

GAHC010282762023



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./53/2024

N. PRIYO KUMAR SINGH @ KESHO MAITIE
S/O LATE N. SAKHENBA SINGH,
R/O UCHHIWA, P.S.- MAYANG IMPHAL, DIST.- IMPHAL WEST, MANIPUR.

VERSUS

THE NATIONAL INVESTIGATION AGENCY
REP. BY SC, NIA.

Advocate for the Petitioner : MR. K SINGHA, MR P J PATAR, M DEVI

Advocate for the Respondent : SC, NIA,

Date of hearing : 18.12.2024.

Date of judgment : 18.12.2024.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER (Oral)

(Suman Shyam, J)

Heard Mr. Z. Kamar, learned senior counsel assisted by Mr. K. Singha, learned counsel appearing for the appellant. We have also heard Mr. R. K. D. Choudhury,

learned Deputy Solicitor General of India assisted by Mr. D. Bharadwaj, learned counsel representing the respondent/National Investigation Agency (NIA).

2. This appeal is directed against the judgment and order dated 14.11.2023 passed by the learned Special Judge, NIA, Assam, Guwahati in Misc.(NIA) Case No.30/2023 rejecting the bail petition of the appellant primarily holding that in view of the restrictions imposed by the proviso to Section 43-D(5) of the Unlawful Activities Prevention Act, 1967 (UAPA for short) and considering the decisions rendered by the Hon'ble Supreme Court in the case of **Union of India Vs. K. A. Najeer** reported in **(2021) 3 SCC 713** and **Thwaha Fasal Vs. Union of India** [Crl. Apl. No.1302/2021] it is only the constitutional courts that can grant bail to an under trial prisoner facing trial in respect of charges framed under the UAPA by invoking the jurisdiction under Article 21 of the Constitution.

3. Before dealing with the legal issues raised by the parties, it would be pertinent to briefly note the facts of the case. Based on an ejahar dated 24.11.2011, NIA Case bearing No.RC-03/2011/NIA GUW was registered under Section 120B/121/121A IPC read with Sections 10/13 of the UAPA, 1967. The basic allegations brought against the appellant was that he is the Commandar-in-Chief of a banned terrorist organization operating from the soils of Manipur, which was responsible for extortion and collection of ransom by kidnapping. On 11.06.2012 the appellant was arrested and since then, he is in custody. Initially, the NIA had submitted charge-sheet on 07.12.2012 under Section 120B/121/121A/420/468/471 of the IPC read with Section 10/13/17/18/20/38(2)/39(2) of the UAPA. A supplementary charge-sheet was

submitted by the NIA on 30.12.2013 and thereafter, again on 30.06.2014. In all, there are 6 (six) accused persons in this case including the appellant and his wife viz., N. Laxmi Devi, all of whom were made to face trial from custody. However, by order dated 03.01.2023 passed by this Court in Crl. Appeal No.79/2022 Ms. Laxmi Devi i.e. the wife of the appellant, has been released on bail. It is submitted at the bar that three other accused persons have also been released on bail, thus leaving the present appellant and another accused in jail.

4. The primary ground urged by the appellant in this appeal is that the maximum punishment permissible in this case would be life imprisonment. As such, since the appellant has already suffered incarceration of more than 12 ½ years as an UTP, hence, it is a fit case to release the appellant on bail only on such ground.

5. Mr. Kamar, learned senior counsel for the appellant has argued that a number of witnesses are yet to be examined by the prosecution (NIA). Therefore, it is evident that there would be substantial delay in conclusion of the trial. Under such circumstances, submits Mr. Kamar, further detention of the appellant in custody would be in utter violation of his fundamental rights guaranteed under Article 21 of the Constitution of India. In support of his above argument Mr. Kamar has placed reliance on the decision of the Supreme Court rendered in the case of **Union of India Vs. K. A. Najeeb** reported in **(2021) 3 SCC 713** to submit that when the personal liberty of a citizen is at stake, the constitutional courts must come to the rescue of the citizen by invoking powers under Article 21 of the Constitution.

6. By referring to the decision of the Supreme Court rendered in the case of

Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. Union of India reported in **(2024) 8 SCC 293** Mr. Kamar has further argued that the present is a fit case where this Court, in exercise its constitutional powers, ought to grant bail to the appellant by ignoring the bar, if any, imposed by Section 43-D(5) of the UAPA, 1967.

7. Responding to the above submissions, Mr. R. K. D. Choudhury, learned Dy.SGI has submitted that the prosecution intends to examine another 25 witnesses (approximately). However, due to the prevailing law and order situation in the State of Manipur, securing the attendance of the witnesses is being hit by unexpected delay. In so far as the bail prayer made by the appellant is concerned, Mr. Dev Choudhury has invited the attention of this Court to Section 43-D(5) of the UAPA to submit that having regard to the seriousness of the offence alleged in this case, this Court may take an objective view in the matter while considering the prayer made by the appellant and pass appropriate order(s).

8. We have considered the submissions made at the Bar and have also gone through the materials available on record.

9. At the very outset, it will be of utmost significance to note herein that admittedly the appellant has already spent more than 12 ½ years in Jail custody facing trial pertaining to offences in respect of which, the maximum sentence is life imprisonment. Ordinarily, this itself would be sufficient for this Court to allow the appeal filed by the appellant particularly in view of the submission made by the learned Dy.SGI stating that the prosecution intends to examine another 25 witnesses before bringing down curtains to the evidence to be adduced by the prosecution

side. Examining 25 more witnesses, in the prevailing situation in the State of Manipur, would undoubtedly delay the conclusion of the trial substantially, as a result of which, the appellant may end up suffering incarceration for more than 14 years in prison just as an undertrial prisoner. In such an eventuality, there would be serious infraction of the rights of the appellant guaranteed under Article 21.

10. In the case of **K. A. Najeeb** (supra), a three Judges Bench of the Hon'ble Supreme Court has taken note of the numerous judgments of the Apex Court whereby, it had been held that the liberty guaranteed by Part-III of the Constitution would cover within its protective ambit not only the procedure and fairness but also access to justice and speedy trial by observing that undertrials cannot indefinitely be detained pending trial. By referring to the restrictions imposed by Section 43-D(5) of the UAP the Supreme Court has made the following observations in paragraph 17, which are reproduced herein below :-

“17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of

constitutional right to speedy trial.”

11. The decision in the case of **K. A. Najeeb** (supra) was followed by a two Judges Bench in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari** (supra) wherein, a similar view was expressed in paragraph 32, which is reproduced herein below for ready reference :-

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

12. Our attention has been invited to a decision rendered by the Supreme Court in the case of **Gurwinder Singh Vs. State of Punjab and another** reported in **(2024) 5 SCC 403** wherein a somewhat divergent view has been expressed by observing that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. However, we find the decision rendered in the case of **Gurwinder Singh** (supra) has been explained and distinguished in the case of **Sheikh Javed Iqbal @ Ashfaq**

Ansari @ Javed Ansari (*supra*) whereby, in the later decision, the view expressed by the Larger Bench in the case of **K. A. Najeeb** (*supra*) has been followed.

13. Having regard to the peculiar facts and circumstances of the case and also the fact that the appellant has been in Jail for more than 12 years facing trial which is unlikely to conclude in near future, we are of the unhesitant opinion that this a clear instance where the fundamental rights of the accused/appellant guaranteed under Article 21 of the Constitution has been unduly infringed. This we say so particularly on account of the fact that, as noted above, admittedly and evidently, the maximum jail sentence that could be awarded by the appellant in this case is life imprisonment whereas the appellant has already suffered incarceration for more than 12 ½ years as an under trial prisoner. Moreover, nothing has been brought to our notice to hold that the facts and circumstances of this case would not justify granting of bail to the appellant even at this stage.

14. For the reasons stated herein above, this appeal succeeds and is hereby allowed. The judgment and order dated 14.11.2023 passed by the learned Special Judge, NIA is hereby set aside. Consequently, the prayer made by the appellant for grant of bail stands allowed.

15. We, accordingly, direct that the appellant N. Priyo Kumar Singh @ Kesho Maitie be released on bail on furnishing a bond of Rs.2,00,000/- (Rupees Two Lakhs) and two sureties of like amount to the satisfaction of the learned Special Judge, NIA, Assam. We also direct the appellant to surrender his passport and/or any other travel documents before the learned Special Judge, NIA as an additional condition of his

release on bail. We also make it clear that the learned Special Judge, NIA shall be at liberty to impose any further condition upon the appellant for his release on bail, if deemed necessary.

16. Before parting with the record, we make it clear that the observations made herein above have been made for the limited purpose of disposal of this appeal. Such observations shall not have any bearing during the trial of the pending case before the learned Special Judge, NIA.

The appeal stands disposed of.

JUDGE

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant