

Uday S. Jagtap

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

CRIMINAL WRIT PETITION NO.3116 OF 2021

Gautam Navlakha	]	
Aged about 70 years,	]	
Currently UTP 196	]	
Taloja Central Jail	]	
R/o Flat No.2,	]	
R-3 Nehru Enclave,	]	
New Delhi- 110019	]	.. Petitioner

Vs.

1. National Investigation Agency	]	
7th Floor, Cumbala Hill Telephone	]	
Exchange, Peddar Road,	]	
Mumbai-26	]	
	]	
2. The State of Maharashtra	]	.. Respondents

Dr. Yug Mohit Chaudhary a/w. Ms. Payoshi Roy for the Petitioner.

Mr. Anil C. Singh, Additional Solicitor General of India a/w.
Mr. Sandesh Patil, Mr. Vishal Gautam, Mr. Chintan Shah and
Mr. Aditya Thakkar for Respondent-NIA.

Mrs. S. D. Shinde, APP for Respondent-State.

**CORAM : S. B. SHUKRE &
G. A. SANAP, JJ.**

**RESERVED ON : 5th APRIL 2022.
PRONOUNCED ON : 26th APRIL, 2022.**

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JUDGMENT: (Per G. A. Sanap, J.)

1. The petitioner is one of the accused in NIA Special Case No.414/2020. The petitioner and other 14 accused have been prosecuted for the commission of the offences under sections 153(A), 505(1)(B), 117, 120-B, 121, 121-A , 124-A and section 34 of Indian Penal Code and Sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, 1967 (for short, UAPA).

2. In this writ petition, the petitioner is seeking direction to keep him under house arrest till the completion of trial. It is the case of the petitioner that on 28.08.2018 he was taken in custody at Delhi. However, Delhi High Court stayed the arrest and directed the police to keep the petitioner under house arrest. Proceeding which led to the house arrest of the petitioner was finally terminated vide order dated 14.02.2020 passed by Hon'ble Apex Court. The petitioner, therefore, surrendered to NIA on 14.04.2020. He has been in custody since then. His bail application made under section 167 of Cr.P.C. came to be rejected. Similarly, application made by him seeking anticipatory bail also came to be rejected. He again applied for bail on medical ground before the Special NIA Court. The Special NIA Court rejected the said bail application vide order dated 23.08.2021. The petitioner has been in judicial custody and presently lodged at Taloja Central Prison, Navi Mumbai.

3. The petitioner has pleaded more than one grounds for seeking direction to keep him under house arrest. It is stated that Taloja prison is overcrowded. The conditions and environment of Taloja Central prison is not compatible to the health of the petitioner. The Petitioner has no criminal antecedents. He is a law abiding citizen. He has co-operated with the investigating agency. There is no possibility of his being at flight risk. There are no basic facilities and infrastructure at Taloja Central Prison, Navi Mumbai. There is no sufficient water and hygienic facilities at Taloja prison. Taloja prison does not have trained escort guards to ensure medical supervision. It is stated that the central jail is incompetent and ill-equipped to take care of elderly inmates such as the petitioner. Taloja Prison Authorities behave in callous and negligent manner, thereby endangering life and health of inmates including the petitioner.

4. It is stated that health of the petitioner is significantly deteriorating on account of his incarceration in Taloja Central prison. He has developed high Blood Pressure. He has developed lump in his chest. His condition requires regular monitoring. Medical facilities are woefully lacking. There is no response from the authorities at the prison to attend to medical and health problems of the petitioner. The prison does not have trained medical staff and critical life saving equipments. It is, therefore, directly violating the right of the petitioner under Article 21 of the Constitution of India.

5. The petitioner made a demand of a chair due to excruciating pain in his lower back and neck. The prison authorities did not provide him a chair, which is his basic requirement. Basic requirements of the petitioner such as healthy food, fruits, books, clean and secure wash-room and other articles have not been satisfied. He is not allowed to contact with his family members. His basic right under Article 21 of the Constitution is violated. He has no criminal antecedents. He has cooperated during the course of investigation. He undertakes to extend the same cooperation in future. The trial has not yet begun. There is no possibility of commencement of the trial in near future. Clone copies of the record have not been provided to all the accused. Considering the volume of the evidence and the number of witnesses in the case, trial may take years together to complete. The petitioner, therefore, cannot be kept languishing in jail in inhuman condition. The petitioner has, therefore, made a prayer to sent him under house arrest from the jail till the completion of trial.

6. Respondent No.1-NIA through its representative V. Vikraman has filed an affidavit and opposed the petition. It is contended that there is no merit and substance in the petition. The petition is not maintainable. The petitioner is trying to circumvent the statutory provisions and, therefore, the petition is liable to be dismissed. It is further contended that the investigation conducted in the case reveal complicity of the petitioner in the commission of crime. The investigation revealed that the petitioner is an active member of CPI (Maoist), a banned organization under the UAPA.

The petitioner and other accused were in contact with the organizers of *Elgar Parishad*. The petitioner and arrested accused persons spread the ideology of maoism/naxalism and encouraged unlawful activities. The crime committed by the petitioner and other accused is grave and serious in nature. The bail applications made by the petitioner have already been rejected on merits. He was found not entitled to get the bail on the grounds pleaded by him. One of the grounds pleaded was his ailment and health condition.

7. It is stated that electronic evidence collected during the course of investigation has established the active involvement of the petitioner with other accused in the commission of the offences mentioned above. The charge-sheet has been filed against them. Copies of the charge-sheet have been supplied to them. It is further contended that as per the mandate to Section 43-D(5) of the UAPA, the Court is required to record a *prima facie* finding on fact before granting bail. It states that if the Court finds that there are reasonable grounds for believing that the accusations against accused persons are *prima facie* true, then bail can not be granted. It is contended that while rejecting his bail application the Special NIA Court has come to the conclusion that evidence proves that accusations against the petitioner are *prima facie* true. According to respondent no.1 – NIA, no case has been made out to grant the relief and the prayer as such deserves to be rejected.

8. The Superintendent of Taloja Central prison has opposed the petition by filing the affidavit. The Superintendent has specifically denied the allegations made with regard to lack of the facilities in Taloja Central prison. It is contended that in the jail there is a canteen. The petitioner is permitted to purchase goods and articles from the prison canteen at regular intervals. The petitioner did not make demand of chair, however, chair can be provided if the Medical Officer certifies that it is necessary. The medical facilities have been provided. In the jail there is a prison hospital with facilities of Medical Officers, pharmacists and male nursing staff. There is 10 bedded hospital. Equipments are provided. Similarly, whenever the petitioner makes a complaint about his ill-health, he is initially examined in the prison hospital and if required is sent to J.J. Hospital or other Government Hospital depending upon the nature of health problem. The Superintendent has stated that there is a library in the prison with 2850 books. Petitioner has access to the books. It is specifically stated that the petitioner has made use of the library. The books are made available in time. Contention regarding dirty and open wash-room is denied. It is submitted that there is no substance in the contention. The allegations have been made just to come out of the jail. It is contended that he has been lodged in high security cell. High security cells are not overcrowded. There is no substance in the grievance. All facilities and amenities are provided. The grievance of the petitioner is properly attended.

9. We have heard learned advocate for the petitioner, the

learned Additional Solicitor General of India for respondent no.1 and the learned APP for respondent no.2 - State. Perused the record and proceedings.

10. The learned advocate appearing for the petitioner, Dr. Yug Mohit Choudhary submitted that this is a fit case to send the petitioner during trial under house arrest. The learned advocate submitted that the petitioner is 70 years old. He is suffering from number of ailments, including the old age ailments. The petitioner, according to the learned advocate is a law abiding citizen. After his arrest for one year and eight months, he was kept under house arrest as per the order of Delhi High Court and the Hon'ble Apex Court. During this period, he did not misuse liberty granted to him in any manner. He obeyed the conditions imposed by the Court. The learned advocate further submitted that there is no evidence to establish that the petitioner was involved in any violence. He has not been charged for the same. The learned advocate submitted that there is no evidence to establish the complicity of the petitioner in the commission of crime. On the basis of gravity and seriousness of the offence put forth by the NIA, the prayer cannot be rejected. The petitioner has been arrested on the basis of the images of a typed unsigned letters found on the computers of the other accused. The learned advocate submitted that the evidence compiled in the charge-sheet, at the most, may make out a case of membership of a banned organization. The learned advocate further submitted that the petitioner does not know how long he would be kept in

custody without framing charge in the case. The learned advocate submitted that considering the volume of evidence, there is no possibility of framing of charges in the near future. The petitioner has no criminal antecedents. He is suffering from serious ailments. In the submission of the learned advocate, therefore, in such a uncertain situation the liberty of the petitioner cannot be curtailed. The house arrest of the petitioner will not harm or hurt anybody. The learned advocate submitted that considering the objection raised by the respondents, this Court may impose suitable conditions of the house arrest to take care of the apprehension of the respondents. The learned advocate submitted that considering over all situation and particularly lack of medical facilities and unhygienic conditions prevailing in Taloja Central Jail, time has come to take a call and order detention of the petitioner under house custody. The learned advocate submitted that the basic needs namely; the delivery of books from relatives and other articles have not been taken care of. There is gross violation of his fundamental rights under Article 21 of the Constitution of India. The learned advocate Dr. Yug Choudhary relied upon the observations of the Apex Court from paragraph no.151 in case of **Gautam Navlakha Vs. National Investigation Agency**,¹. The learned advocate relying upon paragraph 151 submitted that most of the criteria indicated in paragraph 151 have been established in this case and, therefore, the petitioner needs to be sent under house arrest from the jail custody.

¹ 2021 SCC Online SC 382.

11. Shri. Anil Singh, the learned Additional Solicitor General of India submitted that this is not a correct stage to make the application as well as to entertain the application. The learned ASG submitted that this application is not at all maintainable keeping in mind the rigors of Section 43-D sub-section (5) of the UAPA. The learned ASG submitted that the petitioner would be required to go before the Special NIA Court and make out a case for bail. The statements made in this petition are general. The learned ASG submitted that there would be practical difficulties in implementing the order as sought for by the petitioner. The learned ASG submitted that the bail application made by the applicant is pending before the Special NIA Court. The earlier bail application made on medical ground has been rejected by the Special NIA Court. The Anticipatory Bail Application was rejected. The learned ASG submitted that the bail applications have been rejected in view of the seriousness and gravity of the crime and also the evidence compiled in the charge-sheet to establish the complicity of the petitioner in the commission of crime. The learned ASG submitted that this is not a fit case to grant the relief.

12. The learned APP Mrs. Shinde on behalf of the State submitted that in order to seek support to the petition, the petitioner has tried to exaggerate the situation. The learned APP submitted that grievance made about lack of medical facilities, unhygienic conditions in jail and failure of the prison authorities in providing the basic requirements is not correct. The learned APP submitted that the book parcel could not be accepted due to the

Covid protocol. The learned APP submitted that in Taloja Central Jail, there is a library meant for prisoners with 2850 books of different genres available in English, Hindi, Marathi and Urdu languages. The learned APP on the basis of record pointed out that the petitioner has purchased fruits and eatables from the prison canteen. He was allowed to make phone calls. The petitioner has made use of the library. The learned APP submitted that timely medical aid is made available. The learned APP submitted that in order to support the petition, the petitioner has tried to blame the jail administration.

13. In order to appreciate the rival submissions, we have minutely perused the record and proceedings. We may first deal with the dispute between the petitioner and the NIA. According to the petitioner, there is no iota of evidence to establish his complicity in the commission of crime. It is pertinent to mention at this stage that the charge-sheet has been filed against the petitioner and other accused, which runs into thousands of pages. The material evidence is in electronic form. The NIA is in the process of providing clone copies of the material to the accused. Perusal of the record would show that the allegations attributed to the petitioner are serious in nature. The crime alleged to have been committed is grave and serious. The gravity of crime is the most important factor while considering the prayer for bail or the prayer made in this petition. In our opinion, considering the gravity and serious nature of the crime, the petitioner does not qualify for his detention under house arrest. It is further pertinent

to note that the Special NIA Court has rejected his bail application made on medical ground on merits. The learned ASG pointed out that the regular bail application made by the petitioner is pending. In this context, the learned ASG drew our attention towards the provisions of Section 43-D(5) of the UAPA. Perusal of this section would show that before granting bail, a case is required to be made out. The Court would be required to consider whether the rigors of Section 43-D(5) have been satisfied to grant bail. In sum and substance, proviso to Section 43-D(5) states that if the Court on the basis of the material has a reason to believe that the allegations are *prima facie* true then, the bail shall not be granted. In our opinion, in order to arrive at such a conclusion, the Special NIA Court would be required to go through the entire material and then form a reasonable belief. It is pertinent to note that along with this petition copy of the charge-sheet has not been filed. We, therefore, had no benefit to go through the charge-sheet and the evidence. On *prima facie* analysis of the facts stated in the petition as well as in the reply of NIA, we are convinced that the accused has been prosecuted for commission of a serious crime. In the facts and circumstances, as and when regular bail application is made, the same would be tested on the anvil mandate of Section 43-D(5) of the UAPA. It is, therefore, apparent on the face of the record that for the reasons and grounds stated in the petition, the prayer made by the petitioner to send him under house custody cannot be granted. In this context, it is necessary to mention that liberty of the under trial is important. However, undue emphasis cannot be laid on the aspect of liberty, when the same is required

to be considered keeping in mind the mandate of law. Perusal of the record would show that the crime alleged to have been committed by the petitioner and others is not against a particular individual but it is against the society at large. In such cases, the liberty of the under trial prisoner and the interest of the society at large needs to be borne in mind and has to be balanced.

14. The learned APP appearing for the State of Maharashtra on the basis of material placed on record submitted that the allegations against the Officials of the Taloja Central Jail have been made to seek support to the prayer. The learned APP took us through the documents annexed to the reply to fortify the submission. Perusal of the record would show that the parcel of the book sent to the petitioner was not accepted. The parcel contained the book named “World of Jeeves and Wooster”. It was sent on 13.08.2020. It is the case of the State that during this period the Covid protocol was in operation and, therefore, the outside parcels sent to prisoners were not accepted. Even though this may be true, we find that outright rejection of a parcel containing book by a humorist on such a ground was not proper. Covid pandemic was a period of distress, isolation and nervousness for most of the people, and more so for the jail inmates. During such terrible times, nothing more could have provided solace to a jail inmate than a book of his choice. Therefore, if Covid protocol demanded rejection of outside parcel, the jail authorities were required to apply the rule not only generally but also with all its exceptions. The general rule was of rejection but exceptions to

general rule permitted acceptance of essential items from out-side, like grocery, vegetables, toiletries, medicines etc. subject to procedure of sanitation. In Covid times the books also could have been looked upon as essential commodities, just like medicines and hence worthy of acceptance, subject to prescribed procedure. But, that did not happen. We are told that later on the books have been supplied to the petitioner. That being the case, the case of wisdom dawning upon the jail authorities belatedly, we do not think that the P.G. Wodehouse incident should detain us anymore, especially when all other facilities and amenities in general appear to have been provided, as per the requirements of Jail Manual, and if some of them are lacking, they would soon be provided, as per the directions issued by us in a connected matter.

15. In the affidavit-in-reply, the Superintendent has infact specifically dealt with each and every allegations made by the petitioner. It has been stated in the reply that number of books on the request of the petitioner have been made available to him from the jail library. It is stated that the petitioner made use of the facilities provided by the prison canteen to buy the fruits and other eatables. In prison canteen slippers are available. The petitioner could have bought the slippers. It is further stated that the petitioner has been allowed to make phone calls. The record of the phone calls made by the petitioner has been reproduced at Annexure 'C'. It is also stated that on 13.12.2000, the prison authority received a courier containing spectacles of the petitioner. The same was handed over to the petitioner. So far as the

provision of chair is concerned, it is stated that the chair can be provided to the petitioner on medical ground provided, the Medical Officer recommends the same. No such recommendation has been received so far.

16. In the affidavit, it is stated that medical facilities have been provided to the prisoners and to that effect a statement has been made about the hospital staff in paragraph no.16. It is stated that on the request of the petitioner he was taken to the outside hospitals for his medical check up. So far as the diet and hygiene are concerned, it is stated that the diet provided to the prisoners is fibrous, nutritious, healthy and nourishing besides supplementary high protein medical diet is provided to ailing prisoners as per the recommendation of Medical Officer. On the point of hygiene, it is stated that the prison authority looks into the cleanliness and maintains hygienic condition. In our opinion, this statement made in the affidavit cannot be discarded. It is supported by the contemporaneous documentary evidence.

17. It is pertinent to note that as an under trial prisoner, the petitioner is entitled to exercise his right provided under Article 21 of the Constitution of India. If there is a violation of his constitutional right as an under trial prisoner, he has every right to make a grievance. It is pertinent to note at this stage that before coming to this Court, the petitioner was expected to bring all the above facts to the notice of the Presiding Officer of the Special NIA Court. It is pertinent to note that the jail custody of the petitioner

is regulated by the Presiding Officer of the Special NIA Court. The Presiding Officer of Special NIA Court is bound to take care of the grievance, if any, made by the under trial prisoner. It is further pertinent to note that if some facilities are not provided and the same are required to be provided then, the same can be done by the Presiding Officer of the Special NIA Court. It is seen that the petitioner without making a grievance before the learned Presiding Officer of the Special NIA Court, has come before this Court. If the petitioner had made a grievance or a request to the learned Presiding Officer of the Special NIA Court and if the same had not been considered, in that event, he would have been justified in making grievance and asserting his rights before this Court. In the absence of such material, it seems that the contentions are not well founded.

18. Overcrowding of the prisons is a undisputed fact. However, in this case, the facts stated by the Superintendent of the Prison would show that the petitioner would not be affected by the overcrowding. It is stated that the petitioner has been lodged in a high security cell. The high security cell is an isolated place and few under trial prisoners are detained in it. In the high security cell separate toilets / bath rooms are provided as per the guidelines provided in the jail manual. In this case, it is contended that hygiene and cleanliness is not maintained. In our view, this can be taken care by issuing necessary directions to the Superintendent of Central Jail.

19. One more ground pleaded is that the trial may not start in the near future and even if it starts may take years together to complete. We are alive to the situation that the crime committed by the petitioner and the other accused is serious. The evidence collected and relied upon is in the electronic form. Considering the volume of evidence, the trial would definitely take time. It is not the case of the petitioner that the NIA, which is an Investigating Agency, is either dragging its feet or intentionally delaying the expeditious hearing of the trial. It has come on record that the conspiracy is deep rooted and, therefore, despite filing of the charge-sheet the investigation is being conducted. The investigation is the prerogative of the Investigating Officer. It cannot be interfered with by Court. However, in this case, the apprehension of delay in trial can be taken care of. It is pertinent to mention at this stage that while deciding the bail application of the co-accused Dr. Varvara Rao, this Court has requested the trial judge to expedite the hearing of the trial and conduct the same on day-to-day basis by adhering to the mandate of Section 307 of the Indian Penal Code. This direction would take care of the apprehension of the petitioner. In our view, therefore, facts discussed above do not permit us to grant the prayer.

20. At this stage, we propose to reproduce paragraph 151 and consider the applicability of the observations made in *Gautam Navlakha Vs. National Investigation Agency (supra)* to the present case, which reads thus :-

“151. We observe that under Section 167 in appropriate cases it will be open to courts to order house arrest. As to its employment, without being exhaustive, we may indicate criteria like age, health condition and the antecedents of the accused, the nature of the crime, the need for other forms of custody and the ability to enforce the terms of the house arrest. We would also indicate under Section 309 also that judicial custody being custody ordered, subject to following the criteria, the courts will be free to employ it in deserving and suitable cases.”

21. It is pertinent to note that the Hon’ble Apex Court has observed that in appropriate cases it will be open to Courts to order house arrest. It is observed that the criteria like age, health condition, antecedents of the accused, the nature of crime, the need for other forms of custody and the ability to enforce the terms of the house arrest, would be some of the indicative factors. In our view, the case of the petitioner does not fit in any of the criteria. In the facts and circumstances, we conclude that this is not a fit case to grant the prayer. The apprehension of the petitioner that he will not be provided medical aid and his life would be miserable in unhygienic conditions and atmosphere of the prison seems to be ill-founded. It is to be noted that while deciding the writ petitions filed by one of the accused namely, Dr. P. Varavara Rao, this Court has issued necessary directions to Inspector General of Prisons, State of Maharashtra and other concerned authorities to take care of all such aspects in the future. In the case of Dr. P. Varavara Rao, (Criminal Writ Petition No. 461

of 2022 along with connected matters), the Inspector General of Prisons has been directed to submit his report. On receipt of the report this Court would issue necessary directions depending upon the deficiencies noticed by the Court. In the meanwhile, the Inspector General of Prisons has been directed to ensure the compliance of the Maharashtra Prisons (Prison Hospital) Rules, 1970. We make it clear that for all the purposes the directions issued in the writ petition of Dr. P. Varavara Rao, shall be treated as directions in this case as well. Hence, the following order :-

ORDER

- (i) Petition is dismissed.
- (ii) The petitioner would be at liberty to bring to the notice of the Presiding Officer of the Special NIA Court his grievance in respect of any problem or difficulty faced by him. The learned Presiding Officer of the Special NIA Court is directed to ensure that the grievance made by the petitioner is redressed within the parameters of the law.
- (iii) The Superintendent of the Central Prison Taloja is directed to ensure that timely medical aid is made available to the petitioner.
- (iv) Petition is disposed of in the above terms.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)