time) and agrees with the requirements of constitutional liberties?

II. Submissions of the learned counsels for the Parties:

8. Apart from the counsels for the applicants, Shri Nazrul Islam Jafri, learned Senior Counsel assisted by Shri Mohd. Zubair Khan, Shri Vinay Saran, learned Senior Counsel assisted by Shri Pradeep Kumar Mishra, learned counsel, Shri R.P.S. Chauhan, learned counsel, Shri Santosh Kumar Tiwari, learned counsel and Shri Raghuvansh Mishra, learned counsel kindly volunteered to assist the Court. On behalf of the State Shri Manish Goyal, learned Additional Advocate General assisted by Shri Gambhir Singh, learned counsel and Shri Ankit Srivastava, learned counsel for the State have made their submissions.

9. Learned counsel for the applicants in various bail applications, Shri Ajeet Srivastava, Shri Rajesh Chandra Gupta, and Shri Devendra Saini submit that the usual procedure adopted by the Court to effect the service of the notice of bail applications upon the victim under the Act, is to issue notice to the victim by regular mode or through the Chief Judicial Magistrate of the district concerned. The procedure is not contemplated in the Act, and delays hearing of bail applications/

bail appeals for varying periods.

10. Shri Nazrul Islam Jafri, learned Senior Counsel assisted by Shri Mohd. Zubair Khan, learned counsel made the following contentions:

I. The disarray caused in the procedure for hearing of bails is primarily because of service of notice upon the victim by the process of Court, instead of direct service by the State as contemplated in the Act. Hearing of bail application is delayed for uncertain periods resulting in violation of Article 21 of the Constitution of India. The procedure and practice for bail hearing has to be rationalized urgently.

II. The right of the victim under the Act has to be balanced with the right of an accused to have his bail application heard within a reasonable period of time.

III. Learned Senior Counsel largely agrees with the timeline for maturation of bails suggested by the State Government. But efforts should always be made to reduce the time for maturation of bail applications.

IV. Learned Senior Counsel gave an account of real case studies of delays caused by the extant practice of service by Court process. In one case notice sent by the Court was not served for more than one and a half year and the bail application matured for hearing after that period.

11. Shri Vinay Saran, learned Senior Counsel assisted by Shri Pradeep Kumar Mishra, agrees with the arguments of Shri Nazrul Islam Jafri, learned Senior Counsel and further submits:

I. The bail processual framework has to be consistent with the requirements of Articles 14 and 21 of the Constitution of India.

II. The time period and procedure for maturation of the bail application has to be controlled by the fundamental rights of the accused under the Constitution, the rights of the victim under the Act, and the High Court Rules.

III. Practice of issuance of notice of bail by the Court to the victim by the court, has led to large variations in the time period for maturation of the bail applications for hearing. The process is not efficient and causes delays. Further such mode of service is not provided in the Act.

IV. The bail processual system needs to be rationalized urgently. Notice upon the victim has to be served directly by State, as specifically provided in the Act.

V. The time period of maturation of the bail applications as suggested on behalf of the State, is reasonable. Though he contends that efforts should always be made to improve the system.

12. Both learned Senior Counsels have called attention to various provisions of the Act.

13. Shri R.P.S. Chauhan, learned counsel assisted by Shri Santosh Kumar Tiwari, learned counsel made the following contentions:

I. The right of an accused seeking bail applications is conferred by statute but also effects his fundamental liberties under Article 21 of the Constitution of India.

II. All the Courts do not prescribe a uniform period for service of notice. Period and modes for service of notice varies in different Courts. This leads to inconsistency in time for maturation of bails for hearing.

III. The period of maturation of an a bail application cannot be unduly large, nor can it be vary from case to case.

14. Learned counsel has cited on the following authorities:

1. Hussain and another Vs. Union of India[2]

2. Arnab Manoranjan Goswami Vs. State of Maharashtra and Others[3]

15. Shri Raghuvansh Mishra, learned counsel adopted the arguments of learned Senior Counsels and then advanced the following additional submissions:

I. The State Government/ Special Public Prosecutor is nominated as the sole agency under the Act to

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2 **(2020) 5 SCC 702**
3 **(2020) SCC OnLine 964**

effect service of the bail application upon the victim.

II. The creation of any additional agency or mode of service apart from the one prescribed under the Act would be contrary to law.

III. The Act is a criminal statute and has to be interpreted strictly.

IV. Section 15 (3) and Section 15(5) of the Act do not overlap and operate independently. Notice of bail application/bail appeal is served under Section 15(3), while Section 15(5) is invoked when the victim claims his/her right of hearing.

V. Failure of the State authorities to serve the notice upon the victim cannot deny the accused right to have his bail application/bail appeal heard within a stipulated period of time.

16. Learned counsel has placed reliance on the following cases in point:

I. Pramod Kumar Ray and Others Vs State of Odisha[4]

II. Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh[5]

17. Shri Manish Goyal, learned Additional Advocate General assisted by Shri Gambhir Singh, learned counsel and Shri Ankit Srivastava, learned counsel for the State

4 **2017 SCC OnLine Ori 349**
5 **(1976) 1 SCC 560**

submitted as under:

I. Under the Act, the State is the sole agency vested with the duty to serve notice of bail applications/bail appeals upon the victim.

II. The State authorities need reasonable time to serve notice upon the victim.

III. The victim is also required to be afforded adequate time after service of notice to effectively tender his defence before the Court.

IV. The State machinery shall be geared up to implement the provisions of the Act in letter and spirit.

V. Upon the instructions received from the State Government, the following timeline is proposed on behalf of the State:

A. Time for service of notice upon the victim by the State agency should not be less than 96 hours.

B. Time required by the victim between the service of notice and hearing of the bail application should not be less than 72 hours.

III. Right of Bail

18. The right to bail has statutory origins but cannot be

isolated from constitutional oversight.

19. Good authority has long entrenched the right of an accused to seek bail in the charter of fundamental rights assured by the Constitution of India. These authorities pivot the discussion.

20. Bail jurisprudence was firmly embedded in the constitutional regime of fundamental rights in ***Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh***[6]**.** Casting an enduring proposition of law in eloquent speech, *Justice V.R. Krishna Iyer* held:

> "Bail or jail?" — at the pre-trial or post-conviction stage — belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."

21. Engagement of fundamental rights in bail jurisprudence is a constant in constitutional law.

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6 **(1978) 1 SCC 240**

22. The nexus of fundamental liberties of the citizens and the right of bail came to the fore in ***Hussain and another Vs. Union of India***[7], when the Supreme Court was alerted to the issue of delay in consideration of grant of bail applications in the courts. In ***Hussain (supra),*** it was enjoined:

> "Timeline for disposal of bail applications ought to be fixed by the High Court."
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> **"29.1.1.** Bail applications be disposed of normally within one week;"

23. Nearer home the Allahabad High Court in ***Emperor Vs. H.L. Hutchinson and another***[8] stated that grant of bail is the rule and refusal is the exception on the foot of the following reasons:

> "The principle to be deduced from sections 496 and 497 of the Criminal Procedure Code, therefore, is that grant of bail is the rule and refusal is the exception. That this must be so is not at all difficult to see. An accused person is presumed under the law to be innocent till his guilt is proved. As a presumably innocent person he is entitled to freedom and every opportunity to look after his own case. It goes without saying that an accused person, if he enjoys freedom, will be in a much better position to look after his case and to properly defend himself than if he were in custody. One of the complaints made by the applicants in this case is that their letters sent from the custody have been opened and inspected and censored, and, therefore, they were not in a position to conduct their defence with the aid of such friends as may he outside the prison. As I have said, it is obvious that a presumably innocent person should have his freedom to enable him to establish his innocence."

24. The Supreme Court set its face against restrictions on the power of the courts to grant bail in ***Ranjitsing***

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7 **(2017) 5 SCC 702**
8 **AIR 1931 All 356**

***Brahmajeetsing Sharma v. State of Maharashtra*[9].**

25. Constitutionality of onerous conditions for grant of bail imposed by Section 45 of the Money Laundering Act, 2002 was in issue in ***Nikesh Tarachand Shah Vs. Union of India and another***[10]. This narrative will profit from a detailed consideration of the judgment.

26. The Supreme Court in ***Nikesh Tarachand (supra)*** predicated its holding by delving into the origin of the quest for liberty in English jurisprudence**:**

> **"18.** What is important to learn from this history is that Clause 39 of the Magna Carta was subsequently extended to pre-trial imprisonment, so that persons could be enlarged on bail to secure their attendance for the ensuing trial. It may only be added that one century after the Bill of Rights, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution which expressly states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". We may only add that the Eighth Amendment has been read into Article 21 by a Division Bench of this Court in *Rajesh Kumar* v. *State* [*Rajesh Kumar* v. *State*, (2011) 13 SCC 706 : (2012) 2 SCC (Cri) 836] at paras 60 and 61."

27. The enquiry into the constitutional correctness of the assailed provisions began with the tests for violation of Article 14 "both in its discriminatory aspect and its manifestly arbitrary aspect".

28. The discussion then proceeded to understand the scope and effect of Article 21 of the Constitution of India

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9 **(2005) 5 SCC 294**
10 **(2018) 11 SCC 1**

on the offending provisions for grant of bail. This enquiry was overlaid with a consideration of authorities "on the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens".

29. Finally in ***Nikesh Tarachand (supra),*** onerous conditions for grant of bail in Section 45 (1) of the Prevention of Money Laundering Act, 2002, were declared unconstitutional being violative of Articles 14 and 21 of the Constitution of India:

> **"46.** We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature."

30. The following statement of law in the epoch making decision of ***Maneka Gandhi vs. Union of India***[11] will fortify this narrative:

> "*81*... Procedure established by law", with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with "do or die" patriotism, was launched be sapped by formalistic and pharisaic prescriptions,

11 **(1978) 4 SCC 494**

> regardless of essential standards? An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21. It is too grave to be circumvented by a black letter ritual processed through the legislature."

31. More recently in ***Arnab Manoranjan Goswami Vs. State of Maharashtra and Others***[12]**.** The status of liberty in our constitutional value system, realities of the criminal justice process, and nature of the right of bail came up squarely for consideration.

32. The Supreme Court in ***Arnab Goswami (supra)*** was cognizant of the tendency to misuse criminal law and held unequivocally that the courts have to ensure that criminal law does not become "weapon for the selective harassment of the citizens".

33. The self imposed fetters on grant of bail under Article 226 of the Constitution of India were removed. The first principles of writ jurisdiction for upholding the fundamental liberties of the citizens were reiterated:

> "..However, the High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of state power.
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> **71.** While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court."

34. Reinforcing the connection between the concept of liberty and the process of criminal law, the Supreme Court in ***Arnab Goswami (supra),*** determined the characteristics

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12 **2020 SCC OnLine 964**

of liberty and delineated the duties of courts across the spectrum:

> "Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."
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> 74. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation.
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> "...Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions."

35. Constitutional courts have to constantly be at the vanguard of the defence of liberties of citizens.

Provisions for bail in High Court Rules:

36. The process of maturation of a bail application before it is placed before the Court, is contained in Rule 18 of Chapter 18 of the Allahabad High Court Rules. The relevant part of Rule-18 (as amended on 19.09.2018) is reproduced below:

> "***[(3) Save in exceptional circumstances-***
> ***(a) No bail application shall be placed before the Court unless notice thereof has been given to the Government Advocate and a period of two days has elapsed from the date of such notice.***
> ***(b) If the application for bail has not been moved within seven days***

after the expiry of the aforesaid period of two days the applicant or his counsel shall give two days previous notice to the Government Advocate as to the exact date on which such application is intended to be moved.
(c) Where the prayer for bail is contained in a petition of appeal or application for revision, notice thereof may be given to the Government Advocate the same day prior to the hearing of such petition or application and the fact of such previous notice having been given, shall be endorsed on such petition or application. Alongwith such notice a certified copy or one attested to be true by the counsel, of the Judgment appealed from or sought to be revised shall also be given to the Government Advocate.]

(emphasis supplied)"

37. Thus under the Allahabad High Court Rules, the time to run various procedural formalities before a bail is placed before the court is two days.

38. The provision has an interesting history. The time period for maturation of the bail application under unamended Rule 18 of the Allahabad High Court Rules was ten days.

39. A bail processual framework violates fundamental rights and personal liberties of an accused guaranteed under Articles 14 and 21 of the Constitution of India in the following situations:

A. Provisions with an unreasonably large time for maturation of a bail application;

B. Procedures where the time period for hearing of a bail application is undefined;

C. Practices causing indefinite deferment of hearing of a bail application.

D. Failure of police authorities to provide timely instructions to the Government Advocate before the hearing of bail application.

40. Such provisions and practices are vulnerable to a constitutional challenge.

41. Attributes of the processual framework of bails which are in accord with Articles 14 and 21 of the Constitution of India are these. Bail applications have to be processed expeditiously and placed before the court for hearing in a reasonable and definite time frame. The procedure for processing the bail application needs to be consistent, and the time period for hearing of the bail application has to be certain.

42. The proposition that a bail application cannot be under procedural incubation for an unreasonable time, is the sequitor of the preceding tenets of constitutional law. These were at the heart of the efforts made by Shri Haider Rizvi, a public spirited lawyer to reform the bail procedures in this Court, and make them consistent with Articles 14 and 21 of the Constitution of India. Efforts of Sri Haider Rizvi, learned counsel bore fruit when the necessary amendments were made to Rule 18 of the Allahabad High Court Rules, reducing the period of notice of bail from ten days to two days.

IV. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989 : Relevant Provisions and Discussion

43. The Constitution of India asserts the equality of all its citizens. However, the founding fathers were equally conscious of inequalities which blight our society. Many sections of our society are downtrodden and oppressed because of historical reasons. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (as amended from time to time), is a recognition of the fact of inequalities in our society; and a reflection of the resolve to do equal justice.

44. The controversy in hand requires a determination of statutory mandate of relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (as amended from time to time). Determination of statutory mandate is an exercise in interpretation of the statute. The statutory mandate can be distilled by understanding the legislative intent, surveying the relevant provisions of the enactment, examining the words employed by the legislature, and being guided by settled canons of statutory interpretation.

45. The relevant extract of statements of objects and reasons of the Act is reproduced below:

> ***"Statement of Objects and Reasons-*** *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and for providing relief and rehabilitation of the victims of such offences.*

2. Despite the deterrent provisions made in the Act, atrocities against the members of the Scheduled Castes and Scheduled Tribes continue at a disturbing level. Adequate justice also remains difficult for a majority of the victims and the witnesses, as they face hurdles virtually at every stage of the legal process. The implementation of the Act suffers due to (a) procedural hurdles such as non-registration of cases ;(b) procedural delays in investigation, arrest and filing of charge-sheets; and (c) delays in trial and low conviction rate"

46. The provisions of the Act (material to the controversy) shall now be considered.

47. Section 2 (bd) defines the "Exclusive Special Court", Section 2(d) defines the "Special Courts", while Section 2 (ec) defines "victim":

"(bd) "Exclusive Special Court" means the Exclusive Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act;"

"(d) Special Court means a Court of Session specified as a Special Court in section 14;"

"(ec) "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;"

48. Appeal against an order granting or refusing bail under the Act is regulated by Section 14 (A) of the Act, which is extracted hereinunder:

"**[14A. Appeals.** - (1) Notwithstanding anything contained in the Code of Criminal Procedure,1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.]"

49. Rights of victim and witnesses and provisions for grant of bail have merited special attention from the legislature in Section 15 of the Act. Section 15 (A) (3) and (5) being central to the controversy are reproduced hereunder:

"(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act."

"(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing."

50. Section 15 A (3) has two limbs: The first is the nomination of the agency to inform the victim about such proceedings under the Act before the Court. The second limb provides for "reasonable, accurate and timely notice" of any criminal proceedings including a bail application/bail appeal to the victim or his dependent. Section 15(A) 3 visualizes some elements of process of maturation of bail, for being placed before the Court. However, it does not disclose any time frame for the same.

51. The legislature has employed the word "shall'.

52. The word "shall" mostly denotes the mandatory intent of the legislature (***see State of Haryana Vs. Raghuvir Dayal***[13]) Considering the context of the statute and the preceding discussion the provisions are mandatory.

53. The Orissa High Court in ***Pramod Kumar Ray and Others Vs State of Odisha***[14], has held the provisions to be mandatory.

54. The first principle of interpretation of criminal statutes of strict construction of language of the enactment, was relied upon by the Supreme Court in ***Dilip Kumar Sharma Vs State of M.P.***[15] :

> "23. It is well settled that such a penal provision must be strictly construed ; that is to say, in the absence of clear compelling language the provision should not be given a wider interpretation and no case should be held to fall within which does not come within the reasonable interpretation of the statute. (M.V. Joshi V. M.U. Shimpi) If two construction are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness and eschew the other which makes ti operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute."

55. The position which thus emerges is that under the Act the State Government or Special Public Prosecutor is nominated as the sole agency with the exclusive statutory duty to inform the victim about the bail proceedings. Any practice to create an intermediate agency or alternative method for service of notice upon the victim should be avoided.

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13 **(1995) 1 SCC 132**
14 **2017 SCC OnLine Ori 349**
15 **(1976) 1 SCC 560**

56. Direct responsibility for service of bail notice upon the victim under the Act is upon the State. The Act does not contemplate sending of bail notice to the victim by the Court. At least not till the State fails in its duty to serve notice. Further, issuance of notice by the Court does not have added efficacy in these cases, since ultimately service upon victim is effected only by the State agencies.

57. The discussion shall now move to the second most critical aspect of the controversy. The time line during which the bail application matures, for being placed before the court for hearing. And the time period which will give "reasonable accurate and timely notice" to the victim.

58. While determining the aforesaid time line, the Court has to correlate and balance the mandate of statutory rights of the victim, with the imperative of constitutional liberties of the accused.

59. In the opinion of this Court, the time line suggested by the Sri Manish Goyal, learned Additional Advocate General upon specific instructions from the State Government seems to be reasonable and just. This time line implements the mandate of the statute and upholds the demands of constitutional liberties. Though efforts can always be made to streamline functioning, improve the efficiency of the system.

60. Before finalizing the time line, another issue which was

raised at the bar has to be adverted to.

61. In case State fails to serve notice upon the victim for various reasons, what would be the fate of the stipulated time line. The definition of victim under the Act is inclusive. The State is in possession of material details of the victim for service. Further State has the resources and the responsibility to serve notice. It is always open to the State to adopt different modes of service including publication in the newspapers.

62. Failure to serve notice of bail upon the victim, is failure of the State to perform its statutory function. The accused cannot be visited with penal consequences for the default of the State. The erring officials have to be proceeded against as per law. Placement of the bail application/bail appeal before the court cannot be deferred for non service of notice after the expiry of the time line stipulated below.

63. There is another aspect of the matter. A person may simply evade service in the certain knowledge that failure to serve shall defer the hearing of the bail application and extend the period of detention. This would be an abuse of the process of law and breach the fundamental right of liberty of the accused under Article 21 of the Constitution of India.

64. It was also urged on the foot of Section 15(5) of the Act, that in case the State cannot serve the notice within the stipulated period of time, it may move an application for

enlargement of the time. For the reasons in the preceding part of the narrative this contention is being noticed only to be rejected.

65. Section 15(5) of the Act cannot be put in service for extension of the notice period. The said provision comes into play only where the victim exercises his right to be heard, when the bail is placed before the Court after its period of maturation. Section 15(5) of the Act is a stage subsequent to Section 15 (3) of the Act.

66. While the rights of the victim as contemplated under the statute have to be upheld at all times, service of notice of bail application/appeal cannot be unduly delayed by the State, nor can the victim cause indefinite deferment of the hearing of the bail application.

67. The discussion now turns to the interpretation of phrase "reasonable, accurate and timely notice to the victim" under Section 15(3) of the Act. The phraseology employed by the Legislature is comprehensive and the intent is unmistakable. The victim has to be given adequate time to prepare his defence, prior to placing of the matter before the Court. The time period of 72 hours between the receipt of notice by the victim and hearing of the bail application fully satisfies the statutory requirement.

V. Final Directions

68. In light of the preceding narrative, the following directions

are issued.

69. The bail application/bail appeal under the Act shall be placed before the Court in strict adherence to the following time line and procedure:

(I) The notice of the bail application/ bail appeal under the Act shall be served upon the Government Advocate before 12:00 PM of any working day.

(II) The State Government shall ensure that service of notice of the bail application/ bail appeal is effected upon the victim not later than 96 hours after the receipt of the said notice.

(III) The victim will be entitled to 72 hours after the receipt of notice of bail.

(IV) Save in exceptional circumstances which are accepted by the Court, the bail application/ bail appeal under the Act shall be placed before the Court immediately after the expiry of 168 hours/7 days from the time of service of notice of bail application/bail appeal upon the Government Advocate as aforesaid.

(V) The report of the service of notice of bail application/ bail appeal shall be submitted by the State authority before the court showing due compliance of the provisions of Section 15(3) of the Act.

(VI) In case the counsel for the applicant does not move

the bail application/bail appeal as per the current procedure to enable it to be placed before the Court 7 days after the initial service of notice, this procedure shall be followed. The applicant or his/ her counsel shall give 96 hours of notice to the Government Advocate as to the exact date on which such application is intended to be moved. The State shall thereafter cause such notice to be served again upon the victim so as to enable him to have "accurate, notice of the proposed bail application".

(VII) During this period of 7 days notice of the bail application under the Act, the police authorities shall ensure that appropriate instructions are available with the Government Advocates to assist the Court at the hearing of the bail application/bail appeal.

(VIII) The S.S.P/ D.C.P/S.P. (in districts where there is no post of S.S.P) of the concerned district shall be the nodal officer, who shall supervise the staff charged with the duty of actually serving the notice upon the victim and to provide instructions and relevant material to the Government Advocate on the bail application. In case, there is default on part of such official, the S.S.P./ D.C.P/ S.P. of the concerned district shall take immediate action in accordance with law against such erring official.

(IX) Before parting the Court cannot but take notice of the fact that we live in the age of information technology.

The process of law cannot move at a bullock cart pace in the age of information technology. Institutions have to upgrade with the latest technological developments. Fruits of technology have to be put in the service of the people. In the legal process technology can play a critical role in effectuating the fundamental rights of the citizens in particular, and in upholding the process of law in general. The State Government and the Bar are stakeholders in the matter. On behalf of the State, it has been submitted that the office of the Government Advocate does not have the infrastructure and trained personnel to accept and process e-notices of bail applications.

(X) Accordingly, the State Government is directed to ensure that requisite infrastructure and trained personnel in the High Court (Office of Government Advocate), as well as in police stations are available to process the traffic of notices by e-mail. The bail application/ bail appeal may be served upon the Government Advocate by e-mail. In case the notice is fully accurate and contains all the relevant annexures, the said service by e-mail shall be sufficient service upon the State.

(XI) In the event of service of notice of bail application/bail appeal upon Government Advocate by e-mail, the time limit for effecting service of the said notice by the State upon the victim shall be 72 hours and

not 96 hours. The bail application in such cases shall be placed before the Court in 144 hours/6 days.

(XII) The option of e-filing of notice of bail applications/ bail appeals under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, shall be made effective w.e.f. 01.05.2021.

VI. Review of Compliance of Directions

70. The Director General of Police shall create a State Level Committee headed by Officer not below than the rank of Additional Director General of Police. The aforesaid committee shall review the working and implementation of the above said directions, streamline procedures, study the possibility of further reducing the time period of notice of bail appeals/bail applications upon the victims, and also examine the action taken against the concerned officials for violating the directions.

71. The Committee shall submit its report on annual basis before the State Government and make appropriate recommendations.

72. Expeditious service of notice of bail application/bail appeal will give an early intimation about the said proceedings to the victim. By providing the victim with early information about the notice of bail proceedings, the rights of the victim under Section 15-A (3) of the Act will be realized.

73. The review of the implementation of the directions of the

Court shall also assist the Government in framing appropriate schemes for the victim to access justice as contemplated in Section 15(11) of the Act read with Rule 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1995. The provisions are extracted hereinunder for ease of reference:

> "15(11). It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--
>
> (a) to provide a copy of the recorded First Information Report at free of cost;
>
> (b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;
>
> (c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;
>
> (d) to provide relief in respect of death or injury or damage to property;
>
> (e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;
>
> (f) to provide the maintenance expenses to the atrocity victims and their dependents;
>
> (g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;
>
> (h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;
>
> (i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;
>
> (j) to take necessary precautions at the time of medical examination;
>
> (k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;
>
> (l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;
>
> (m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;
>
> (n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals ***at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights*** ***(emphasis supplied)***
>
> **Rule 14. Specific responsibility of the State Government.**—(1) The State Government shall make necessary provisions in its annual budget

> for providing relief and rehabilitation facilities to the victims of atrocity, as well as for ***implementing an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act.***
>
> ***(emphasis supplied)***
>
> (2). The State Government shall review at least twice in a calendar year, in the month of January and July the performance of the Special Public Prosecutor and Exclusive Special Public Prosecutor specified or appointed under Section 15 of the Act, various reports received, investigation made and preventive steps taken by the District Magistrate, Sub-Divisional magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers.

VI. Consideration of Bail Application on merits:

74. Matter is taken up in the revised call.

75. The office report indicates that the notices have been served upon the victim. None appears on behalf of the victim. The bail application is being heard on its merit.

76. A first information report was lodged against the applicant as Case Crime No. 137 of 2020 at Police Station- Karkanda, District Ghazipur, on 12.05.2020 under Sections 354 I.P.C, read with Sections 3(1)Da, 3(1) Dha of SC/ST Act and Section 7/8 of POCSO Act.

77. The bail application of the applicant was rejected by learned Special Judge (POCSO Act)-1, Ghazipur, on 23.10.2020.

78. The applicant is in jail since 12.10.2020 pursuant to the said F.I.R.

79. Sri Ajeet Srivastava, learned counsel for the applicant

contends that the F.I.R. was lodged six days after the incident. The F.I.R. is a result of a trivial altercation between the adults of the family. The F.I.R. was lodged six days after much deliberation and with a view to falsely implicate the applicant. There are material contradictions in the statements of victim under Sections 161 and 164 Cr.P.C. There is no independent witness of the alleged incident. The school certificate relied to establish the age of the victim is a fabricated document. The applicant claims parity with the cases of other co-accused persons, namely, Sonu Chaudhary and Kishan Chaudhary, who have been granted bail by this Court on 02.11.2020 in Criminal Misc. Bail Application No. 31204 of 2020 (Sonu Chaudhary and another Vs. State of U.P.). It is also asserted that apart from the above said case the applicant does not have any criminal history.

80. Learned A.G.A. has opposed the bail application.

81. The submissions on behalf of the applicant clearly make out a case for grant of bail. In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is **allowed**.

82. Let the applicant- **Ajeet Chaudhary** be released on bail in Case Crime No. 137 of 2020 under Sections 354 and 506 I.P.C. read with Sections 3(2) (5)-A SC/ ST Act and 7/8 of POCSO Act, registered at Police Station- Karkanda, District Ghazipur, registered on 12.05.2020 at Police Station- Karkanda, District

Ghazipur, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient

cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(vi) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vii) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 11.01.2021
Dhananjai Sharma