

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 588 OF 2024**

Sudhanwa Sudhir Gondhalekar
Age : 45 Years,
R/at : House No. 424, Near Siddhivinayak
Temple, Karanje Peth, Satara.

Presently lodged in Arthur road Jail,
Byculla Mumbai.

.. Appellant

Versus

The State of Maharashtra
Through Public Prosecutor
Represented by Anti Terrorism Squad,
Bhoiwada, Mumbai.

.. Respondent

WITH**CRIMINAL APPEAL NO. 589 OF 2024**

Vasudev Bhagwan Suryavanshi
Age : 35 Years,
R/at : A&P Sakali, Taluka Yaval, District
Jalgaon.

(presented lodged at Central Jail,
Bangalore, Karnataka)

.. Appellant

Versus

The State of Maharashtra
Through Public Prosecutor
Represented by Anti Terrorism Squad,
Bhoiwada, Mumbai.

.. Respondent

...

Mr. Sanjiv Punalekar a/w Mr. Sachin Kause i/b Ms. Jyoti Ghorpade, for the Appellants.

Ms. S. S. Kaushik, A.P.P., for the State-Respondent.

A.P.I. C. S. Lohakare, ATS, Pune Unit, is present.

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**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 19th SEPTEMBER, 2024**

ORDER (PER MANJUSHA DESHPANDE, J) :-

1. The Appellants in both the Appeals have filed the Appeals against the Order dated 27.03.2024, on Exh-419 and 420 respectively, passed by the Special Court, Mumbai, constituted under the National Investigation Act, for trying offences under the Unlawful Activities (Prevention) Act, 1967. The Applications for Bail filed by the respective Appellants were rejected by the Special Court under NIA at Mumbai (25th Court, City Civil Court, Mumbai), in Special Case No. 401 of 2022, which was earlier numbered as Sessions Case No. 151 of 2019, arising out of C.R. No. 11 of 2018, registered with anti Terrorism Squad, Maharashtra.

2. It is the case of prosecution that P.I. Sandeep Vishwasrao of ATS, Mumbai received information that some persons staying at Pune, Satara, Solapur, Nalasopara and

Mumbai are likely to cause sabotage in cities of Mumbai and Pune. The house and shop premises of the accused Nos.1 and 2 were searched in presence of panchas. During house search of accused No.1, two handwritten chits having matter regarding procedure of manufacturing of bomb was seized. During the house search of the accused No.2, explosive substance were found from his house. Accordingly, C.R. No.11 of 2018 came to be registered at ATS Kalachowki, Mumbai for the offences under Section 16,18,20 of UAP Act read with section 120-B of IPC, section 4, 5 of Explosive Substance Act, section 9-B of Explosive Act, 1884.

3. During further investigation, it revealed that conspiracy was hatched to disorganize the sunburn festival. The accused persons had prepared crude bombs and planned to throw those bombs at the time of Sunburn festival. Accused were also found performing recce of some of the prominent persons. At the time of investigation some pistols, country made katta, barrels of fire arms, country made pistols, magazine, etc. were seized. The charge-sheet shows that Appellants came to be arrested on 10.08.2018 and 08.09.2018 respectively.

4. The Appellant in Appeal No. 588 of 2024 was arrested on 10.08.2018 and Appellant in Appeal No. 589 of 2024 was arrested on 08.09.2018. Since then, both the Appellants are in jail. The charges against the Appellant in Appeal No. 588 of 2024 are that, there is recovery of arms at his instance from his house at Natepute, District Solapur. In the memorandum panchanama under Section 27 of the Evidence Act, the Appellant has shown the places, where recce was conducted by him alongwith the other accused; he has also shown the venue of Sunburn Event. The Appellant was alleged to be present in the meeting held in his company office at Mitramandal Chowk, Pune. The said meeting has taken place 2/3 days after Christmas of 2017, wherein one person is alleged to have given a speech containing information about Hindu religion, and stated to have urged that festivals like Sunburn should be opposed and should not be allowed since they are contrary and derogatory to the principles of Hinduism.

5. The charges against the Appellant in Appeal No. 589 of 2024 are that he was present in the meeting held in the office at Mitramandal Chowk, Pune, which has taken place 2/3

days after the Christmas of 2017, wherein a speech containing information of Hindu religion and making derogatory remarks about the Sunburn festival was given. It is alleged that, he has dismantled motorbike used by one of the co-accused Rishikesh Devdikar, who was also part of the conspiracy.

Two panchanamas were recorded under Section 27 of the Evidence Act at the instance of the Appellant in Appeal No. 589 of 2024. One is recorded on 23.09.2018 in which he has shown the place where the dismantled pieces of motorbike were burned and disposed off. The other panchanama is in respect of the places where he has allegedly fired bullets from pistol alongwith some other persons who are not accused in the present case.

On the background of above allegations and evidence collected against the Appellants, charges were framed against the Appellants in September 2019.

6. It is the contention of the Appellants that since the provisions of Unlawful Activities (Prevention) Act, 1967, are invoked, the matter is seized with the Special Court, as the provisions of National Investigation Act are applicable to the trial, wherein offences under Unlawful Activities (Prevention)

Act, 1967, are tried. The trial is to be conducted speedily as per Section 19 of the NIA Act. It mandates trial of offences under UAPA are to be conducted on day to day basis. Thus, the trial is required to be conducted in a speedy manner as compared to the trial involving offences under the provisions of Indian Penal Code. Section 43(D) (5) of the UAPA, puts additional restrictions on the power of the Court while granting Bail, it limits the power of the Courts to grant Bail.

7. Considering the provisions of special enactment the Appellant were under bonafide belief that the trial would be conducted speedily. Therefore, the Appellants neither did oppose at the time of framing of charge, in order to expedite the proceedings, neither filed any discharge application. The charge was framed against the Appellants under Section 16, 18, 18(A), 18(B), 19, 20 and 23 of Unlawful Activities Prevention Act, read with Section 4 and 5 of the Explosives Substance Act, 1908, read with Section 9(B) of the Explosives Act, read with Section 3, 5, 7, 26, 27 of Arms Act, read with Section 35(1), 135 of the Maharashtra Police Act and Section 12(B), 212, 471, 379, 201 of the Indian Penal Code.

Though the Appellants had not exercised their

right while framing of charge nor had they filed any application for discharge in the hope of speedy trial, however, the trial could not proceed on account of Covid-19 pandemic and thereafter due to the heavy burden of work load with the Special Court. Therefore, the Applicants have filed Application for Bail before the Special Judge, City Civil and Sessions Court of Greater Bombay.

8. The Application for grant of Bail filed by the Appellants was rejected by the Special Judge by Order dated 27.03.2024, observing that, the documents placed on record reveal that there is sufficient evidence which indicate participation of the Appellants in the meeting when the conspiracy was hatched and also the fact that they have performed recce. There are specific allegations against the Appellants regarding their participation in the conspiracy. Considering the presumption as provided under Section 43(E) of the UAPA and the material seized against the accused, there is reasonable ground for prima-facie believing that, the accusations against the Appellants are true. The trial has already commenced. The prosecution has already examined three witnesses therefore considering the accusation and the material available on record, the Appellants were denied Bail

by the Special Judge, City Civil and Sessions Court, Greater Mumbai.

9. The Appellants have therefore, approached this Court since they have been denied the relief of Bail. According to the Appellants it is alleged by the prosecution that, the accused have formed a gang for the purpose of opposing Anti-Hindu elements and have chosen the Sunburn Festival as one of the targets which was to take place in the outskirts of Pune City, on and around 26.10.2017 to 31.10.2017. The accused had planned to disrupt the said program by pelting stones, petrol bombs, creating ruckus, by use of firearms etc. It is alleged that all the accused had come together after Christmas of 2017, in the office of Appellant in Appeal No. 588 of 2024 for discussion and planning. Some of the accused are alleged to have gone to the house in village Mulkhed, Taluka Mulashi, District Pune, and assembled bombs, to be used to disrupt Sunburn Festival. Though the allegations revolve around disruption of Sunburn festival, the fact remains that the Sunburn festival was over without any disturbance and no such plan as alleged was executed by the accused in the Sunburn festival or any other festival. Yet the Appellants have been arrested on 10.08.2018 and 08.09.2018, after the alleged

incident which was supposed to be disrupted.

10. It is the contention of the Appellants that there is no independent evidence about the presence of any of the accused during the Sunburn festival or about their alleged conspiracy to disrupt the said program except reference made in disclosure statement of the accused themselves.

According to the Appellants, two fold allegations against them are that, there was seizure of certain arms and ammunition from the accused Nos.1 and 2 and the Appellants in Appeal No.588 of 2024 in August 2018. It is also alleged that arms and ammunition were stored for the purpose of conspiracy to disturb Sunburn festival which took place from 26.12.2017 to 31.12.2017.

According to the Appellants, the learned Special Court has committed an error by placing reliance on the evidence in the form of statements of co-accused of their plan to disrupt the Sunburn festival. None of the Appellants were captured in the 150 CC TV cameras installed on and around the Sunburn Event. There was no use of arms and explosives therefore, the learned Judge has erroneously applied the presumption under Section 43(E) of the UAPA.

The Appellants have also relied on the relief granted to the co-accused by the Orders of this Court and the Hon'ble Apex Court. The counsel for the Appellants have placed on record the orders passed by this Court as well as the Hon'ble Apex court granting relief to the other co-accused in the C.R. No. 11 of 2018.

11. The learned A.P.P. Ms. Kaushik has tendered affidavit filed by the Assistant Commissioner of Police, ATS, Pune, opposing the prayer made by the Appellants. According to the Respondent, the accused Sudhanwa Sudhir Gondhalekar and 13 other associates are the active members of 'Hindu Jana Jagruti Samiti' and 'Sanatan Sanstha' and other Hindu organization of similar nature. The accused in the above mentioned crime are inspired by the concept 'Hindu Rashtra' as depicted in a book by Sanatan Sanstha named 'Kshatra-Dharma Sadhana'. All the accused have conspired to oppose all those people who allegedly write/speak/act and also the movies which are against Hindu Dharma, thereby creating terror amongst the common people. The accused have formed a terrorist gang to achieve their purpose. They are disturbing unity, integrity, security and sovereignty of India. The

Appellants have hatched conspiracy to cause violent attack in public event in Pune in December 2017, which was allegedly promoting western culture. With the said object, training camps, workshops for making explosive bombs were arranged.

The accused have kept watch on popular public figures and over and above that, the Appellant in Appeal No.588 of 2024 is arrested in murder case of reporter Gauri Lankesh which was registered at Rajarajeshwari Nagar Police Station, Bengaluru, Karnataka, being FIR No. 221 of 2017.

Similarly, Appellant/accused No.7 Vasudev Bhagwan Suryavanshi is arrested in Com. Govind Pansare murder case, registered with Rajarampuri Police Station, Kolhapur in FIR No.39 of 2015.

12. It is contented by the learned A.P.P. that, charges have already been framed and the trial is pending before the learned District Judge and Additional Sessions Judge, Mumbai, till date three witnesses have been examined, and 145 to 150 witnesses are yet to be examined by the prosecution. If the Appellants are granted Bail, the possibility of pressurizing the witnesses in the case, cannot be ruled out.

Considering the criminal antecedents of both the

Appellants, the learned A.P.P. has requested to reject the Appeals filed by both the Appellants.

13. We have perused the impugned order passed by the learned Special Judge, in the Applications for Bail filed by the respective Appellants on Exh-419 and Exh-420 respectively. We have also perused the affidavit filed by the Respondent-State opposing the Bail Applications and the grounds raised by the prosecution. The impugned order passed by the learned Judge of the Special Court in para No.10 of Exh-419 and 420, reads thus :

Para No.10 of Exh-419 :

“10. There is presumption as per Section 43(E) of the UAPA. Considering the material against the accused there are reasonable ground for believing that the accusation against the applicant prima-facie true. The order of sanction dated 14.11.2018 for the prosecution is granted as per provisions of Section 45(1)(ii) of the UAPA against applicant and co-accused. The ground of parity is not applicable to the applicant. The charges against applicant and co-accused are framed. The matter is part-heard. Prosecution has examined 3 witnesses. The prosecution is proceeding with the trial of the case. I have gone through the case law relied learned advocate for the applicant. With great respect to the ratio laid down therein, same are not helpful to the applicant. Ground of parity is not applicable to the applicant. Considering the accusation against

applicant, material available on record, gravity, seriousness of offence and in view of impediment as per Section 43(D) of UAPA, applicant is not entitled for grant of bail. Hence, I proceed to pass following order :

ORDER

Application Exh.419 is rejected and disposed of."

Para No.10 of Exh-420 :

"10. There is presumption as per Section 43(E) of the UAPA. Considering the material against the accused there are reasonable ground for believing that the accusation against the applicant prima-facie true. The order of sanction dated 14.11.2018 for the prosecution is granted as per provisions of Section 45(1)(i) of the UAPA against applicant and co-accused. The ground of parity is not applicable to the applicant. The charges against applicant and co-accused are framed. The matter is part-heard. Prosecution had examined 3 witnesses. The prosecution is proceeding with the trial of the case. I have gone through the case law relied learned advocate for the applicant. With great respect to the ratio laid down therein, same are not helpful to the applicant. Ground of parity is not applicable to the applicant. Considering the accusation against applicant, material available on record, gravity, seriousness of offence and in view of impediment as per Section 43(D) of UAPA, applicant is not entitled for grant of bail. Hence, I proceed to pass following order :

ORDER

Application Exh.420 is rejected and disposed of."

While rejecting the Applications for Bail, the

learned Judge, has relied on the presumption under Section 43(E) of the UAPA and has also refused to grant Bail on the ground of parity. It is observed that, the ground of parity is not available to the accused. It is further observed that since the charges are already framed and the trial has commenced, already three witnesses have been examined, therefore considering the seriousness of the offence and in view of the restrictions imposed on the power of the Court under Section 43(D) of the UAPA, the Bail Applications have been rejected.

14. We have considered the submissions of the counsel for the Appellants as well as the learned A.P.P. for the State and also the documents produced on record. The undisputed fact is that, all the accused persons are facing charge of hatching a conspiracy, of disrupting the Sunburn festival at Pune. Though the evidence is collected and charge-sheet has been filed however the fact remains that the alleged plan for conspiracy was never executed. Whatever evidence is collected it is at the instance of the accused persons. From the evidence in the charge-sheet, we are of the prima-facie opinion that, the said evidence is insufficient to establish charge of conspiracy against the Appellants. Admittedly, though the

Appellants have been arrested in the year 2018, till date only three witnesses have examined. It is also admitted by the prosecution that as yet they have to examine 145 to 150 witnesses. It is also informed that since September 2023, no witness has been examined by the prosecution. It is almost six years since the Appellants have been arrested and facing incarceration.

15. The learned counsel for the Appellants have placed on record number of orders passed by this Court as well as the Hon'ble Apex Court, granting relief of Bail to the co-accused in the present offence. Our attention has been invited to the order passed by this Court in case of accused No.2 Vaibhav Raut, in Criminal Appeal No. 261 of 2023, decided on 20.09.2023. While passing the order this Court has taken into consideration the provisions of UAPA and has observed that the minimum sentence that can be awarded under the provisions of UAPA is five years and it can be extended upto life imprisonment. The Appellants are in custody and have been incarcerated for last five years, taking into consideration that the trial is not likely to complete in near future within a reasonable period, relying on the Judgment of the Hon'ble

Apex Court in *Union of India V/s. K. A. Najeed, 2021(3) SCC 713*, wherein it is clearly observed that the presence of statutory restrictions like 43-D(5) of the UAPA per-se does not oust the ability of the Constitutional Courts to grant Bail on the grounds of violation of Part III of the Constitution. This Hon'ble Court relying on para Nos.15 and 18 of the Judgment of Union of India V/s. K. A. Najeed (Supra), has been pleased to hold that relief can be granted to the Appellant in Criminal Appeal No.261 of 2023. Hence, the Appeal was allowed and the Appellant was enlarged on Bail.

16. Relying on the said Judgment granting relief to accused No.2, this Court (Coram : Bharati Dangre and Manjusha Deshpande, JJ.) in Common Order passed in Criminal Appeal No. 1268 of 2023, 545 of 2024, 546 of 2024, 1388 of 2023, 1267 of 2023, in respect of five co-accused has granted Bail during the pendency of the proceedings before the Special Court.

One of the co-accused Avinash Pawar, who had filed SLP has been granted relief by the Hon'ble Apex Court vide Order dated 11.08.2022, considering that there is no likelihood of early conclusion of trial, the co-accused was directed to be

released on Bail on such terms and conditions as may be imposed by the trial Court.

Hence, considering all the orders passed by this Court as well as the Hon'ble Apex Court, granting relief to the other co-accused, we see no reason why the same relief cannot be granted to the Appellants in Appeal No.588 of 2024 and 589 of 2024. Since speedy trial is a fundamental right of a person facing accusation and being subjected to trial, which will take its own time, we see no reason why the Appellants should continue to incarcerate in the prison. Therefore, in view of the observations made hereinabove, we pass the following order :

: ORDER :

- (i) Appeals are allowed.
- (ii) Sudhanwa Sudhir Gondhalekar in Criminal Appeal No. 588 of 2024, shall be released on Bail in connection with C.R. No. 11 of 2018, registered with ATS Kalachowki, Mumbai (Special Case No. 401 of 2022), on furnishing P. R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.
- (iii) Vasudev Bhagwan Suryavanshi in Criminal Appeal No. 589 of 2024, shall be released on Bail in connection with C.R. No. 11 of 2018,

registered with ATS Kalachowki, Mumbai (Special Case No. 401 of 2022), on furnishing P. R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

- (iv) The Appellants shall attend ATS Kalachowki, Mumbai on first Monday of every month between 10.00 a.m. to 12.00 noon.
- (v) The Appellants shall not tamper with the prosecution witnesses/evidence.
- (vi) The Appellants shall appear before the Trial Court on every date and will not seek any adjournment.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)