



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.542 OF 2021**

Talha Hanif Potrick,  
Age : 25 years, Occ. Student,  
r/o. H. No.1202, 12<sup>th</sup> Floor,  
Emrald `A` wing, Dosti. Planet,  
North Shilphata, Kausa,  
Mumbra, Dist. Thane

..Appellant

Vs.

The State of Maharashtra,  
Through Maharashtra A.T.S.,

..Respondent

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Mr.T.W.Pathan, Advocate for appellant  
Mr.A.R.Kale, Addl. Public Prosecutor for respondent – State  
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**CORAM : R.G.AVACHAT AND  
NEERAJ P. DHOTE, JJ.**  
**RESERVED ON : OCTOBER 14, 2024**  
**PRONOUNCED ON : OCTOBER 18, 2024**

**ORDER (Per R.G.Avachat, J.) :-**

This appeal arises from Crime No.1 of 2019, registered with Kala Chowki, Mumbai (Anti Terrorist Squad, Aurangabad Unit Police Station, Dist. Aurangabad), for the offences punishable under Sections 120-B and 201 of Indian Penal Code; Sections 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (“UAPA”, for short); and Section 135 of Bombay Police Act; and the consequential charge-sheet dated 08.07.2019, on the file of learned Special Judge, Aurangabad.

2. The appeal has been filed under Section 21 of the National Investigation Agency Act, 2008. The challenge in the appeal is to the order refusing to grant the appellant bail. The appellant is original accused no.9.

3. The case of prosecution, in short, is as under:-

Shri. Vijayant Jaiswal, Police Inspector attached to Anti-Terrorist Squad (A.T.S.), Aurangabad, had received a tip-off in August, 2018. It was an information about the persons indulged in disruptive/subversive activities in Mumbai and Aurangabad regions. He, therefore, collected the names, addresses and cellphone numbers of the suspected persons. The main suspect was Mohsin Khan (accused no.1). It was further learnt that Mohsin had come to Aurangabad along with some of his associates many a time. He formed a group by name "*Ummat-E-Mohammadiya*". They were admitting in the group the like-minded persons. It was further learnt that all of them were inspired by the ideology of 'Islamic State of Iraq and Syria (ISIS)' and were in contact with the foreign handlers. Cellphone numbers of other suspected persons were also obtained. Their call data records (CDRs) were collected. It was further learnt and revealed as well that the suspected accused - Jaman had instructed Salman (co-accused) to use mask/hand-gloves while

handling the material kept on terrace for being dried. It was further disclosed that some of the accused persons had conspired to make/prepare poisonous substance and lace the same with food/Prasad offered to Hindu devotees at a temple in Mumbai and elsewhere as well. It was, therefore, decided to effect raids at the residential premises of all the suspects. Five different teams headed by different Inspectors of Police were formed. Raid was also effected at the premises of the appellant at H. No.1202, 12<sup>th</sup> Floor, Emerald 'A' wing, Dosti Planet, North Shilphata, Kausa, Mumbra, Dist. Thane. He was found to have been residing in the premises taken on rent. During search of his premises, number of cellphones, tablet-phones, pen-drives, hard-disk, laptop, router were seized besides sim cards. When mobile-phones were inspected, number of screen shots were found. The appellant was in contact with the co-accused. He had attended a dinner meeting hosted by accused no.1.

4. On 25.01.2019, the house of the appellant was searched. He was present. His mother too was present at the house. During search, three cellphones and three Lenovo tablets of various companies, Sandisk pen-drive, Jio sim-card, Transcend pen-drive, Western Digital hard-disk, H.P. laptop, TP Link router with charger were seized. Then, the appellant made a disclosure statement on

30.01.2019, stating therein that with a view to get connected with ISIS, he used to make phone calls and used social media Apps., as well. He and others had planned to carry out bomb blasts. The cellphone he used for such talks was concealed in a flat at Mumbra and he would take out the same. He then took the police to a particular place, at Mumbra, wherefrom the cellphone of Letv handset with a particular IMEI numbers, Jio sim-cards, Vodafone sim-cards were seized.

5. The appellant again made a disclosure statement on 01.02.2019, stating therein Login-id and passwords, four in number.. Pursuant to those passwords, various screenshots were obtained. However, recovery of E-mail could not be removed. The words/button "My Activity" was clicked. Google Dashboard got opened. The data stored therein was downloaded. Same exercise was carried out in respect of the other G-mail accounts. A detail panchnama to that effect was drawn. Again, on 02.02.2019, the appellant made a disclosure statement. Two DVDs were checked. Pursuant to his statement, IP address was procured. Sixteen screenshots were obtained. He further disclosed to have created an account on Telegram (App) with profile name - `Mohammad Talha' on cellphone number 8369096625. He again made a disclosure

statement on 11.02.2019, stating therein that he used Telegram App. Two DVDs of Sony make were, therefore, opened. He gave sim-card number 8551819034. In the profile, there was user name “@Istishadi23”. He gave its meaning as “इशतीशहादी इसका मतलब अल्लाह के राह में जो शहीद हो जाते हैं उसको इशतीशहादी बोलते हैं।” He again made a disclosure statement on 16.02.2019, stating therein that he and his friends, co-accused, would use Telegram App to contact each other, so as to talk in respect of ISIS, etc.

6. All the screenshots noticed and found during inspection of the cellphones and sim cards seized from the appellant were part of the police papers (charge sheet). It was, ultimately, revealed that all the accused had conspired to commit disruptive/subversive activities against the Indian nation. A crime was, therefore, registered at Kala Chowki Police Station, Mumbai. It was investigated by A.T.S. and on conclusion of the investigation, charge sheet has been filed before the Special Court, at Aurangabad.

7. Heard learned counsel for the parties.

8. Learned counsel for the appellant would submit that the appellant was just 24 years old when he was arrested. Sections 15 or 16 of UAPA have not been invoked, meaning thereby, the

appellant was not involved in the terrorist activities. He would submit that the statement of the a co-accused (juvenile in conflict with law) was inadmissible in evidence. The appellant is presumed to be innocent, until proven guilty. He has been behind the bars for little over 5 years and 9 months. The trial is proceeding with snail's pace. The prosecution has cited 179 witnesses and only 28 have been examined so far. No overt-acts have been attributed to the appellant. The appellant was neither member of any banned organisation nor indulged in any conspiracy. He would further submit that there was delay of not less than 59 days in obtaining sanction of the competent authority for prosecuting the appellant. He relied on the decision of *High Court of Kerala at Ernakulam in the case of **Roopesh Vs. State of Kerala and ors., MANU/KE/0889/2022***, in this regard. He placed reliance on Rules 3 and 4 of the Unlawful Activities (Prevention)(Recommendation and Sanction of Prosecution) Rules, 2008. He also brought to our notice a Government Notification, whereunder, certain Officers were to be authorised to inspect the electronic evidence. Although the notification was issued, the officials to be authorised have neither been named nor designated. He then brought to our notice, a statement made by the then Special Public Prosecutor on 24.01.2024. He would submit that the Muddemal/seized articles were

not deposited immediately with the concerned police station with which the crime was registered.

9. According to learned counsel for the appellant, it is a fundamental right of the accused to have speedy trial. It is not known, how many more years it will take to conclude the trial. If the appellant is ultimately acquitted, who will bring back the days the appellant spent behind the bars for no reason. He, then, took us through Sections 18, 20, 38 and 39 of UAPA and particularly, the punishment provided thereunder. Learned counsel, ultimately, urged for allowing the appeal and grant of bail on merit and on the ground of long incarceration as well. He relied on following authorities:-

- (i) Roopesh Vs. State of Kerala and ors.,  
MANU/KE/0889/2022;
- (ii) Hussein Ghadially Vs. State of Gujarat,  
MANU/SC/0613/2014;
- (iii) Union of India (UOI) Vs. K.A.Najeeb,  
MANU/SC/0046/2021;
- (iv) The National Investigation Agency Vs.  
Areeb Ajaz Majeed,  
MANU/MH/0471/2021;
- (v) Iqbal Ahmed Kabir Ahmed Vs. State of  
Maharashtra, MANU/MH/2082/2021

10. Learned Addl. Public Prosecutor would, on the other hand, submit that it is a serious offence. Search was made in the room of the appellant. The material which was found in the room of the appellant was seized. Some additional material was in the nature of cellphones, etc. The prosecution has, so far, examined 28 witnesses. The prosecution is ready to go with the trial on day-to-day basis. For one or the other reason, the trial could not be conducted as per the directions of this Court dated 05.12.2022. Blame for delay in trial could not be put on the prosecution. According to him, it is the defence Advocate, who conducted cross-examination of one of the witnesses, for not less than 8-10 days. Learned Addl. Public Prosecutor then adverted our attention to Section 43-D(5) of UAPA to submit that same is interdict to grant bail to the appellant. According to him, when the charge has been framed for the concerned offences of UAPA, same indicates that there is strong material to suggest involvement of the appellant. He would, therefore, be not entitled for grant of bail. Learned Addl. Public Prosecutor places on record certain documents indicating the material against the present appellant. According to him, cellphones and sim cards have been seized from the rooms of the appellant, at H. No.1202, 12<sup>th</sup> Floor, Emerald 'A' wing, Dosti. Planet, North Shilphata, Kausa, Mumbra, Dist. Thane. Then, the statement of co-

accused (juvenile-in-conflict with law) was read out. According to him, in view of the Apex Court judgment in the case of ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali, 2019 DGLS (SC) 509 : (2009)5SCC 1***, one has to go by the case diary and police papers/charge-sheet, to find whether the appellant is involved in the offence under UAPA. Whether the material in charge-sheet is admissible or not in evidence, would be a question to be decided by the trial court, whenever it would come up before it.

11. According to learned Addl. Public Prosecutor, as of now, voluminous material indicates involvement of the appellant in the offence in question. The appellant was in contact with the co-accused. He was inspired by ISIS ideology. He was influenced by the speeches of Zakir Naik - a hardliner of a banned Muslim organisation. According to learned Addl. Public Prosecutor for all the aforesaid reasons and in view of the statutory mandate under Section 43-D(5) of UAPA, no interference with the orders impugned herein, is warranted. He, therefore, urged for dismissal of the appeal.

12. Considered the submissions advanced. Perused the material placed on record. Also perused the authorities relied on.

13. Nothing incriminating was found in the cellphones seized from the room of the appellant.

14. Besides the offences punishable under Sections 120-B and 201 of Indian Penal Code, Charge for offences under Sections 18, 20, 38 and 39 of UAPA has been framed against the appellant, meaning thereby the trial has commenced. Twenty-eight witnesses have so far been examined. For better appreciation, we propose to reproduce Sections of UAPA, the appellant has been charged with:-

**18. Punishment for conspiracy, etc.—**

Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs 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.**

**38. Offence relating to membership of a terrorist organisation.—**

(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the first Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), **shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.**

### **39. Offence relating to support given to a terrorist organisation-**

(1) A person commits the offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organization; and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organization; or

(ii) to further the activity of the terrorist organization; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) **shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.**

15. Section 43-D of UAPA speaks of modified application of certain provisions of the Code of Criminal Procedure. We are concerned here with sub-sections (5) and (6) thereof. For better appreciation, the same is, therefore, reproduced below:-

43D. Modified application of certain provisions of the Code.—

(1) .....

(2) .....

(3) .....

(4) .....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail

(7) .....

(8) .....

16. When the charge has been framed and 28 witnesses have been examined, we restrict ourselves to not make *prima facie* observations regarding merits of the matter, so that the trial court shall not be influenced thereby. However, role of the present appellant in the alleged crime and the material pitted against him is on our minds for deciding both the appeal. We have perused the seizure panchnama, indicating three cellphones, tablet-phones, pen-drives, hard-disk, laptop, router were seized besides sim cards from the room occupied by the appellant. There is material to indicate that he was in contact with the co-accused. A telegram group was formed. The appellant was inspired by the speeches/preaching of Zakir Naik - a hardliner of a banned organisation. We, however, do not find anything indicating the appellant to have played any overt-acts, except to have entertained a particular ideology and attended the parties/ meetings held twice.

17. True, there is some other material as well. It may lead one to *prima facie* infer the appellant to have indulged in commission of the offence he is charged with. One cannot dispute the observations of the Apex Court in the cases of (i) **Zahoor Ahmad Shah Watali** (supra) and (ii) **Gurwinder Singh Vs. State of Punjab and anr., Criminal Appeal No.704 of 2024** [**@Special**

**Leave Petition (Criminal) No.10047 of 2023] decided on 07.02.2024**, relied on by learned Addl. Public Prosecutor, indicating that the inculpatory statement of the co-accused or statement made by accused to the police, may even to be considered.

18. The appeal had come up for hearing number of times. This Court had requested the trial court to hold trial on day-to-day basis. Same has not happened. Neither the prosecution nor the trial court or the accused (appellant) could be blamed for the delay in trial of the case. The fact is that the number of cited witnesses to be examined is 179. Learned Addl. Public Prosecutor submitted that they may examine not more than 40 witnesses in addition to the witnesses already examined. There are ten accused persons. It appears that different advocates are representing them before the trial court. It is, thus, not known as to when the trial would reach to its logical conclusion.

19. On 24.01.2024, we had recorded submission of the Special Counsel representing the State. Paragraph 4 of the order is reproduced below:-

*4. It is submitted by the learned Special Counsel representing the State that the prosecution will examine the remaining witnesses within a period of*

*six months from today. The learned advocate for the appellant submits that in the event the prosecution fails to examine all the witnesses within a period of six months, he shall be granted liberty to move before the Court for grant of bail.*

It is true that learned Special Counsel, that time, had submitted that the trial may be delayed for the reasons beyond his control. Same was not recorded by us, might be inadvertently.

20. The fact remains that the trial is not likely to be concluded in the near future. The appellant is behind the bars for little over 5 years and 9 months.

21. In the case of **Sheikh Javed Iqbal Vs. State of Uttar Pradesh, MANU/SC/0716/2024**, the Apex Court observed thus:-

22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an under trial has a fundamental right to speedy trial which is traceable to [Article 21](#) of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-under trial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal

No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the [National Investigating Agency Act, 2008](#) and was charged under the [UAP Act](#) along with [Sections 489B](#) and [489C](#) IPC. He was in custody as an under trial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:-

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under [Article 21](#) of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. [Article 21](#) of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a

speedy trial could be said to have been infringed thereby violating [Article 21](#) of the Constitution.

24. Earlier, in [Supreme Court Legal Aid Committee \(Representing Undertrial Prisoners\) Vs. Union of India](#), MANU/SC/0877/1994 : 1994:INSC:456 : (1994)6 SCC 731 this Court had issued a slue of directions relating to under trials in jail facing charges under the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (briefly, the 'NDPS Act' hereinafter) for a period exceeding two years on account of the delay in disposal of the cases lodged against them. In respect of under trials who were foreigners, this Court directed that the Special Judge should impound their passports besides insisting on a certificate of assurance from the concerned Embassy/High Commission of the country to which the foreigner accused belonged and that such accused should not leave the country and should appear before the Special Court as required.

25. Similarly, in [Shaheen Welfare Association Vs. Union of India](#), MANU/SC/0768/1996 : 1996:INSC:324 : (1996)2 SCC 616, this Court was considering a public interest litigation wherein certain reliefs were sought for under trial prisoners charged with offences under the [Terrorist and Disruptive Activities \(Prevention\) Act, 1987 \(TADA Act\)](#) languishing in jail for considerable periods of time. This Court observed that while liberty of a citizen must be zealously safeguarded by the courts but, at the same time, in the context of stringent laws like the [TADA Act](#), the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an under trial can only be on account of the accused-under trial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.

26. [Angela Harish Sontakke Vs. State of Maharashtra](#), (2021)3 SCC 723 is a case where the accused-appellant was charged

under various provisions of the [UAP Act](#) as well as under the [IPC](#). He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

27. More recently, a three Judge Bench of this Court in [Union of India Vs. K.A. Najeeb](#), MANU/SC/0046/2021 : 2021:INSC:50 considered an appeal filed by the Union of India through the National Investigation Agency (NIA) against an order passed by the High Court of Kerala granting bail to an accused-under trial facing trial for allegedly committing offences, amongst others, under [Sections 16, 18, 18B, 19 and 20](#) of the UAP Act.

27.1. This Court noted that the appellant in [K.A. Najeeb](#) (supra) was in jail for more than five years. Charges were framed only on 27.11.2020 and there were 276 witnesses still left to be examined. This Court emphasized that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. No under trial can be detained indefinitely pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

27.2. Referring to the decision of this Court in [NIA Vs. Zahoor Ahmad Shah Watali](#), MANU/SC/0458/2019 : 2019:INSC:456 : (2019)5 SCC 1, this Court opined that the High Court in that case had virtually conducted a mini trial and determined admissibility of certain evidence which clearly exceeded the limited scope of a bail proceeding. Not only was it beyond the statutory mandate of prima-facie assessment under [Section 43D\(5\)](#)

of the UAP Act, it was premature and possibly would have prejudiced the trial as well. It was in these circumstances that this Court in Zahoor Ahmad Shah Watali (supra) had to intervene leading to cancellation of the bail granted.

22. Learned Addl. Public Prosecutor tried to distinguish the Apex Court judgment in the case of **K.A.Najeeb** (supra). True, the Apex Court was dealing with a proceedings for cancellation of bail granted to the accused therein. We agree with the submission of learned Addl.P.P. that the parameters for grant of bail and cancellation thereof are altogether different. Suffice it to say that a bench of three-Judge of the Apex Court was dealing with the case of Union of India Vs. K.A. Najeeb.

23. Without observing anything more, we propose to rely on the judgment of the Apex Court in the case of **Sheikh Javed Iqbal** (supra), which has relied on the judgment of the Apex Court in the case of **K.A.Najeeb** (supra) and other judgments referred to in paragraphs 24 to 27, and the statement made by learned Special Counsel to this appeal, and allow the appeal in terms of the following order:-

(i) The appeal is allowed.

- (ii) The impugned order passed by learned Addl. Sessions Judge, Aurangabad, refusing to grant bail to the appellant, is set aside.
- (iii) The appellant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
- (iv) The appellant shall appear before the trial court on every date of hearing, except he is granted exemption by the trial court from appearance on account of his ill-health or like ground, provided that the Advocate representing him would co-operate with the trial court, to take the trial to its logical conclusion.
- (v) The appellant shall attend A.T.S. Unit, Aurangabad, everyday, during 09.00 p.m. and 10.00 p.m., whenever he would be in Aurangabad.
- (vi) The appellant shall surrender his Passport, if any.
- (vii) The appellant shall give the Investigating Officer, his address or place of his permanent abode during trial.
- (viii) If the appellant happens to be at Mumbra (his native

place), Dist. Thane, on holidays or any other day, he shall attend Kala Chowki Police Station, Mumbai, during 09.00 p.m. and 10.00 p.m., everyday.

**[NEERAJ P. DHOTE, J.]**

**[R.G. AVACHAT, J.]**

KBP