

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 294 OF 2022

- 1) Sagar Tatyarama Gorkhe
Aged 35 years, occu: Singer,
PMC Colony No.10, Near Bafna Transport,
Gurunanak Nagar, Bhavani Peth,
Pune – 411042

- 2) Ramesh Murlidhar Gaichor
Aged 39 years, occu: Singer,
Both undertrials lodged in
Taloja Central Prison, Navi Mumbai,

Maharashtra.
Survey Number 14, Jai Jawan,
Gurudwara Road, Yerwada,
Pune City, Pune – 411006. Appellants
V/s.

- 1) The State of Maharashtra

- 2) National Investigation Agency
through its Investigating Officer,
having his office at Cambala Hills,
Peddar Road, Mumbai Respondents

Mr. Mihir Desai, Sr. Advocate a/w. Mr. Neeraj Yadav, Ms. Deepa Punjani and
Ms. Rishika Agarwal i/b. Mr. Nihalsing Rathod for the Appellants.

Mr. Anil Singh, The Additional Solicitor General of India a/w.
Mr. Chintan Shah, Mr. Sandeep Sadawarte, Mr. Prasanna Bhangale and
Mr. Adarsh Vyas for the Respondent – NIA.

Smt. M.M. Deshmukh, Acting P.P. a/w. Mr. Ajay Patil, APP for the
Respondent – State.

Mr. Vishal Gaikwad, Dy. SP, NIA, Mumbai. `

Mr. Subhash Ingle, Head Constable, NIA, Mumbai.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 19th JANUARY, 2026
PRONOUNCED ON : 23rd JANUARY, 2026**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

1) This is an Appeal under Section 21(4) of the National Investigation Agency Act, 2008 (for short '**NIA Act**') by the Original Accused Nos.13 and 14 impugning the Order dated 14th February 2022, passed below Exh.490 in NIA Special Case No.414 of 2020, by the learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai.

1.1) By the impugned Order, the Application for bail filed by the Appellants under Section 439 of the Code of Criminal Procedure ('**Cr.P.C.**') for the offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 115, 120B, 201 read with 34 of the Indian Penal Code, 1860 ('**I.P.C.**') and Sections 13, 16, 17, 18, 18-A, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (for short '**UA(P) Act**') has been rejected by the trial court.

1.2) The NIA has opposed the Appeal with its Affidavit-in-reply dated 23rd June, 2022.

2) Heard Mr. Desai, the learned senior counsel for Appellants, Mr. Singh, the Additional Solicitor General of India for the Respondent – NIA, Smt. M.M. Deshmukh, the learned Acting PP and Mr. Patil, the learned APP for the Respondent – State. Perused the record.

3) The facts giving rise to this Appeal are as under :-

3.1) That, on 8th January, 2018, FIR bearing Crime No.4 of 2018 was registered at Vishrambaug Police Station, Pune under Sections 153A, 505(1)(b), 117 read with 34 of the Indian Penal Code (“I.P.C.”). Offence under Section 120B of I.P.C. was added to the crime on 6th March, 2018. On 19th May, 2018 offences under Sections 13, 16, 17, 18, 18-A, 18-B, 20, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 (“UA(P) Act”) were also added by the Investigating Agency. The FIR alleges that the accused persons had delivered provocative speeches, spreading hatred, presented misleading history, provocative songs and street plays which ultimately led to the violence. After taking into consideration the gravity of the offence, subsequently by an Order of the Government of India, the investigation of the present crime was transferred to the NIA i.e. the Respondent No.2. The investigation culminated into filing of charge-sheet.

4) Mr. Desai, learned senior counsel, at the outset, submitted that, although the bail is prayed for on various grounds, the Appellants are seeking bail mainly on the ground of parity and prolonged incarceration without trial and not on merits. He submitted that, the Appellants were arrested on 07/09/2020 and since then, they are languishing in jail. So far, no charge has been framed in the case and even if charge is framed, the possibility of completion of the hearing and trial in the said case in the near future, is very bleak. He therefore urged that the Appellants may be

released on bail as the co-accused in the said case have been granted bail by the Apex Court and this Court on the ground of prolonged incarceration.

5) Mr. Anil Singh, learned Additional Solicitor General of India strongly opposed the Appeal. He submitted that, pursuant to the criminal conspiracy and direction from CPI (Maoist), a gathering was organized to commemorate the celebration of 200th Shourya Diwas (Bravery Day) at Bhima-Koregaon. During that gathering, hatred speech was delivered in different ways thereby promoting enmity between different groups and to create hatred against the Government. He submitted that there is considerable material against the accused showing their involvement in the crime. Therefore, charge-sheet was filed against the accused including the Appellants. He submitted that the offence is of serious nature. He submitted that, the said case could not be proceeded further for various reasons which may not be attributable to the prosecution. As such, the bail may be rejected. To support these submissions, Mr. Anil Singh, learned ASG has relied upon the following decisions :-

- (i) Arvind Dham v/s. Directorate of Enforcement reported in *2026 SCC OnLine SC 30*
- (ii) Gulfisha Fatima v/s. State (Govt. of NCT of Delhi) reported in *2026 SCC OnLine SC 10*

6) In Gulfisha Fatima v/s. State (Govt. of NCT of Delhi) [2026 SCC OnLine SC 10], in paragraph 422, the Hon'ble Supreme Court held that, "Once bail has been granted to co-accused who stand on the same

factual and legal footing in terms of alleged roles, meetings, communications, and purported execution on the ground, continued incarceration of the Appellant violates the settled principle of parity.”

7) Perusal of record reveals that, the Appellants have been arrested on 7th September 2020 and are in pre-trial incarceration for more than five years as of today. Perusal of charge-sheet indicates that, in the list of witnesses annexed thereto, the prosecution has cited approximately 363 witnesses in support of its case. Admittedly, till date the charge has not been framed, rather it is yet to be framed and the chances of completing the trial in near future are bleak. The Orders of granting bail to the co-accused cited by Mr. Desai to support the ground of parity, are conceded by Mr. Singh.

8) A three Judge Bench of the Hon’ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb* reported in (2021) 3 SCC 713, in paragraph Nos.10, 11, 12, 15 and 17 has held as under :-

“ 10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43- D(5) of UAPA.

11. The High Court’s view draws support from a batch of

decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p.622, para 10)

“ 10. Bearing Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569] , on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

(emphasis supplied)

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) (1999) 9 SCC 252 : 1999 SCC (Cri) 1156, Babba v. State of Maharashtra (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118 and Umarmia v. State of Gujarat (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing

Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the 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 statute 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 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial. ”

9) The principles of law enunciated by the Hon'ble the Supreme Court in the case of *Union of India Vs. K.A. Najeeb (supra)* have been consistently followed by it in subsequent decisions. It is thus by now a settled and recognized principle of law that, the prolonged incarceration without trial amounts to infringement of right of an accused enshrined under Article 21 of the Constitution of India. The prolonged incarceration and unlikelihood of the trial being completed in

reasonable time or near future, necessitates a consequential release of the undertrial on Bail.

10) As noted above, the Appellants are already in pre-trial incarceration for more than five years as of today. Taking into consideration the ratio laid by the Hon'ble Supreme Court enunciated in *Union of India Vs. K.A. Najeeb (Supra)*, in our opinion, the Appellants can be enlarged on bail during the pendency of his trial.

11) Hence the following Order :-

(i) The impugned Order dated 14th February, 2022 passed below Exh.490 in Special Case No.414 of 2020, is set aside.

(ii) Appellants are directed to be released on bail in Special Case No.414 of 2020 arising out of C.R. No.4 of 2018 originally registered with Vishrambaug Police Station, Pune and subsequently investigated by Respondent N.I.A. pending on the file of learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai on their executing P.R. bond in the sum of Rs.1,00,000/- each with one or more solvent local sureties to make up the amount.

(iii) Before their release from jail, the Appellants shall inform the NIA, Mumbai so also to the trial Court, their prospective place of residence.

(iv) Appellants shall surrender their passport, if having or in their possession, before the trial Court, before their release from Jail.

(v) Appellants shall also provide their mobile and/or landline number to NIA, Mumbai and to the trial Court, on which they can be contacted.

(vi) Till the Appellants comply with the aforesaid conditions No.(ii) to (v), the Appellants are permitted to furnish cash surety of Rs.1,00,000/- each before the trial Court.

(vii) After the Appellants comply with the afore-noted condition Nos. (ii) to (v) above, the Appellants are entitled for return of the said cash security amount from the trial Court.

(viii) After their release from jail, the Appellants shall attend the office of NIA, Mumbai on every first Monday of every calender month between 11.00 a.m. and 1.00 p.m. and shall mark their presence till the conclusion of trial.

(ix) Appellants shall not leave the territorial jurisdiction of this Court without prior permission of the learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai seized of Special Case No.414 of 2020.

(x) Appellants shall attend all the dates before the trial Court unless precluded on medical grounds.

(xi) Appellants shall not tamper with the prosecution witnesses and/or evidence in any manner.

12) Appeal is allowed in the aforesaid terms.

13) It is to be noted here that, the Appellants are enlarged on bail only on the ground of prolonged incarceration without trial and not on merits involved in the Appeal.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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