

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 33 OF 2023**

Gautam P. Navlakha

... Appellant

**V/s.**

1. National Investigation Agency And  
2. State of Maharashtra

... Respondents

Dr. Yug Mohit Chaudhry a/w Ms. Shifa Khan for Appellant.

Mr. Anil C. Singh, Additional Solicitor General of India a/w Mr. Sandesh D. Patil a/w Mr. Aditya A. Thakkar a/w Mr. Chintan Y. Shah a/w Adv. Anusha P. Amin a/w Mr. Shrikant Sonkawade for Respondent No.1-NIA.

Mr. Ajay Patil, APP for Respondent No.2-State.

Mr. Pravin Ingawale, Superintendent of Police is present.

**CORAM : A.S. GADKARI AND  
PRAKASH D. NAIK, JJ.**

**DATE : 2<sup>nd</sup> MARCH, 2023.**

**PC. :**

1. Perusal of impugned Order dated 5th September, 2022 passed below Exh-648 in NIA Special Case No. 414 of 2020 by the Special Court under NIA for Gr. Mumbai (Trial Court) clearly indicates that, the trial Court has not given reasoning as required under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (*for short "the UAP Act"*) while rejecting the Bail Application of the Appellant. It further appears that, law enunciated by the Hon'ble Supreme Court in the case of *National Investigation Agency Vs. Zahoor Ahmed Shah Watali* reported in (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383 : 2019 SCC OnLine SC 461 has also not been considered while rejecting the bail application of the Appellant. The

reasoning given in para No.8 of the impugned Order is very cryptic and there is no analysis of evidence relied upon by the prosecution in it.

2. Mr. Singh, learned Additional Solicitor General of India fairly conceded to the said factual aspect. He submitted that, the Bail Application filed by Appellant below Exh-648 in NIA Special Case No. 414 of 2020 be remanded to the Trial Court for its consideration afresh.

Dr. Chaudhry, learned Advocate for Appellant opposed the said submission of the learned Additional Solicitor General of India and submitted that, instead of remanding the matter to the trial Court for hearing the said application afresh, it be heard on merits by this Court only.

3. However taking into consideration the fact that, this Court is not assisted with the reasoning given by the trial Court while rejecting the Bail Application of Appellant, it will be appropriate that the trial Court will pass a detailed reasoned Order dealing with the analysis of evidence placed before it.

Even otherwise also in view of the observations made by us in para No.1 above, the Bail Application filed by Appellant below Exh-648 deserves its remand for hearing it afresh.

4. Accordingly the Order dated 5<sup>th</sup> September, 2022 passed below Exh-648 in NIA Special Case No. 414 of 2020 is set aside and the Bail Application filed below Exh-648, by the Appellant is restored to the file of learned Special Judge under NIA for Greater Mumbai for its consideration afresh.

5. Learned Special Judge is requested to conclude the hearing of the said Bail filed below Exh-648 including passing of Order thereon within a period of four weeks from the date of receipt of present Order, without being influenced by the impugned Order dated 5<sup>th</sup> September, 2022 and observations made by us in the forgoing paragraphs.

It is further made clear that, this Court has not expressed any opinion on merits in the present Appeal and the Trial Court shall decide the said Bail Application as per the provisions of law.

6. Appeal is disposed off in the aforesaid terms.

7. Registrar (Judicial-II) is directed to forward the copy of present Order to the concerned Court immediately.

**(PRAKASH D. NAIK, J.)**

**(A.S. GADKARI, J.)**