



[2024:RJ-JD:35400-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 1971/2017

Amar Singh son of Bagtawar Singh Ji, aged about 58 years
resident of Ward No.1, Near Power House, Gajsinghpur District
Shri Ganganagar

---Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Personnel (Ka 3/Jach) Department, Government of Rajasthan Secretariat Jaipur.
2. State of Rajasthan through Deputy Secretary, Personnel (Ka 3/Jach) Department, Government of Rajasthan Secretariat Jaipur.
3. Rajasthan High Court Jodhpur through Registrar General, Rajasthan High Court Jodhpur

----Respondents

For Petitioner(s) : Mr. Anil Vyas, Advocate

For Respondent(s) : Mr. Manoj Bhandari, Sr. Adv. assisted
by Mr. Aniket Tater, Advocate**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR****HON'BLE MR. JUSTICE KULDEEP MATHUR****JUDGMENT****Reserved on : 13/08/2024****Pronounced on : 14/11/2024***Per, Shree Chandrashekhar, J.*

The petitioner seeks to challenge the punishment of compulsory retirement awarded to him which was issued on 18th September 2015 by the order of the Governor of Rajasthan; under the signature of Deputy Secretary, Administration. In the departmental inquiry, the charge found proved against the petitioner was that he had entertained 2nd bail petition and granted bail to the accused Satyanarayan who was facing murder trial, though he had knowledge that the bail petition filed by the





said accused was dismissed by the High Court and a transfer petition seeking transfer of Sessions Case No.25 of 2009 was pending before the High Court. The petitioner has challenged the very basis of instituting the disciplinary proceeding against him and has raised manifold grounds to assail the punishment order dated 18th September 2015.

2. Briefly stated, the petitioner at the relevant time was posted as Additional District & Sessions Judge at Sangaria and was seized with Criminal Miscellaneous Bail Application No.87 of 2010 filed by accused Satyanarayan seeking bail pending the trial in Sessions Case No.25 of 2009. Previously, he had rejected the bail petition filed by the said accused vide order dated 23rd January 2010. This order refusing bail to him was taken to the High Court by Satyanarayan in S.B Criminal Misc. Bail Application No.981 of 2010 and that was dismissed on 11th May 2010. The complainant appeared in the proceeding of 2nd bail petition and sought adjournment on the ground that he had moved a petition in the High Court for transfer of the sessions case from the petitioner's Court. The petitioner however heard and allowed 2nd bail petition and granted bail to Satyanarayan on 4th June 2010. This order granting bail to Satyanarayan was challenged by the complainant in S.B. Criminal Misc. Bail Cancellation Application No.26 of 2010 and the bail granted to Satyanarayan was cancelled by the High Court vide order dated 23rd November 2011 and this bail cancellation order was placed before the Hon'ble Chief Justice. Later on, File No. Estt. B2(iii)138/2013 was moved for an inquiry against the petitioner on the direction of the then Hon'ble Chief Justice of the Rajasthan High Court and an inquiry was caused in



the matter. According to the petitioner, the preliminary inquiry conducted by the Registrar (Vigilance) was improper and illegal and was conducted behind his back. Before the competent authority, the petitioner therefore raised an objection that no preliminary inquiry as contemplated under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, 'the Rules of 1958') was conducted and he was not supplied any information that an inquiry officer has been appointed to inquire into the complaint against him. However, the explanation offered by the petitioner was found to be not satisfactory by the disciplinary authority and a memorandum of charge was served upon him on 26th September 2013. In the disciplinary inquiry, the allegation levelled against the petitioner was that of committing gross misconduct, judicial indiscipline and impropriety. He was further alleged to have failed to maintain absolute integrity and dignity of the office. The imputation in connection to the charge of extraneous consideration was to the effect that there was no substantial change in the circumstances after the dismissal of 1st bail petition vide Criminal Misc. Bail Application No.10 of 2010 and he allowed 2nd bail petition for improper motives and granted bail to Satyanarayan who was facing charge under section 302/34 of the Indian Penal Code in Sessions Case No.25 of 2009. On these allegations, two charges were framed against the petitioner and, in support thereof, the complainant Atma Ram was produced in the domestic inquiry and a few documents were laid in evidence to support the charges so framed. Those charges were framed in the following language :-

"1. That you, Shri Amar Singh while posted as Additional District and Sessions Judge, Sangaria had granted bail to the accused





Mr. Satyanarayan just within three weeks after dismissal of S.B. Criminal Miscellaneous Bail Application No.981 of 2010 by Hon'ble Rajasthan High Court ignoring that a Transfer Application had also been filed by the complainant and same was pending before the Hon'ble Rajasthan High Court.

2. That you, Shri Amar Singh, while working as Presiding Officer in the capacity of Additional District & Sessions Judge, Sangaria, malafidely and by extraneous reason granted bail to accused Mr. Satyanarayan in offence under Section 302/34 of Indian Penal Code vide order dated 4.6.2010 in Criminal Misc. Application No. 87/2010 (Sessions Case No. 25/2009) despite knowledge that earlier on 23.1.2010, this bail application has been rejected by you and also by Hon'ble Rajasthan High Court on 11.5.2010 and also knowingly that there were no substantial change in circumstances.

Thus, your above mentioned act and conduct on your part tantamount to gross misconduct, judicial indiscipline and impropriety and thus, you failed to maintain absolute integrity, dignity of the office, which is punishable under rule 16 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958."

3. In the disciplinary inquiry, the petitioner denied the allegation that he had passed the bail order under any fear or favour. He endeavoured to justify his action in taking up 2nd bail petition on the ground that till 6th May 2010 when the transfer petition was filed in the High Court there was no complaint against him, co-accused Savitri Devi was already enlarged on bail and the bail petition was to be dealt with and decided expeditiously. He further pointed out that the bail petition of Satyanarayan was dismissed as not pressed and it was not an order passed on merits by the High Court. Secondly, the complainant was granted opportunities on 7th May 2010, 24th May 2010 and 25th May 2010 but he did not produce any order of the High Court passed in the transfer petition.



4. The first charge was held proved by the Hon'ble Enquiry Judge but the charge of acting with malafide intention and for extraneous reasons in granting bail to the murder accused Satyanarayan in Sessions Case No.25 of 2009 could not be substantiated against the petitioner. A copy of the inquiry report dated 25th March 2015 was furnished to the petitioner through letter dated 8th May 2015 whereby he was offered an opportunity to submit his explanation/reply under Rule 16(10) of the Rules of 1958 within a period of 15 days. The 'majority' of the Full Court of the Rajasthan High Court did not find any substance in the explanation submitted by the petitioner against the findings recorded by the Hon'ble Enquiry Judge and, he was awarded the punishment of compulsory retirement from service under Rule 14(v) of the Rules of 1958. The punishment order dated 18th September 2015 issued under the order of the Governor of Rajasthan is reproduced as under :-

“राजस्थान सरकार

कार्मिक (क-3/जांच) विभाग

क्रमांक पं.1(198) कार्मिक/क-3/जांच/2015 जयपुर दिनांक: 18 SEP 2015
आदेश

राजस्थान उच्च न्यायालय जोधपुर के मुख्य न्यायाधीश महोदय द्वारा श्री अमर सिंह तत्कालीन ए.डी.जे. (हाल विशेष जल एस.सी/एस.टी केसेज कोर्ट बीकानेर), के विरुद्ध राजस्थान सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1958 के नियम-16 के अन्तर्गत अनुशासनिक कार्यवाही प्रारम्भ कर ज्ञापन क्रमांक:- स्था. बी-2 (iii) 138/2013/13854 दिनांक 26.09.2013 के द्वारा आरोप-पत्र/आरोप विवरण पत्र जारी किये गये।

श्री अमर सिंह पर निम्न आरोप अधिरोपित किए गए:-

1. That you, Shri Amar Singh, while posted as Additional District & Sessions Judge, Sangaria had granted bail to the accused Mr. Satyanarayan just within three weeks after dismissal of S.B. Criminal Misc. Bail Application No. 981/2010 by Hon'ble Rajasthan High Court ignoring that a Transfer Application had also been filed by the complainant and same was pending before Hon'ble Rajasthan High Court.

2. That you, Shri Amar Singh, while working as Presiding Officer in the capacity of Additional District & Sessions Judge,



Sargaria, malafidely and by extraneous reason granted bail to accused Mr. Satyanarayan in offence under Section 302/34 of Indian Penal Code vide order dated 4-6-2010 in Criminal Misc. Application No. 87/2010 (Sessions Case No. 25/2009) despite knowledge that earlier on 23-01-2010, this bail application has been rejected by you and also by Hon'ble Rajasthan High Court on 11-05-2010 and also knowingly that there were no substantial change in circumstances.

Thus, your above mentioned act and conduct on your part tantamount to gross misconduct, judicial indiscipline and impropriety and thus, you failed to maintain absolute integrity, dignity of the office, which is punishable under rule 16 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958.

श्री अमर सिंह ने उक्त आरोपों के संबंध में अपना लिखित कथन दिनांक 21.06.2014 को प्रस्तुत किया। श्री सिंह से प्राप्त लिखित कथन का अभिलेख के साथ परीक्षण किया एवं सन्तोषजनक नहीं पाये जाने पर श्री विजय विश्‍नोई, माननीय न्यायाधीश को जांच अधिकारी नियुक्त किया गया।

The Hon'ble Enquiry Judge conducted the enquiry in accordance with the law and submitted report dated 25.03.2015.

तत्पश्चात् श्री सिंह को पत्र क्रमांक 7576 दिनांक 08.05.2015 के द्वारा जांच प्रतिवेदन की प्रति प्रेषित कर अभ्यावेदन प्रस्तुत करने का अवसर प्रदान किया गया। जिसके क्रम में श्री सिंह द्वारा अपना अभ्यावेदन दिनांक 23.05.2015 के द्वारा प्रस्तुत किया गया।

In accordance with the Hon'ble Full Court resolution the report/recommendation was submitted before the Full Court for consideration in its meeting held on 08.08.2015. After considering the report/recommendation of the Hon'ble Enquiry Judge, Hon'ble the Full Court resolved as Follows:-

"Considered the explanation.

Considering the nature of the charges found proved against the officer, it is RESOLVED with majority to impose upon him penalty of compulsory retirement from service, on proportionate pension."

अतः माननीय राज्यपाल, श्री अमर सिंह तत्कालीन ए.डी.जे. (हाल विशेष जज एस.सी./एस.टी केसेज कोर्ट बीकानेर) के विरुद्ध प्रमाणित आरोपों के लिए माननीय राजस्थान उच्च न्यायालय की पूर्ण पीठ के निष्कर्ष एवं प्रस्तावित दण्ड से पूर्णतया सहमत होते हुए श्री अमर सिंह को राजस्थान सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1958 के नियम 14(V) के अन्तर्गत सेवा से अनुपातिक पेंशन पर अनिवार्य सेवानिवृत्त करने के दण्ड से दण्डित करने के एतद्द्वारा आदेश प्रदान करते हैं।

राज्यपाल की आज्ञा से,

--sd--

(कानचन्द बुनकर)

शासन उप सचिव"

5. Mr. Anil Vyas, the learned counsel for the petitioner assailed the punishment of compulsory retirement passed against the petitioner by referring to the decisions in (i) "Smt. Bimla Devi v.



*State of Bihar & Ors.*¹ (ii) "*P.C. Joshi v. State of UP and Ors.*"² (iii) "*Ramesh Chander Singh v. State of Allahabad and Anr.*"³ and (iv) "*Babu Singh & Ors. v. State of U.P.*"⁴, and put forth a submission that the petitioner could not have been subjected to disciplinary proceeding and was not liable to be awarded the punishment of compulsory retirement on the allegation of granting bail to the under-trial prisoner even though it was 2nd bail petition filed on his behalf and he was facing murder charge. Mr. Anil Vyas, the learned counsel for the petitioner further submitted that the disciplinary inquiry against the petitioner was conducted contrary to Rule 16 of Rules of 1958 and in breach of Article 311 of the Constitution of India inasmuch as the memorandum of charge vide Exhibit-2 was issued on 26th September 2013 and the Registrar (Administration) provided him the list of documents and list of witnesses about one year thereafter through letter dated 20th September 2014. It was contended that the documentary evidence laid in the disciplinary inquiry did not include (a) the order sheet of the transfer petition and (b) the petition for cancellation of bail which were necessary to examine the truth or otherwise in the complaint made against the petitioner and therefore a serious prejudice was caused to him.

6. The judicial service is not service in the sense of employment and the judicial officers are not employees of the State⁵. If such is the status accorded to the judicial officers, this is expected at all times from them that they should remain honest, impartial and maintain integrity in their actions and decisions and that must be

1 [1999] 2 SCC 8.

2 [2001] 6 SCC 491.

3 [2007] 4 SCC 247.

4 [1978] 1 SCC 591.

5 "*All India Judges Association and Others v. Union Of India & Ors.*" : [1993] 4 SCC 288.





beyond any doubt. The very nature of judicial service is such that it cannot afford to suffer continuance in service of the persons of doubtful integrity. *Lopes, C.J.* once remarked that if a servant conducts himself in a way inconsistent with the faithful discharge of duty in the service that would amount to misconduct and justify immediate dismissal from service.⁶ The High Court is the sole custodian of control over the subordinate judiciary and the control vested in the High Court under Article 235 of the Constitution of India includes disciplinary jurisdiction and it is complete control subject only to the powers of the Governor. The powers under Article 235 of the Constitution are exercised wherever there is *prima facie* material indicating an accusing finger to the judicial officer of misconduct in the discharge of duty inasmuch as he unduly favored a litigant or had passed an order actuated by corrupt motive. In "*Registrar, High Court of Madras v. R. Rajah*"⁷, the Hon'ble Supreme Court held that the High Court's control over the subordinate judiciary would comprehend within its fold taking a decision of punishment including the punishment of compulsory retirement but the exercise of power even in such a situation must be a rarity and not a common feature in the name of exercising supervisory superintendence over the subordinate judiciary.

7. The gravamen of allegation against the petitioner was that within three weeks after S.B. Criminal Misc. Bail Application No. 981 of 2010 was dismissed by the Rajasthan High Court and a transfer petition was pending before the High Court notwithstanding that, he proceeded to hear 2nd bail petition and granted bail to the murder accused. However, in S.B. Criminal

6 *Pearce v. Foster* : [1866] 17 QBD 536-542.

7 [1988] 3 SCC 211.





Misc. Transfer Petition No.3 of 2010 the complainant did not express any apprehension of wrongdoing by the petitioner. That transfer petition was filed on the ground that the petitioner granted bail to Savitri Devi wife of Ramchandra within three days after her arrest in the pending sessions trial. The other reason for seeking transfer of Sessions Case No. 25 of 2009 from the petitioner's Court was that the petitioner had allegedly declared in the open Court that it was a case of acquittal. The relevant pleadings in the transfer petition read as under :-

"A. That it is pertinent to mention here that the petitioner is a poor person and resident of Rasuwala, Tehsil Sangaria, District Hanumangarh. The Presiding Officer of learned Addl. Sessions Judge, Sangaria is under the influence of the respondent no. 3 and he has granted the bail to the respondent no. 3 within 3 days after arrest and addressed in the open court that it is a clear cut case of acquittal of the respondent no. 2 and 3, therefore, the petitioner has no hope of justice from the Presiding Officer of learned Addl. Sessions Judge, Sangaria."

8. Quite apparently, a doubt was raised by the complainant against the petitioner for the reason that the petitioner had allegedly made a comment in the open Court about the prosecution's case. May be it was a mistake on part of the petitioner to comment upon the prosecution's case but if such mistake of a judicial officer is held against him to hold that he was pre-determined or had made up his mind to grant bail to the murder accused or that he was acting with corrupt motive then no judicial officer can act freely. For one thing, it would be really impossible to ascertain the truth in the allegation made by the complainant that some comment was made by the judicial officer while conducting the case before him. Secondly, a judicial proceeding is not conducted in an iron-cast manner and this is



quite common and natural that the judicial officer would pose questions and make comments while hearing the arguments in a case. In the order dated 23rd November 2011 by which bail granted to Satyanarayan was cancelled by the High Court, there is no discussion on the merits of the matter. There is not even an observation by the High Court that the order granting bail to Satyanarayan does not satisfy the requirements in law as laid down by the Hon'ble Supreme Court in a catena of judgments. It seems that it was the observation made by the High Court in the said bail cancellation petition and not any complaint made by the complainant which prompted an inquiry against the petitioner. For easy reference, we would reproduce the order dated 23rd November 2011 passed in S.B. Criminal Misc. Bail Cancellation Application No.26 of 2010 hereunder :-

"I have heard the arguments advanced at the bar and have perused the impugned order.

The question involved in this matter is not whether the bail of the accused respondent no.2 should be cancelled or not on the ground that there exists reasons so as to show that the accused respondent no.2 has misused the liberty granted to him but the question is whether the propriety demands that such bail should be cancelled. As has been observed above that this Court rejected the bail application filed by the accused respondent no.2, which was pending since 3.2.2010 just on 11.5.2010. Obviously, this Court was not inclined to grant bail to the accused respondent no.2 and thus, counsel for the accused respondent no.2 chose not to press the said bail application. The ground of delay in trial, if at all available to the accused respondent no.2, was very much available to him on that date as well. No change of circumstances occurred between 11.5.2010 and 4.6.2010 whereby any occasion could have arisen for the learned Additional Sessions Judge, Sangaria for even considering the bail application of the accused respondent no.2.





The Hon'ble Apex Court in the case of Bimla Devi (Smt.) vs. State of Bihar and others reported in (1994) 2 SCC 8, has observed as under:-

"2. In view of the fact that the Judicial Magistrate at a later stage has himself cancelled the bail, it is not necessary for us to pass any order with regard to the petitioner's prayer for cancellation of bail but the disturbing feature of the case is that though two successive applications of the accused for grant of bail were rejected by the High Court yet the learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions. The manner in which the learned Magistrate dealt with the case can give rise to the apprehensions which were expressed by the complainant in her complaint, which was treated by this Court as a writ petition and is being dealt with as such. In the course that we are adopting, we would not like to comment upon the manner in which the learned Magistrate dealt with the case any more at this stage. We, in the facts and circumstances stated above, direct that a copy of this order be sent to the Chief Justice of the Patna High Court for taking such action on, the administrative side as may be deemed fit by him."

As the learned counsel for the petitioner has pointed out to this Court that a transfer application filed by the petitioner/complainant making aspersions against the Presiding Officer of the Court below was already pending before this Court. Accordingly, the apprehension of the complainant regarding bail having been granted for extraneous consideration cannot be said to be unfounded and cannot be said to be unjustified by any stretch of imagination.

This Court had called for explanation of the Presiding Officer who granted bail to the accused and the explanation has been sent by letter no.11/2010 dated 28.9.2010. I have carefully considered the explanation.

This Court is of the firm opinion that the explanation which has been submitted by the Presiding Officer for justifying the grant of bail to the accused respondent no.2 is absolutely unacceptable and unconvincing. It is apparent that in the explanation, the learned Presiding Officer has tried to justify his order despite the fact that aspersions had been made against him by the complainant. Neither the order passed by the Presiding



Officer nor the explanation given by him for justifying the said order can be appreciated.

Thus, this Court feels that imperative in the interest of justice, the registry be directed to place a copy of this order before Hon'ble the Chief Justice for information.

The upshot of the above discussion is that this bail cancellation application is allowed, the order dated 4.6.2010 whereby the respondent no.2 was granted bail is set aside. The bail bonds of the accused respondent no.2 are cancelled and the learned trial court is directed to take the respondent no.2 in custody and proceed with the trial of the case in accordance with law. The order dated 20.8.2010 passed by this Court staying the proceedings of the trial court is vacated."

9. The disciplinary inquiry is a quasi-judicial proceeding and it is held to ascertain the substance in the allegations. The role of an inquiry officer in a departmental inquiry is to investigate the truth or otherwise in the imputations of misconduct and to prepare a report that recommends whether the charges are proven or not. The inquiry officer is not the prosecutor and it is not his duty to somehow hold the charge proved. It is not for him to assume that the delinquent government employee is guilty of misconduct and his duty and objective should be confined to sift the evidence with a view to arrive at the truth. This is also an established norm that the inquiry officer while writing his report should rely only on the evidence adduced during the inquiry and he should not make use of any material based on his personal knowledge against which the delinquent government employee had no opportunity to defend himself.
10. Rule 14 of the Rules of 1958 enumerates the penalties that may be imposed on the delinquent government employee and one of the penalties is the penalty of compulsory retirement on



proportionate pension that can be imposed on a government employee for good and sufficient reasons. Rule 16 lays down the procedure for imposing major penalty and envisages sufficient opportunity to the delinquent government employee to defend himself in the disciplinary inquiry against him. It provides that the disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. For the purpose of preparing his defence, the government employee shall be permitted to inspect and take extract of the documents from the official records subject to relevancy of the document in the opinion of the disciplinary authority. Under sub-rule(6), the government employee shall be provided the list of witnesses and documents and he may also submit the list of documents in his defence. The powers vested in the inquiry officer are so vast that he may summon only a few of the witnesses and give permission for laying only such document and evidence which are relevant in his opinion. The report of the inquiry officer is intended to serve the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the government employee is called for. The inquiry officer should therefore take into consideration all the circumstances and facts of the case as a rational and prudent man and should draw his conclusions as to whether the charges are proved or not and each conclusion should be based on proper reasoning and logic. In "*Girdhari Lal Gupta v. D.N. Mehta, Assistant Collector for Customs & Anr.*"⁸, the Supreme Court emphasized the need for correct

8 [1970] 2 SCC 530.





assessment of evidence through an objective analysis based on cast-iron logic. Having in our mind the importance of inquiry report and the duty of the inquiry officer, we would now examine the findings recorded in the inquiry report dated 25th March 2015.

11. The Hon'ble Enquiry Judge did not accept the petitioner's stand that the complainant was causing delay in the progress of the sessions trial and held that the complainant would have little control over the sessions trial. The transfer petition remained pending in the High Court for about six months but such delay was brushed aside on the ground that the complainant might have lost the interest in the transfer petition because the accused was already granted bail on 04th June 2010. It was further observed by the Hon'ble Enquiry Judge that in view of the order passed by the High Court in the bail cancellation application staying further proceedings in Sessions Case No.25 of 2009 there was no reason or occasion for the complainant to press the transfer petition before the High Court. For holding the first charge proved, the Hon'ble Enquiry Judge referred to the statement of the complainant given in the domestic inquiry wherein he took a stand that he had objected to hearing of 2nd bail petition. The Hon'ble Enquiry Judge further observed that the petitioner had knowledge about the order dated 11th May 2010 rejecting the bail petition of Satyanarayan and he was also aware about the pending transfer petition in the High Court. The Hon'ble Enquiry Judge finally held that the Sessions Court has jurisdiction to grant bail to an accused during the pendency of trial but the manner in which the petitioner exercised such jurisdiction established that he had failed



to observe the procedure and judicial propriety. The Hon'ble Enquiry Judge incidentally commented also on the conduct of the petitioner because some aspersion was raised on his conduct by the High Court while cancelling the bail granted to Satyanarayan.

The Hon'ble Enquiry Judge held as under :-

"It is also noticed that while granting the bail application to the accused- Satyanarayan vide order dated 04.06.2010, the delinquent officer has blamed the complainant for delaying the trial but it is to be appreciated that the complainant has little control over the conduct of trial of a sessions case and it is the duty of the prosecution to produce the witnesses and to cooperate with the trial court for early disposal of the case.

Though in the written arguments and during the course of oral arguments, it is contended on behalf of the delinquent officer that one of the grounds for granting bail to the accused- Satyanarayan was that the co-accused-Savitri was already granted bail on 07.05.2010, however, from perusal of the order dated 04.06.2010, it is clear that the delinquent officer had not granted bail to the accused-Satyanarayan on the ground that the co-accused has already been released on bail. The bail was granted to the accused-Satyanarayan mainly on the ground that the complainant is delaying the trial and is not cooperating with the trial.

It is also noticed that the transfer petition filed by the complainant before the Hon'ble High Court was first listed on 21.05.2010 and on that date, the learned Single Judge has ordered for listing the transfer petition on 26.05.2010 on the prayer made by the counsel for the complainant. On 26.05.2010, none was present on behalf of the complainant and the court, after noticing the same, had ordered for listing the transfer petition after summer vacation. Thereafter, the registry had fixed the next date in the transfer petition as 07.07.2010 and thereafter on several dates, the case was adjourned and ultimately, the transfer petition was dismissed on 16.11.2011 as having become infructuous.

It seems that the complainant had filed the transfer petition before the Hon'ble High Court with a prayer for transfer the trial of the Sessions Case No.25/2009 to any competent court of jurisdiction while apprehending that the delinquent officer





would grant the bail to accused-Satyanarayan or would pass an order in favour of the accused-persons but after the delinquent officer had granted bail to the accused- Satyanarayan on 04.06.2010, he might have lost the interest in pressing the transfer application and instead preferred an application for cancellation of bail granted to the accused-Satyanarayan and Single Judge of Hon'ble High Court vide order dated 20.08.2010 in S.B. Cr. Misc. Bail Cancellation Application No. 26/2010 had stayed the further proceedings and therefore, after 20.08.2010, there was no reason or occasion for the complainant to press the transfer petition before the Hon'ble High Court.

It is true that a court conducting trial of a sessions case has jurisdiction to grant bail to an accused during the pendency of trial, however, the manner in which such jurisdiction is exercised can also be scrutinised if some aspersions are raised as has been done in this case by the Single Judge of Hon'ble High Court while cancelling the bail of accused-Satyanarayan.

In the overall facts and circumstances as noted above, it is clear that the delinquent officer had granted bail to the accused-Satyanarayan ignoring established judicial procedure and the delinquent officer has failed to maintain judicial propriety."

12. The gist of the findings recorded by the Hon'ble Enquiry Judge is that the petitioner was required to wait for the outcome of the transfer petition filed by the complainant and it was a gross misconduct on his part to take up for hearing and deal with 2nd bail petition. A question, therefore, arises as to how long the petitioner should have waited for an order from the High Court to be produced before him by the complainant and as to how many times the hearing of 2nd bail petition could have been adjourned or it could have been adjourned till the disposal of the transfer petition. Another connected issue that would arise is whether the petitioner would have been acting against the direction for expeditious disposal of the bail petition had he adjourned the hearing of 2nd bail petition for an indefinite period; the transfer



petition was pending in the High Court for about six months. This is well remembered that timeline for disposal of bail petitions has been fixed by the High Courts and time and again the Hon'ble Supreme Court has observed⁹ that the bail petitions in subordinate Courts should ordinarily be decided within one week and in the High Courts within two or three weeks as far as practicable. In "*Chunni Lal Gaba v. Assistant Director, Directorate of Enforcement*"⁹, the Hon'ble Supreme Court observed that the accused has a right of hearing of the bail petition and the denial of hearing is an infringement of his right and liberty under the Constitution. That was a case where the bail petition was not listed for quite a long time and the Hon'ble Supreme Court observed that non-listing of a bail petition defeats the administration of justice. Years before that, the Hon'ble Supreme Court had observed in "*Gudikanti Narasimhulu & Ors. v. Public Prosecutor, Andhra Pradesh*"¹⁰ that the personal liberty guaranteed under Article 21 of the Constitution of India is too precious a value that a curial power to negate it must be exercised judiciously and not casually.

13. The information tendered by the complainant during the proceedings of 2nd bail petition in the petitioner's Court was that the transfer petition vide S.B. Criminal Misc. Transfer Petition No.3 of 2010 was likely to be listed for hearing in the High Court on 12th May 2010; hearing of the bail petition was adjourned for 24th May 2010. The complainant gave further information to the Court that the transfer petition was to be listed in the High Court

9 *Chunni Lal Gaba v. Assistant Director, Directorate of Enforcement* : [S.L.P. (Criminal) Diary No.11581/2021]; order dated 15th June 2021.

10 [1978] 1 SCC 240.





for hearing on 26th June 2010; but that was not a working day. On 25th May 2010, the hearing of the bail petition was again adjourned for 29th June 2010. On the other hand, the proceedings in S.B. Criminal Miscellaneous Transfer Petition No.3 of 2010 reveal that the transfer petition was not seriously prosecuted by the complainant, no notice was issued in that proceeding to the opposite party and, in fact, on a few dates no one appeared for the complainant. For the sake of fullness, we record that the transfer petition was listed for hearing on as many as 21 occasions between 21st May 2010 and 16th November 2011 when it was eventually dismissed as infructuous. However, the Hon'ble Enquiry Judge did not accept the stand taken by the petitioner that a departmental proceeding could not have been initiated against him merely because he granted bail to the accused and that there were subsequent developments and substantial change in the circumstances.

14. This is one of the canons of judicial ethics that the judicial officers perform their duties without unnecessary delays and ensure that the justice is not delayed. Mere knowledge of the pendency of the transfer petition in the High Court was not such a compelling reason for the petitioner not to deal with 2nd bail petition. In "*Hussain & Anr. v. Union of India & Ors.*"¹¹, the Hon'ble Supreme Court observed that denial of speedy justice is a threat to public confidence in the administration of justice and timely delivery of justice is a part of human rights. The Hon'ble Supreme Court further observed that the deprivation of personal liberty

11 (2017) 5 SCC 702





without ensuring speedy trial is not consistent with Article 21 of the Constitution. On merits, we observe that there is hardly any material forthcoming against the petitioner to conclude that entertaining 2nd bail petition was an act of misconduct. There cannot be any exhaustive parameters for considering the bail petitions and the grant of bail depends on the contextual facts of the case and may vary from case to case. Indeed, this does not require a reference of any case law that the grant of bail is a discretionary relief. We have gone through the records and find that the order granting bail on 2nd bail petition to Satyanarayan was a reasoned order with foundations in law. The under-trial prisoner Satyanarayan was accused of running over Suchit @ Sanjeev by a tractor. He was arrested on 14th June 2009 and the charge of murder was framed against him on 22nd September 2009 but no witness was produced in the trial for about one year. In the order granting bail, the petitioner made a mention thatailable warrants and arrest warrants were issued for production of the witnesses and the complainant was not co-operating and he filed an application on 07th May 2010 in his Court for deferring the hearing of 2nd bail petition on the ground that he had filed a transfer petition in the High Court. The defence taken by Satyanarayan was that four persons had tried to stop the tractor but he did not stop the tractor fearing that they would kill him and in the ensuing confusion Suchit @ Sanjeev came in front of the tractor and got hit while the other three persons had retreated. To set up this defence, the statement of four witnesses recorded by the police was referred to by the learned counsel appearing for



Satyanarayan. The decisions in "*Chhinder Singh v. State of Rajasthan*"¹² and "*Satnam Singh v. State of Rajasthan*"¹³ were also cited on his behalf to support his defence that the offence committed by him would at the best fall under section 304-A of the Indian Penal Code. In our opinion, this is one thing to say that the view taken by the petitioner was not correct but to attribute any motive to him in dealing with 2nd bail petition while a transfer petition was pending in the High Court is definitely a different matter and that shall require some definite evidence in support thereof. In "*Ramesh Chander Singh*"³, the Hon'ble Supreme Court held that if the High Court were to initiate disciplinary proceedings based on a judicial order there must be strong grounds to suspect the officer's *bona fides* and the order itself should have been actuated with malice, bias or illegality. Pertinently, the charge of granting bail for improper motive was not found substantiated in the disciplinary inquiry and the petitioner was exonerated of that charge.

15. 2nd bail petition filed by Satyanarayan was dealt with by the petitioner in the following manner :-

English Translation from the operative portion of the order dated 04th June 2010 passed in Misc. Criminal Case No.87/2010: "*Satyanarayan v. State of Rajasthan*" in Sessions Case No.25 of 2009:

"6. After hearing both the parties, I have perused the file and carefully examined the judicial precedents. In the case of *Tejveer v. State of Rajasthan* 1989 Criminal Law Reporter (Raj) page 227, the Hon'ble Rajasthan High Court, without delving into the facts and circumstances of the case, considered the time required for the trial and deemed it just to release the accused on bail. I have carefully observed the

12 1986 [1] W.L.N. 464

13 2000 CrL. L. J. 584



facts and circumstances of the present case. In this case, the alleged offence against the accused-Satyanarayan is of running his tractor over the complainant's nephew Suchit alias Sanjeev at 4:00 PM on 12.06.09, resulting in his death. The accused-Satyanarayan has been in judicial custody for over a year, and according to his arrest memo, he was arrested on 14.06.09 and the case was committed to this Court on 17.09.09. On the very next hearing, on September 22, 2009, charges were framed against the accused, and all witnesses were summoned. However, despite issuing bail warrants and even arrest warrants, the complainant has failed to present any of their witnesses in court, although the complainant's counsel has been consistently present in the court. The delay in this case is solely due to the conduct of the complainant and his witnesses. On 07.05.10 the complainant filed an application in the Court that his transfer petition bearing Criminal Miscellaneous Petition No. 03/10 is pending in the Hon'ble Rajasthan High Court. Therefore no action should be taken in the case. When co-accused Savitri appeared in court on 07.05.10, the complainant requested that no further action be taken in this case, and that charges under Section 302 of the IPC be framed against the accused, rather than Section 304-A. The learned advocate of the accused agreed that he has no objection to the charge of Section 302 IPC. In light of the judicial decorum, the complainant was directed to present the order of the Hon'ble Rajasthan High Court on the next hearing i.e. 24.05.2010, but no such order has been submitted by the complainant till date. In view of the overall examination of the case and looking at the facts and circumstances, in my humble opinion the delay in this case is caused by the complainant and not by the accused. The learned advocates of the accused are prepared to assist the Court in every possible manner. Furthermore, it has been requested that the complainant should not demand any substantial action from the Court at this stage, and the only task for now should be the recording of statements after framing the charges. The arguments will reach the final stage after some time. However, in my humble opinion the complainant is not adopting a co-operative attitude with the Court. I have perused the case file once again. The learned advocate for the accused has referred to the judicial precedents in the State of Gujarat v.





Haider Ali Kalubhai (1976 Criminal Law Reporter (Supreme Court) Page 114) in which the Hon'ble Supreme Court opined that the elements of Section 279, Section 300, and Section 304A of the Indian Penal Code (IPC) are different. In that case, the Hon'ble Supreme Court categorized the matter under Section 304A, not Section 304 (Part II). Similarly, the learned advocate referred to the case of Satnam Singh v. State of Rajasthan (2000 Criminal Law Journal, Page 584), where the facts were similar to the present case. In that case, the Hon'ble Supreme Court considered the matter under Section 304-A, not Section 304 (Part II). Additionally, the case Chhinder Singh v. State of Rajasthan (1986 W.L.N., Page 464) was cited by the learned advocate. In this case, the accused Chhinder Singh was driving a tractor with his brother Gindar Singh and were sitting on one side of tractor's mudguard and a third person Nazar Singh was sitting on the other side of the tractor's mudguard. Due to a family dispute between Sardar Singh and Chhinder Singh, Chhinder Singh and his brother Gindarsingh deliberately ran tractor over Sardar Singh, causing his death. The tractor was driven in such a way that it was deliberately driven over Sardar Singh, causing him to fall. It was stated that Chhinder Singh intentionally ran the tractor over Sardar Singh, and a case was filed under Section 302 read with Section 34 of the Indian Penal Code (IPC), and a charge sheet was filed. The Rajasthan High Court held that despite the false allegations of provocation and incitement, the accused could only be held liable under Section 304-A. The facts of the present case, in my humble opinion, closely resemble the judicial precedent in Chhinder Singh v. State of Rajasthan. However, it would not be appropriate for me to comment on the merits and demerits of the case at this stage. The learned advocate for the accused has argued that from the examination of the statements of witnesses Raju son of Mukhram Bawri, Prem son of Ramchandra Jat, Sandeep son of Atmaram, and Surjeet, it is clear that when the accused was driving the tractor, four men attempted to stop him. The accused fearing that they would harm him if he stopped, continued driving. As a result, three of the men moved aside but the deceased Sanjeev did not move in time and was struck by the tractor leading to his death and the incident could be considered a case of suicide due to the circumstances. I have carefully





*examined the statements of these four witnesses, especially those of Raju and Surjeet Singh, who are independent witnesses. After Raju and Surjeet Singh moved their tractor aside, the accused, Satyanarayan, parked his tractor and began carrying a tali (a type of tree) with it. According to the statements of both Raju and Surjeet Singh, they followed him. Satyanarayan's tractor was ahead of them. When they reached the other side of the road, they signaled him to stop by shouting "Stop, stop!" As the tractor came closer at high speed, three of them moved aside, but one person remained in front. This sequence of events was corroborated by the statements of the witnesses during the investigation. At this stage, it would not be appropriate for me to comment on the merits and demerits of the case. However, in my humble opinion, the principles established in the judicial precedents, particularly in *Chhinder Singh v. State of Rajasthan* (1986 W.L.N., Page 464) and *Satnam Singh vs. State of Rajasthan* (2000 Criminal Law Journal, Page 584), are closely aligned with the facts of the present case. The accused has a legal right of speedy disposal of the case. The complainant has not co-operated with the Court in any manner. The accused has been in judicial custody for a considerable amount of time. Despite repeated summons, the complainant has not presented any evidence after the charges were framed. Considering the overall circumstances and the past animosity between the parties, it seems just and fair to grant bail to the accused.*

7. Therefore, the application for bail filed under Section 439 of the Cr.P.C. by the accused-Satyanarayan is hereby accepted. The accused is granted bail on the condition that he submits two sureties of ₹25,000 each and a personal bond of ₹50,000 before the Court. It is also important to note that the observations made in this order are limited to the disposal of this bail application and should not be considered as final findings on the merits of the case."

16. If an order is passed without there being any corrupt motive the same cannot be made the basis for initiating a disciplinary proceeding against the judicial officer. No one is infallible and the Constitution itself provides the hierarchy of Courts and a provision



for review under Article 137. To err is human and it would be really preposterous to assume that a judicial officer cannot commit mistake of any kind in passing the judicial orders. A mistake committed by the judicial officer may some time seem to be an intolerable error but the right course to deal with such a situation would be to correct the mistake and to ensure dignity of the Court. In "*Kashi Nath Roy v. State of Bihar*"¹⁴, the Hon'ble Supreme Court observed that the higher Courts should convey its message in the judgment to the officer concerned through the process of reasoning, essentially persuasive, mellowed and result oriented but rarely as a rebuke.

17. No doubt it is lawful for the departmental authority to pass an order of punishment against the delinquent government employee provided there is some evidence. However, in a case in which the punishment of compulsory retirement from service has been passed based on an inquiry report which itself is based on no evidence then the writ Court must step in and remedy the mistake committed by the departmental authority. In "*K.P. Tiwari v. State of Madhya Pradesh*"¹⁵, the Hon'ble Supreme Court observed that the judicial officers work under psychological pressure and every error howsoever gross it may look should not be attributed to improper motive. In the departmental inquiry against the petitioner, the complainant could not support the allegation of extraneous consideration in granting bail to Satyanarayan. The Hon'ble Enquiry Judge also did not find any material to conclude that the order passed in 2nd bail petition was actuated by corrupt

14 [1996] 4 SCC 539.

15 AIR 1994 SC 1031.



motive. For a robust and impartial subordinate judiciary, it is necessary that the High Court remains alive to the ground realities and should not encourage frivolous complaints. Else, the judicial officers would be in a state of dilemma in every case dealt with by them and it would be really difficult for them to discharge their duty in an independent manner. Indeed, the subordinate judicial officers look upon the High Court for guidance and protection from desperate complaints. The order-sheet of the transfer petition was not produced in the domestic inquiry and the Hon'ble Inquiry Judge had no material before him to discuss and verify the stand taken by the petitioner that the complainant was delaying disposal of 2nd bail petition. This is also a matter of record that the documents laid in evidence in the departmental inquiry against the petitioner were not even proved through any witness and there was hardly any legally admissible material produced before the Hon'ble Inquiry Judge. May be the genuineness of those documents were not denied by the petitioner but the petitioner had no opportunity to elicit any statement with reference to those documents because no witness was produced by the High Court in the disciplinary inquiry (refer, "*Roop Singh Negi v. Punjab National Bank and Ors.*"¹⁶). The inquiry report serves a vital purpose in a disciplinary proceeding inasmuch as the inquiry officer conducts a fact finding inquiry but the mere *ipse dixit* of the inquiry officer is not sufficient to hold the charge proved against the government employee. In "*M.V. Bijlani v. Union of India*"¹⁷, the Hon'ble Supreme Court observed that an inquiry officer performs a quasi-

16 [2009] 2 SCC 570.

17 [2006] 5 SCC 88





judicial function and he must arrive at a conclusion upon analysing the documents that there is a preponderance of probability to prove the charge on the basis of materials on record.

18. The complainant tendered evidence to the effect that he apprehended foul play because co-accused Savitri Devi was bailed out by the petitioner within three days of her arrest and the petitioner continued to deal with 2nd bail petition, though the transfer petition was pending consideration before the High Court. But in the cross-examination, the complainant accepted the suggestion that he was not seriously prosecuting the transfer petition and he admitted that he never visited the High Court after filing the transfer petition. This is the statement of the complainant that he did not make any allegation of extraneous consideration against the petitioner in the bail cancellation petition. He also admitted that he never made any complaint against the petitioner before he filed the transfer petition in the High Court. More importantly, the complainant stated in the domestic inquiry that the application vide Exhibit-P.11 was prepared by his counsel for adjournment in the petitioner's Court and he had no knowledge about the contents thereunder.

19. The relevant portions of the cross-examination of the complainant are extracted below :-

English Translation

"I did not read the affidavit Exhibit P. 11 before signing it. I only told the lawyer to write in it that our hearing is going on in the High Court, please do not hear the bail application today. I do not know what else did the lawyer write as I am illiterate. This lawyer was not appointed by me; he was just a lawyer I happened to engage that day.

When the transfer application was filed in the High Court, I had come to the High Court that day, but after that, I would only visit the lawyer and did not appear in court. The transfer petition was pending in the High Court for about eight to nine months.





During this time, I kept in contact with the lawyer but never went to court. It is true that the matter was pending for nearly one and a half years, and during this period, I never went to the High Court. It is also true that I had suspicions that Amar Singh had accepted a bribe to approve the bail of Savitri Devi, but I never saw any exchange of money. It is true that both the accused Satyanarayan and Savitri Devi were charged under Section 302 of the IPC by Amar Singh. I do not remember for how many days the file remained under testimony during his tenure. During this period, we did not produce any witness because our transfer application was pending in the High Court. It is true that from the beginning of the case until today, I have not made any complaints against Amar Singh, I only filed the transfer petition. It is true that there is my signature on Exhibit P.4 in the file S.B. Criminal Misc. Transfer Petition No. 3/2010 at all places from A to B and the affidavit attached with it also has my signature at both places from A to B. I don't know why the fact of suspicion of bribery is not mentioned in transfer application (Exhibit P.4).

The judge had given me two opportunities. He had told me once, "You bring the stay order from the High Court." The second time, he did not accept my petition, so I sent it by post. When Mr. Amar Singh granted bail to Savitri, I filed a petition in the High Court to have this order canceled, but it was dismissed. In a case under Section 302 IPC where a 16-year-old child was murdered and bail is granted in just four days, it naturally raises suspicions. It is incorrect to say that I filed a false transfer petition in the High Court due to the adverse order regarding Satyanarayan's bail, and that I am making baseless allegations against Mr. Amar Singh due to animosity, claiming him to be someone who influences decisions with bribes."

20. The jurisdiction of the High Court to issue a writ of *certiorari* under Article 226 of the Constitution is a plenary jurisdiction but the High Court exercises this jurisdiction not as an appellate Court. In one of the earliest judgments, in "*State of Andhra Pradesh & Ors. v. S. Shree Rama Rao*"¹⁸ it was held that the High Court is not constituted as a Court of appeal in a proceeding under Article 226 of the Constitution over the decision of the authority holding a departmental inquiry against a public servant. However, if the departmental authority fails to take into consideration a material fact which would change the course of the decision then that shall be an error in law and the High Court shall be justified in interfering with the order of punishment. It is also well-settled that the High Court may interfere with the punishment awarded in

¹⁸ AIR 1963 SC 1723.





a departmental proceeding if there was no evidence against the government employee and the disciplinary authority simply accepted the inquiry report and based on that passed the order of punishment. In "*Narinder Mohan Arya v. United India Insurance Company Ltd. & Ors.*"¹⁹, the Hon'ble Supreme Court observed that the writ Court shall bear in mind the distinction between some evidence and no evidence and the real question required to be posed is whether some evidence adduced in the domestic inquiry would lead to the conclusion about the guilt of the delinquent officer. The Hon'ble Supreme Court further observed that the High Court while exercising its writ jurisdiction should examine as to whether the evidence adduced before the inquiry officer had any nexus with the charge and could or could not lead to the guilt of the employee. We would also refer to "*Kuldeep Singh v. Commissioner of Police & Ors.*"²⁰ wherein the Hon'ble Supreme Court held that the High Court has power to interfere in the matter where the conclusions reached in the disciplinary inquiry could not have been concluded by an ordinary prudent man. The Hon'ble Supreme Court held as under :-

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have

19 (2006) 4 SCC 713.

20 [1999] 2 SCC 10.





been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

21. Just to recapitulate, the complainant could not support the allegation that the petitioner had any corrupt motive in hearing 2nd bail petition of Satyanarayan, no other witness except the complainant was produced in the disciplinary inquiry against the petitioner and merely some documents were produced before the Hon'ble Enquiry Judge to support the charges framed against the petitioner. It seems that the Full Court of the Rajasthan High Court was quite divided and perhaps there were discordant voices and that was the reason the decision to impose punishment upon the petitioner was taken by 'majority' and it was not a unanimous decision of the Full Court. In summation, there was no material produced in the departmental inquiry to connect the petitioner with the charges framed against him and it was a case of 'no evidence'. Therefore, having regard to the admitted facts, we are inclined to hold that the disciplinary authority failed to take note of the explanation offered by the petitioner. In our considered opinion, the punishment order is not sustainable in law and is liable to be quashed.

22. For the foregoing reasons, the order of punishment dated 18th September 2015 is quashed. This writ petition is allowed and the petitioner is held entitled to all consequential benefits.

23. No order as to costs.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J

50-divya/-

Whether fit for reporting:- Yes/No

