

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

CRIMINAL APPEAL NO.429 OF 2026

Mohiuddin Siddiqui @ Mohin Khan Appellant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Kartik Garg, appointed advocate through legal aid a/w Aashka Shell, Advocate for Appellant.
- Ms. Supriya Kak, APP for the State/Respondent.
- Mr. Amogh Singh, SPP a/w Mr. Rahul Arora and Mr. Rutuparn Umesh Deo, for Respondent No.2-NIA.
- Mr. Manish Prabhune, Dy.S.P NIA, Mumbai, present in Court.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**
DATE : 08th SEPTEMBER, 2026

P.C. :

1. The Appellant has filed the present Appeal challenging the order dated 26/12/2023 passed by the learned Special Judge, Greater Bombay, passed below Ex.232 in NIA Special Case No.666 of 2022. The said application was a Bail Application. The present Appeal is preferred under Section 21 (4) of the National Investigation Agency Act. Therefore, in effect, the Appellant is seeking bail during the pendency of NIA

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Special Case No.666 of 2022 pending before the learned Special Judge at Greater Bombay.

2. Heard Mr. Kartik Garg, learned counsel for the Appellant, Mr. Amogh Singh, learned counsel for the Respondent No.2 and Ms. Supriya Kak, learned APP for the State.
3. The case arises out of RC-01/2019/NIA/MUM registered under Sections 120-B of the IPC, Sections 3, 7 r/w 25 of the Arms Act, 1959, Section 37 r/w 135 of the Maharashtra Police Act, 1951, and under Sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA). It was registered on 02/12/2018.
4. The Appellant was arrested in connection with a case in Punjab on 08/12/2018. He was transferred and shown arrested in connection with the present case on 24/12/2018. Since then, he is in custody.
5. We are informed that there were 130 witnesses cited in the charge-sheet. Obviously, all of them are not going to be

examined during the trial, but as of today, 32 witnesses are examined. We are informed, on instructions, by the learned SPP, that the prosecution intends to examine 22 more witnesses. Thus it can be seen that the trial is not likely to get over within a reasonable period. We may also note that there were four accused in this case. Out of them, accused No.3, Sundarlal Parashar, is on bail. Accused No.1, Harpal Singh, and the accused No.4, Gurjeet Singh pleaded guilty to the charges. Both of them were convicted for those offences and were sentenced to suffer RI for 5 years, which they had already undergone, and they were released. Therefore, as of today, only the present Appellant is in custody.

6. In this background, we have heard the learned counsel for the respective parties. The prosecution case is reflected in column 16 of the final report submitted by the investigating agency. The allegations against the Appellant are as follows:

On prior information received by Mr. Kailas Pingle, In-charge Police Inspector of ATS, Pune Unit; accused No.1, Harpal

Singh, was apprehended. He was driving an 18 wheeler trailer and had reached Chakan-Shikrapur Road, near Hotel Garva. The information and the number of the trailer, i.e. KA-01-AH-5951, matched. The ATS team intercepted the trailer and apprehended the accused No.1, Harpal Singh. His personal search was conducted in the presence of independent witnesses. During the personal search, one country-made pistol and five live rounds, apart from a mobile phone, were found in his possession. Accused No.1, Harpal Singh, did not have a license for possessing a firearm. Therefore, he was arrested and taken into police custody. CR No.13 of 2018 was registered by ATS, Maharashtra on 02/12/2018. Subsequently, ATS, Maharashtra State, invoked Section 20 of the UAPA on 10/12/2018.

It is the case of the prosecution that during the course of investigation, it was revealed that the present Appellant was also involved in this case. Hence, on 08/12/2018, the Appellant was declared as a wanted accused. It is the case of the prosecution that accused No.1 and accused No.2 (present Appellant) were involved in unlawful activities for the formation

of a separate state, and thereby their acts were threats to the security, integrity, and sovereignty of the country. The NIA re-registered the case on 10/01/2019 vide RC-01/2019/NIA-MUM and investigated the case. During the investigation, it was revealed that a similar Case No.156 of 2018 was registered against the Appellant at Sirhind Police Station, District Fatehgarh Sahib, Punjab. In that case, the Punjab Police had recovered a pistol, five live rounds and three mobile phones with SIM cards from the Appellant. Accused No.1, Harpal Singh, was shown as an accused in the said Case No.156 of 2018 by the Punjab Police. It is the case of the prosecution that during the investigation, it was revealed that the Appellant was in Tihar Jail between 2013 to 2016. He developed contact with one Jagtar Singh Hawara, who was involved in the murder of a former Chief Minister of Punjab. After his release from jail, the Appellant kept in touch with the said Jagtar Singh and showed willingness to join him. There are allegations that the Appellant joined the social networking sites for their separatist movement. As per the prosecution case, on the directions of accused No.4, Gurjeet Singh, the Appellant collected 2 SIM cards at Delhi

International Airport from one Pandwar on 20/10/2018. Accused No.4, Gurjeet Singh, directed the Appellant to arrange pistol and ammunition. The Appellant, in turn, asked him to provide some money and gave his bank account number. On 09/10/2018, Rs.30,000/- were deposited in that account by accused No.1, Harpal Singh's friend, Jaspreet Singh Saini, on the directions of the accused No.4. It is the prosecution case that on 14/10/2018, the Appellant went to Fatehgarh Sahib, Punjab, to deliver the weapon to accused No.1, Harpal Singh. This was the first meeting between the Appellant and the accused No.1. But at that time, the Appellant did not deliver the weapon.

7. Thereafter, the Appellant approached accused No.3, Parashar, for procuring the weapon. Accused No.3, Parashar, gave a country-made pistol to the Appellant at Hotel Check Inn, New Delhi, in the last week of October 2019. It is the prosecution case that the said country-made pistol was further delivered by the Appellant to accused No.1 at Fatehgarh Sahib, Punjab, on 01/11/2018, through one Sarabjit Singh. Incidentally, Sarabjit Singh is a witness. The same country-

made pistol was later recovered by ATS, Pune, from the possession of accused No.1 on 02/12/2018. The entire case revolves around this recovery of the weapon from accused No.1.

It is the case of the prosecution that during the investigation, accused No.3, Parashar, disclosed that he had found the said pistol during morning walk near a garbage dumping area. During investigation, the CDR analysis of accused Nos. 1, 3, 4, and the Appellant were analysed. It was concluded that there was a conspiracy amongst all of them. They were constantly in touch with each other. Accused No.4 was residing in Cyprus. He was subsequently arrested. On these allegations, the charge-sheet was filed.

8. As mentioned earlier, the charges were framed and the trial proceeded. As of today, 32 witnesses are examined.

9. Learned counsel for the Appellant made the following submissions :-

The main accused in this case were the accused Nos.1 and 4. Both of them have pleaded guilty and, on conviction, they

were sentenced to suffer the maximum sentence of five years. Compared to them, the Appellant's role is much lesser and, in spite of that, he is in custody for more than seven and half years. He submitted that, on the principles of parity, at the highest, he is not likely to get a sentence more than the period which he has already suffered in custody. He submitted that, as stated by the learned SPP, the prosecution intends to examine at least 22 more witnesses. Most of the witnesses are from Punjab, and therefore, it is not easy to procure their presence. He further submitted that even the Appellant intends to examine himself and he intends to lead defence evidence. This will take further time, and hence, the trial is definitely not going to get over within a reasonable time. Therefore, in this background, it would be only just and proper that the Appellant is released on bail during the pendency of the trial.

He further submitted that there was no reliable and admissible material against the Appellant to justify and support any of the allegations made against him. The allegations about joining social media groups were common allegations against all

the accused, and in spite of that, the 2 main accused were awarded the maximum sentence of 5 years of imprisonment. This is a relevant factor in this case. He also submitted that there is no evidence to show that the Appellant handed over the country-made pistol to accused No.1, and if that allegation is not substantiated by evidence, the entire prosecution case fails. He invited our attention to the provisions of Chapter IV of the UAPA. He submitted that neither the provisions of Chapter IV nor the provisions of Chapter VI are attracted in this present case, and therefore, the bar u/s 43-D (5) of the UAPA for the grant of bail will not apply in the present case. He submitted that as per the prosecution case, it was the accused No.3 who had actually procured the pistol and yet he was not charged with the offences under the UAPA. There is material to show that the Appellant is not involved in the commission of the offence, but in fact, he was working as an informer and was helping the investigating agency. He submitted that the Appellant is already in custody for more than seven and half years, and therefore, in the facts of this case, he deserves to be released on bail.

10. Learned SPP invited our attention to the compilation tendered in the Court. He submitted that there is evidence to show that Rs.30,000/- were actually transferred to the account of the Appellant. There are various photographs with weapons to show that the Appellant was possessing weapons. Those photographs supported the allegations made against the accused. He submitted that the prosecution would make efforts to complete the trial within three months. He further submitted that the prosecution has made an application under Section 19 of the NIA Act to conduct the trial on a day-to-day basis. He submitted that the offence is serious. The ingredients of Sections 15, 18, and 20 of the UAPA are made out. There are statements of the accused themselves showing that the Appellant had handed over that pistol to accused No.1.

11. We have considered these submissions. The prosecution and the investigating agency is required to show that the Appellant had handed over that pistol to accused No.1. Unless there is some material to show this specific act played by the Appellant, the prosecution case cannot proceed further

against him. In that context, we specifically asked the learned SPP to show the material which would sufficiently show that the Appellant had, in fact, handed over that weapon to the accused No.1. In response, the learned SPP relied on certain statements. He relied on page 460 of his compilation. The said document refers to the explanation of the Appellant himself that the accused No.4 wanted a weapon and the accused No.4 had sent Rs.30,000/- in the Appellant's account. As can be seen, this is in the nature of a confession made by the Appellant before the police, and therefore, it is hit by Section 25 of the Evidence Act.

12. Similar is the case with the learned SPP's reliance on page 503 of his compilation. This was also, again, the Appellant's explanation about the SIM cards which he had got from the accused No.4.

13. The learned SPP then relied on the screenshot mentioned on page 486. That screenshot is in respect of a chat between accused No.1 and the Appellant. However, pursuant to that chat, no specific act was committed either by accused No.1 or the present Appellant.

14. Page 513 shows photographs of the Appellant with weapons. At this stage, we are not making any observations about these photographs. It is specifically left open to be considered at the stage of trial. However, for consideration of the bail application, we may note that these particular photographs are not directly related to the present case, where the allegations are that the Appellant had given a firearm to the accused No.1. In any case, the explanation on page 513 mentioned that the Appellant had taken a licensed weapon of a private guard to pose for those photographs. There are other screenshots referred to by the learned SPP on page 740. Again, it does not take the prosecution case any further in respect of the allegations that the Appellant had handed over the pistol to accused No.1. The learned SPP then relied on statements at pages 1197 and 1255. The allegations made in these statements are related to accused Nos. 1, 4, and the present Appellant. Therefore, the material in those statements is equally applicable to accused Nos. 1 and 4, who were sentenced only for 5 years.

15. Statement of Sarabjit Singh at page No.1222 mentions that one person unknown to him had handed over the pistol with five live rounds to him (i.e. to Sarabjit Singh). After that Sarabjit Singh handed it over to accused No.1. The Appellant had not handed over that firearm to the accused No.1.

16. In short, this is the main material relied on by the learned SPP against the Appellant.

17. In this context, it is necessary to see whether any specific act is shown at the prima facie stage against the Appellant based on the material collected by the investigating agency. As submitted by the learned SPP and the learned counsel for the Appellant, Sections 18, 20, and 15 are important in this context. Section 18 and Section 20 of UAPA both refer to the commission of a terrorist act. Sections 18 and 20 are as follows:

“18. Punishment for conspiracy, etc.— Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or

any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

20. Punishment for being member of terrorist gang or organisation.—

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.”

18. Since the concept of a terrorist act is important, section 15 of the UAPA is reproduced herein below.

“15. Terrorist act.—

(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
 - (i) death of, or injuries to, any person or persons; or
 - (ii) loss of, or damage to, or destruction of, property; or
 - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
 - (iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]
 - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.
- (2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.”

19. In the present case, we do not see any material which prima facie shows that the Appellant had committed any specific act to bring it within the meaning of this provision. The only act alleged against him is that he procured the weapon for Rs.30,000/- and gave it to accused No.1. As discussed earlier, there is no reliable material to substantiate that fact. In such circumstances, the prosecution case against the Appellant is weak. Hence there are no reasonable grounds for believing prima facie that the Appellant has committed any offence under Chapter IV and VI of UAPA. In this view of the matter, the bar

under Section 43-D (5) of the UAPA will not operate against the Appellant. We make it clear that these observations are made only for the purpose of deciding this appeal, which is for consideration of grant of bail. The trial Court shall not be influenced by these observations and shall decide the matter on its own merits in accordance with law, on the basis of the evidence produced before it.

20. We have also mainly taken into consideration the fact that the Appellant is in custody for more than seven and half years. The trial is not likely to get over within a reasonable period, and the main accused were sentenced to suffer imprisonment only for 5 years. The Appellant has spent many more years than them in custody for similar allegations. Accused No.1 was actually found in possession of the firearm, whereas, as discussed earlier, there is hardly any material to show that the Appellant had handed over that weapon to the accused No.1. In this view of the matter, the Appellant deserves to be released on bail. But considering the serious nature of the allegations, some stringent conditions are required to be imposed.

21. Hence, the following order :

ORDER

- (i) During the pendency and disposal of NIA Special Case No.666 of 2022 pending before the Special Judge at Greater Bombay, the Appellant is directed to be released on bail on his executing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount.
- (ii) The Appellant shall not leave the jurisdiction of the learned NIA Special Court, Greater Mumbai, without prior permission of the said court.
- (iii) The Appellant shall surrender his passport to the Investigating Officer before being released on bail.
- (iv) Before being released on bail, the Appellant shall provide his contact number and the address where he would be staying during pendency of the trial.

- (v) The Appellant shall not establish any communication with the co-accused or any of the witnesses. He shall not tamper with the evidence or the witnesses.
- (vi) The Appellant shall remain present on all the dates before the trial court, unless prevented by circumstances acceptable to the trial court.
- (vii) He shall report to the Investigating Officer once a week, i.e. every Saturday between 04:00 pm to 06:00 pm, till conclusion of the trial.
- (viii) The Appeal is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)