

The right to a speedy trial is an inseparable facet of Article 21 of the Constitution. Unduly long deprivation of liberty pending trial of bank fraud case and siphoning off money to shell entities, strikes at the heart of Article 21, and pre-trial incarceration cannot be allowed to degenerate into punishment without adjudication

Reaffirming the principle that “bail is the rule and jail is an exception”, which stems from the presumption of innocence, and that the process should not become the punishment, the **Supreme Court** in the case of **Kapil Wadhawan vs Central Bureau of Investigation**, has ruled that the right to a speedy trial is an inseparable facet of Article 21 of the Constitution. Unduly long deprivation of liberty pending trial strikes at the heart of Article 21, and pre-trial incarceration cannot be allowed to degenerate into punishment without adjudication.

Referring to Section 479 of the BNSS (which is formerly 436-A of the CrPC, the Court clarified that this section carves out an additional ground for an accused to seek bail and cannot be construed as a positive mandate to keep individuals incarcerated until the trial is complete, especially in cases with a maximum punishment of life imprisonment.

The Court explained that Section 479 of the BNSS has come into force to de-clog the prisons in India, which are generally plagued by the issue of overcrowding. It is a trite law that any provision involving liberty has to be construed as per the touchstone of personal liberty of a citizen, who cannot be put behind bars for a long time without following the procedure established by law.

The provision of Section 479 is to be read in addition to the provisions relating to the grant of bail under Section 481, 480 of the BNSS, which essentially carve out additional grounds for an accused seeking bail, who is incarcerated for a substantial period of time as an undertrial. Thus, the Court pointed out that those who have served one-half of the maximum sentence or one-third if he/she is a first-time offender, can apply to the Court for bail under this provision.

This provision also mandates a positive obligation on the Superintendent of Jail to seek bail, on behalf of the under-trial, if they satisfy the condition under subsection (1) of 479 of BNSS. Such a provision cannot be interpreted to suggest that it's a mandate under law to not release under-trial prisoners unless they complete one-half or one-third of their sentence, as the case may be. Such an interpretation would create havoc in the jails and create a great burden on the prison system in India, emphasised the Court.

The Court observed that the accused, having been charged with offences having a maximum punishment of life imprisonment, cannot claim benefit under Section 479 of BNSS. However, it cannot be construed as a positive mandate to keep them incarcerated till the completion of the trial.

Coming to the facts of the case, the Court found that the appellant was made an accused on account of non-payment of loan and credit facility availed from a consortium of 17 Banks and divesting of the money in 81 shell companies. The Court also admitted that, based on documentary evidence, all the accused persons connected with these companies, except the appellants, have been granted bail. Further, a total of 11 cases have been registered against the appellant, and in all other cases, the appellants have been released on bail.

At the same time, the Court found that the chargesheet filed by the CBI is voluminous in nature, containing more than 4 lakh pages and having 736 witnesses. In addition, the proceedings against the assets have already been taken up by the NCLT, and the CIRP is in progress. However, pending trial, the charges have not yet been framed by the Court.

Therefore, finding that the conclusion of the trial is not possible in the near future, that the case is solely based on documentary evidence, all other accused persons connected with the companies have been granted bail; and that the appellants have already been released on bail in all 10 other related cases, the Court without expressing any opinion on the merits of the case, deemed it appropriate to release the appellants on bail, subject to the caveat that the appellants shall furnish a personal bond of Rs. 10 lacs, surrender their passports, and not influence the witnesses.