

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 220 OF 2021

Surendra Pundalik Gadling

Aged about 51 years, having address at
Flat No. 79, Misal Layout Bhim Chowk,
Jaripataka, Nagpur.

...Appellant

vs.

Senior Inspector of Police,
National Investigation Agency

...Respondents

Ms.Indira Jaising, Senior Advocate a/w. Ms. Susan Abraham and
Mr. Nihalsingh Rathod i/b Mr. R. Sathyanarayanan for appellant.

Mr.Anil C. Singh, ASG a/w. Mr. Sandesh Patil, Mr.Chintan Shah,
Mr. Prithviraj Gole for respondent-NIA.

Mrs. A.S. Pai, PP a/w. Mrs. S.D. Shinde, APP for State.

CORAM : S.S. SHINDE &

N.J. JAMADAR, JJ.

Reserved for Judgment on : 26th July 2021.

Judgment Pronounced on : 30th July 2021.

(THROUGH VIDEO CONFERENCE)

JUDGMENT :

1. This appeal, under section 21(4) of the National Investigation Agency Act, 2008, is directed against an order dated 11th September 2020 passed by the learned Special Judge, NIA, Greater Bombay, on an application for temporary bail (Exh.317), whereby the prayer of the appellant-accused No.3, to release him

on temporary bail to join his family members in performing the last rites of his mother Smt. Manjula Gadling, who passed away on 15th August 2020, at Nagpur, came to be rejected.

2. Factual background can be stated in brief as under :-

(a) The appellant is arraigned for the offences punishable under sections 121, 121(A), 124(A), 153(A), 505(1)(B) and 117 read with sections 34 and 120B of the Indian Penal Code, 1860 ('the Penal Code') and sections 13, 16, 18, 18B, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 2008 ('UAPA').

(b) The appellant was arrested 6th June 2018. Bail application preferred by the appellant came to be rejected on 6th November 2018.

(c) On 17th August 2020, the appellant preferred an application for temporary bail with the assertion that his mother passed away on 15th August 2020 and he wished to join his other family members in performing the last rites/rituals of his mother.

(d) The respondent-NIA resisted the application by filing reply on 28th August 2020.

(e) By the impugned order, the learned Special

Judge was persuaded to reject the application for temporary bail holding, *inter-alia*, that as the regular bail application of the appellant has already been rejected, the prayer for temporary bail also deserved to be negated as the considerations for grant of temporary bail and regular bail are one and the same. It was further observed that in view of the interdict contained in section 43D of the UAPA, in the light of the serious nature of the accusation against the appellant, no case for grant of temporary bail was made out. The fact that at the time of the consideration of the prayer for bail, three weeks' time had already elapsed from the date of death of the appellant's mother, was also arrayed against the appellant.

(f) Being aggrieved, the appellant is in appeal.

3. Admit. With the consent of the counsels for the parties, heard finally.

4. In view of the change in circumstances, on account of passage of time, the appellant has filed an additional affidavit on 28th June 2021. The appellant has affirmed that in view of the

adverse circumstances, in which the mother of the appellant died, funeral, rites, rituals and condolence meeting etc. could not be held and remained pending till date and now it has been decided by the family of the appellant that they shall hold funeral rituals on the first death anniversary of the appellant's mother, i.e., 15th August 2021, which is proposed to be clubbed with the 20th death anniversary of the father of the appellant which falls on 20th September 2021. The proposed schedule of the rituals to be performed is indicated. The appellant, thus, prays for release on temporary bail for a period of three weeks to perform the last rites and rituals, hold and attend the condolence meeting etc. of his mother

5. An affidavit is filed on behalf of NIA, in opposition of the prayer. After adverting to the seriousness of the allegations against the appellant and the role attributed to the appellant, the respondent-NIA has assailed the tenability of the prayer as the very reason for which the grant of temporary bail was sought, does not survive any more. Temporary bail, according the respondent-NIA, cannot be granted to the appellant for a reason which no more survives. It was contended that, on the said count alone, this Court, in exercise of the appellate jurisdiction, cannot

interfere with the impugned order. Even otherwise, having regard to the seriousness of the offences and the provisions of UAPA, no fault can be found with the impugned order. Lastly, the new ground sought to be urged by the appellant by filing additional affidavit is also untenable as the rites and rituals can be performed by any other family member.

6. In the backdrop of the aforesaid facts and pleadings, we have heard Ms. Indira Jaising, the learned Senior Advocate for the appellant and Mr. Sandesh Patil, the learned counsel for NIA.

7. Ms.Indira Jaising strenuously urged that the NIA Court approached the prayer of the appellant for release on temporary bail from a completely incorrect perspective. The learned Special Judge, according to Ms.Jaising, committed a manifest error in importing the considerations which weigh in granting the bail on merits, to an application for grant of bail to participate in the funeral and last rites of the mother of the appellant. This incorrect approach vitiated the determination. Ms.Jaising further urged that, indisputably, the application of the appellant to release him on temporary bail could not be considered expeditiously and, thus, the passage of time could not have been held against the appellant. Since the appellant has explained on

an affidavit, the onerous circumstances which prevented the family from performing the last rites and rituals of the deceased mother, the prayer of the appellant to release him on temporary bail to participate in the rituals proposed to be held on the first death anniversary of his mother, cannot be resisted.

8. Ms.Jaising invited the attention of the Court to a number of orders passed by various Courts, including this Court, in the case of *Javed Noor Mohammed Fakir Vs. State of Maharashtra*.¹, *Nusrat @ Nasrat Ali Mohammad Idris Khan Vs. The State of Maharashtra*² and the order passed in the matter of co-accused in the case of *Sudha Bhardwaj Vs. The State of Maharashtra*³, wherein, on humanitarian ground, the accused were released on temporary bail.

9. As against this, Mr.Sandesh Patil, the learned counsel for NIA stoutly submitted that the appeal does not deserve consideration. Since the reason which was ascribed by the appellant for release on temporary bail does not survive, at this juncture, there is no propriety in testing the legality and correctness of the impugned order. Thus, in the instant appeal, the appellant cannot be permitted to urge a new ground for

1 2020 SCC OnLine Bom 2279

2 2015 SCC OnLine Bom 2758

3 Criminal Writ Petition No.428 of 2019 dt. 8th August 2019

release on temporary bail.

10. We have given our anxious consideration to the submissions canvassed across the bar. Indubitably, when the application was preferred before the NIA Court, the appellant had sought release on temporary bail to participate in the last rites/rituals of his deceased mother. Incontrovertibly, the appellant's mother passed away on 15th August 2020. It is affirmed in the additional affidavit that none of the family members could participate in the funeral on account of the then prevalent Covid-19 protocol.

11. The submission on behalf of NIA that since the appellant had prayed for temporary bail to participate in the last rites/rituals and on account of the passage of time, the said cause does not survive, appears attractive at the first blush. However, on a humane consideration, which the circumstances of the case and the nature of the prayer warrant, the said objection appears untenable. It was not the prayer of the appellant that he should be released to attend the funeral of his deceased mother. The specific prayer was to release him so that he can join his family in performing the rituals. From this stand point, the claim of the appellant that the rites, rituals and condolence meeting, which have been kept in abeyance, are to be performed and held

on the first death anniversary of his mother, cannot be said to be impracticable or untenable.

12. The submissions on behalf of NIA that the NIA Court's order is justifiable in the backdrop of the facts and circumstances then presented before the Court and the ground which is now sought to be urged before this Court was not at all pressed for the consideration of the NIA Court, again appears alluring. However, we cannot lose sight of the fact that what weighed with the NIA Court is that the appellant's regular bail application was rejected and the interdict contained in section 43D of the UAPA operated with full vigor. From the perusal of the impugned order, it does not appear that the NIA Court approached the issue from the perspective of humanitarian consideration. In our view, the NIA Court misdirected itself in importing the considerations which bear upon grant of regular bail to a prayer for release on humanitarian ground. Reliance placed on behalf of the respondent-NIA on the judgment in the case of ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali*** ⁴, which governs the grant of a regular bail, therefore, does not seem well founded in the context of the consideration of the prayer for

⁴ (2019) 5 SCC 1

temporary bail to participate in the last rites/rituals of the deceased mother of the appellant.

13. In the aforesaid view of the mater, we are not persuaded to accede to the submission on behalf of respondent-NIA. Having regard to the nature of the prayer and peculiar facts of the case, in our considered view, it may be appropriate to take cautious cognizance of the developments in the intervening period, particularly, on account of passage of time, and consider the prayer to release the appellant on temporary bail, purely on humanitarian ground. In the prevailing social construct, the first death anniversary of an immediate family member has an element of religious, personal and emotional significance. Admittedly, the appellant has not been able to participate in any of the rites/rituals in connection with the death of his mother. Viewed through this prism, we do not find the prayer of the appellant unjustifiable.

14. Ms.Jaising submitted that the appellant had been a practicing Advocate before he came to be arrested on 6th June 2018. Though, the Pune Police conducted a search and seizure operation at the residence of the appellant on 17th April 2018, well forty days before his arrest, the appellant did not make himself

scarce and avoid to co-operate with the investigation agency. In substance, the appellant does not pose any “flight risk”.

15. These submissions carry substance. Having regard to the situation in life of the appellant, as borne out by the record, we do not find that there is a reasonable ground to believe that the appellant may abscond. Nonetheless, we propose to impose appropriate conditions upon the appellant, an undertrial prisoner, to take care of the possible apprehension of the prosecuting agency. Likewise, charge-sheet has been lodged and the identity of the majority of witnesses is concealed. This takes care of the apprehension of tampering with evidence as well.

16. In the totality of the circumstances, in our view, the appellant can be released on temporary bail with effect from 13th August 2021 to 21st August 2021.

17. Hence, the following order :

O R D E R

- (i) The appeal stands partly allowed.
- (ii) The appellant-Mr. Surendra Pundalik Gadling, an undertrial, is ordered to be released on temporary bail from 13th August 2021 to 21st August 2021, purely on humanitarian ground, to attend the last rites/rituals

and family condolence gathering of his deceased mother, on furnishing a PR bond in the sum of Rs. 50,000/-, with one or two sureties in the like amount, to the satisfaction of the learned Special Judge, NIA Court, subject to the following conditions :

(a) The appellant shall furnish to the S.P., NIA, Mumbai, and the In-charge Police Inspector of the jurisdictional police station, within the limits of which the appellant will stay at Nagpur, the details of his travel from Mumbai to Nagpur, upon being released from Taloja Central Prison, along with the address at which the appellant would stay at Nagpur and the contact number on which he will be available during the said period, and the details of return journey.

(b) The appellant shall intimate the jurisdictional police station the date and time of his arrival at Nagpur immediately after reaching Nagpur.

(c) The appellant shall mark his presence at the jurisdictional police station on 16th August 2021 and 19th August 2021 at 10:00 a.m.

(d) The appellant shall not leave the limits of Nagpur except the proposed visit to Bina River to immerse the ashes of the appellant's mother on

18th August 2021.

(e) The appellant shall not tamper with the prosecution evidence in any manner whatsoever and shall not contact any of the prosecution witnesses for any purpose.

(f) The appellant shall surrender his passport, if any, before the NIA Court.

(g) The appellant shall intimate the jurisdictional police the time of his departure from Nagpur.

(h) The appellant shall surrender before the Superintendent, Taloja Prison by 6:00 p.m. on 21st August 2021.

(i) It is made clear that, no prayer for extension of period of bail, beyond 21st August 2021, will be entertained on any count whatsoever.

(iii) All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)

At this stage, Mr. Patil, learned counsel for NIA makes an oral application for stay to the effect and operation of this order.

Since the appellant is ordered to be released on 13th August, 2021, there is adequate time for the respondent-NIA to take out appropriate proceeding, if desired to, and therefore, we do not think it necessary to stay the effect and operation of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)