

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4677 OF 2021

NARESH RAMNIKLAL GAUR) **PETITIONER**

V/S.

UNION OF INDIA THROUGH
SP, NIA, MUMBAI) **RESPONDENT**

*** * * ***

Mr. Shirish Gupte, Senior Counsel a/w. Mr. Aniket Nikam a/
w. Mr. Ashraf Diamondwala and Saurin Shah i/by.
Diamondwala and Company, Advocate for the
petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w. Mr.
Sandesh D. Patil, Mr. Prithviraj S. Gole, Mr. Chintan Y.
Shah, Ms. Anusha P. Amin, Advocate for respondent
no.1-NIA.

CORAM : SANDEEP K. SHINDE, J.

Jugdgment Resd. On : 7th December, 2021.

Judgment Pron. On : 8th December, 2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent
of parties, taken up for hearing immediately.

2. This, petition under Article 227 of the Constitution of India, assails the order dated 20th November, 2021 by which the Special Judge stayed the operation of his own order of grant of bail for 25 days, on a request made by the National Investigating Agency.

FACTS

3. Petitioner-applicant, was granted bail on 20th November, 2021 by the Special Court at Greater Bombay in NIA Special Case No. 1090/2021 in re-registered Crime No.RC-01/2021/NIA/MUM with National Investigation Agency for the offences punishable under Sections 120B, 201, 286, 302, 364, 384, 386, 403, 419, 465, 471, 473 and 506 of the Indian Penal Code; Sections 3 and 25 of the Arms Act, Section 4 of the Explosive Substances Act, 1908 and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act. After which, the operation of the bail, order was stayed for 25 days on the following two grounds :

(i) National Investigating Agency, was intending to assail the order in Appeal before the High Court.

(ii) The Court is empowered to stay its, own order, of grant of bail, in terms of the provisions of Section 309(1) of the Criminal Procedure Code. Reliance was placed on the judgment of the Bombay High Court in the case of **C.P. Nangia, Assistant Collector V/s. Omprakash Agarwal and anr.**, (1994) Cri.Law Journal 2160.

4. Mr. Gupte, learned Senior Counsel for the petitioner, would challenge the impugned order, on the following grounds :

(i) That, the Sessions Judge has no powers under the law to stay the operation of its own order of grant of bail;

(ii) Even assuming that the power to stay bail order is incidental to power to grant bail, yet the

learned Special Judge has not recorded 'good reasons' to stay his own bail order.

5. Mr. Gupte, submitted that, the learned Judge could not have taken recourse to Section 309 of the Cr.P.C. to derive the powers, to stay his own order, in as much as, provisions of Section 309, relates to and deals with the general provisions as to 'enquiry' and 'trial'. Mr. Gupte, submitted that, the power to grant bail is neither an 'enquiry' nor a 'trial' and therefore the judgment in the case of *C.P. Nangia* (supra), could not have been relied upon.

6. Mr. Gupte, on instructions submitted that, though the bail was granted on 20th November, 2021, and stay was sought, to enable the National Investigation Agency to prefer appeal, till date, the respondents have not preferred Appeal. It is therefore submitted, the impugned order being non-est for want of power and jurisdiction, has caused interference with petitioner's right to liberty. Mr. Gupte, thus seeks to quash the impugned order.

7. Mr. Anil Singh, learned Additional Solicitor General vehemently opposed the petition and contended, that the writ petition against the impugned order was not maintainable, and at the most, the petitioner could have maintained an Appeal under Section 21 of the National Investigation Agency Act, 2008 (“N.I.A. Act” for short). He relied on Section 21(4) of the N.I.A. Act which reads as under :

“Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special court granting or refusing bail.”

8. Mr. Singh’s contention was that, all matters ‘concerning’ or relatable to ‘bail’, could be assailed only in appeal and not otherwise. It is therefore submitted that, since the impugned order was concerning ‘the grant of bail’, in terms of provisions of Section 21(4) of the N.I.A. Act, only appeal was maintainable and not the petition under Article 227 of the Constitution of India.

9. In the next place, Mr. Singh submitted that, the law laid by this Court in the case of *C.P. Nanjia* (supra), has been followed by the Gujrat High Court in the case of **Bishnoi Balwant Agarwal V/s. State of Gujarat, (2018) 3 GLR 2270**. Mr. Singh has invited my attention to paragraph-11 of the judgment in the case of *Bisnoi* (supra), wherein the learned Judge endorsed his agreement with the view expressed in the case of *C.P. Nanjia*;

“that for the reasons to be recorded, Magistrate do possess, the power to stay his own order of grant of bail, if a request is made by the Public Prosecutor in that regard.”

. In addition, Mr. Singh learned Additional Solicitor General, would also rely on the order passed in the case of **Sudha Bharadwaj V/s. National Investigation Agency and Ors. passed in Criminal Bail Application No. 2024/2021** by the learned Single Judge of this Court, in support of his contention that, sub-section (3) of Section 21 of the N.I.A. Act also encompasses orders ‘concerning’ grant or rejection of the bail.

10. I have carefully considered the submissions of the learned Counsel for the parties.

11. In so far as the maintainability of the Writ Petition is concerned, it may be stated that, the order impugned, though said to be “relatable” to bail, as argued by Mr. Singh, however, in terms of provisions of sub-section (4) of Section 21, it is not an order of a Special Court, either ‘granting’ or ‘refusing’ bail. The sub-section (4) envisage two kind of orders; one ‘granting’ and another ‘refusing’ bail. It does not specify third kind of order i.e. ‘orders concerning or relating to bail’ (emphasis supplied). Herein, the impugned order, not being order granting or refusing the bail, obviously it would not fall under sub-section (4) of Section 21 of the N.I.A. Act. That for these reasons, contention of the respondents that, Writ Petition was not maintainable, is rejected.

12. In so, far as power of the learned Sessions Judge to stay his own order of grant of bail is concerned, in

my view, the Code of Criminal Procedure does not empower the Sessions Judge to stay the operation of his order of grant of bail. The provision which can be said to be the nearest to meet the situation is Section 439(2) of the Cr.P.C.,1973. However, in it's terms, it only empowers him, to direct any person who has been released on bail to be arrested and committed to the custody. No doubt, the High Court in exercise of its power under Section 482 Cr.P.C. can stay the operation of bail order where it finds it necessary to do so, to prevent abuse of process of the Court or to meet the ends of justice. Therefore, in my view, the learned Judge could not have assumed the jurisdiction to stay its own order of grant of bail by taking recourse to Section 209 of the Cr.P.C. This being error in exercise of jurisdiction, the petition was perfectly maintainable. That even otherwise, the learned Sessions Judge has not justified the order by recording the reasons in suspending his own order.

13. In that view of the matter and for the reasons stated above, the impugned order is quashed and set aside.

The petition is allowed and the Rule is made absolute in terms of prayer clause-14(b). Petition is disposed of.

14. Mr. Patil's request for stay of operation of this order is rejected.

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signed by
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SHAILESH
SAWANT
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(SANDEEP K. SHINDE, J.)