HUSSAINARA KHATOON & ORS.

v.

HOME SECRETARY, STATE OF BIHAR, GOVT. OF BIHAR, PATNA

May 4, 1979

[P. N. BHAGWATI AND O. CHINNAPPA REDDY, JJ.]

Constitution of India, 1950—Art. 21— Necessity of Speedy trial of under-trial prisoners.

Ordinarily when a person is accused of more than one offence, the sentences of imprisonment imposed are directed to run concurrently but assuming the sentences of imprisonment be consecutive, the undertrial prisoners here have suffered incarceration for the maximum period for which they could be sent to jail on conviction for multiple offences. There is absolutely no reason why the under trials be allowed to continue in jail for a moment longer since such continuance of detention would be violative not only of human dignity but also of their fundamental right under Art. 21 of the Constitution. [1277A-C]

[The Court directed the High Court to submit information regarding the location of Courts, the number of cases pending in each of them and the reasons for the delay in disposal of cases to enable it to give necessary direction for setting up more Courts, appointing additional Judges and providing more facilities by way of staff and equipment so as to ensure fulfilment of the fundamental right of the accused to speedy trial under Art. 21 of the Constitution.]

ORIGINAL JURISDICTION : Writ Petition No. 57 of 1978.

Mrs. K. Hingorani for the Petitioners.

U. P. Singh for the Respondent.

The Order of the Court was delivered by

BHAGWATI, J.—This Writ Petition has come up for further directions. Mr. U. P. Singh, on behalf of the State of Bihar, has pointed out that the Order made by us on 19th April, 1979 directing release of Sukhan Sah and Ganga Prasad, being under-trial prisoners detained in Bhagalpur Central Jail and mentioned in the list furnished by Mrs. Hingorani on 16th April, 1979, is not correct, since on further scrutiny it is found that they do not fall within the category of under-trial prisoners who have been in jail for a period longer than the maximum term for which they could have been sentenced, if convicted. We. therefore, recall our Order directing release of Sukhan Sah and Ganga Prasad. Their cases will be considered by us again when the Writ Petition is taken up for final hearing on the reopening of the Court after the summer vacation.

Mrs. Hingorani has handed over to us a list of under-trial prisoners who are accused of multiple offences and who have already been in jail for the maximum term for which they could be sentenced on conviction, even if the sentences awarded to them were consecutive and not concurrent. Now ordinarily when a person is accused of more offences than one, the sentences of imprisonment imposed on him are directed to run concurrently, but even on the assumption that the sentences of imprisonment may be consecutive, these under-trial prisoners, mentioned in the list of Mrs. Hingorani, have already suffered incarceration for the maximum period for which they could have been sent to jail on conviction. There is absolutely no reason why they should be allowed to continue to remain in jail for a moment longer, since such continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the Constitution. We, therefore, direct that these under-trial prisoners be released forthwith.

We have also before us a list of under-trial prisoners furnished by Mrs. Hingorani, which gives the names and particulars of those under-trial prisoners who are accused of multiple offences and who have been in jail for a period longer than the maximum for which they could be sentenced on conviction on the basis of the sentences being concurrent, though, if the sentences of imprisonment imposed on them on conviction were directed to run consecutively, their detention as under-trial prisoners could not be said to have exceeded the maximum term. We do not for the time being, direct them to be released unconditionally but when they are produced before the Magistrates or the Courts of Session, they may be released on bail on executing a personal bond of Rs. 50/- only, without any surety and without any verification of financial solvency. We direct that a copy of this Order, may be sent through the High Court of Patna to the Magistrates and Courts of Session before whom the cases of these under-trial prisoners are pending, so that the necessary orders granting bail may be passed by them in favour of these under-trial prisoners at the earliest. The High Court may obtain a compliance report from the Magistrates and Courts of Session and submit the same to us by the middle of June, 1979.

We pointed out in our earlier Judgment dated 9th March, 1979 that speedy trial is a part of the fundamental right guaranteed under Article 21 and in order to enforce this fundamental right, it was necessary to have particulars as to the location of the Courts of Magistrates

A and Courts of Session in the State of Bihar together with the total number of cases pending in each of these courts as on 31st December, 1978 giving yearwise break-up of such pending cases and also explaining why it has not been possible to dispose of such of those cases as have been pending for more then six months. We, therefore, by our order dated 9th March, 1979 called for these particulars from the B High Court of Patna and pursuant to our directions, the High Court has sent these particulars in a detailed chart and also intimated to us what are the norms of disposals fixed by the High Court for each Court of Magistrate and Sessions Judge. But this information given to us by the High Court is not enough. We should also like to know C from the High Court how many more Courts and Judges are necessary and at which places, for ensuring the fundamental right of speedy trial to the accused in the State, having regard to the pending file and the average inflow of cases and the norm of disposals fixed for each Court of Magistrate and Sessions Judge by the High Court. The High Court should also inform us what further facilities by way of staff and equip- D ment are necessary in the Courts of Magistrates and Courts of Session, the lack of which is responsible for delays in disposal of criminal cases and is hampering the realisation of the fundamental right of speedy trial. This additional information, which of course would have to be worked out on the basis of a proper and careful analysis and appraisal of the existing and anticipated filing of cases, should E be forwarded to this Court by the High Court by 30th June, 1979 in five sets and out of these five sets, one should be handed over to Mrs. Hingorani and the other to Mr. U. P. Singh, on behalf of the State of Bihar. If the State of Bihar wishes to contest the correctness of the information supplied by the High Court or the validity of F the proposal made by the High Court, the State of Bihar may file an affidavit in reply on or before 20th July, 1979. This Court will then decide, on the basis of the material placed before it, as to what directions are necessary to be given for setting up more courts, appointing additional judges and providing more facilities by way of staff and equipment, so as to ensure fulfilment of the fundamental right G of the accused to speedy trial under Article 21 of the Constitution.

The Writ Petition will now come up for final hearing on 24th July, 1979.

N.K.A.