

examined so far. The total witnesses are 72 and thus there is no end in sight for the trial to conclude.

4. The Hon'ble Supreme Court of India in the case of '*Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*')¹ has observed thus:

28. We are in respectful agreement with the reasoning given in K.A. Najeeb (supra) regarding the decision in Zahoor Ahmad Shah Watali (supra). This decision i.e. Zahoor Ahmad Shah Watali (supra) has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

29. Going back to K.A. Najeeb (supra), this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail....."

30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of

¹ (2024) SCC Online SC 1755

India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

5. Thus, considering the above referred observations of the Hon'ble Supreme Court of India and the fact of period of incarceration in the present matter, I am of the opinion that the applicant is entitled for grant of bail, for the reason that there is unlikelihood of trial not to conclude in near future. Accordingly, I pass the following order:

ORDER

- i) Criminal application is allowed;
- ii) It is directed that the applicant shall be released on bail in in Crime No.40 of 2016, registered with Samarth Police Station, Pune for the offences punishable under Sections 302, 506 (2) and 34 of the Indian Penal Code, Section 4(25) of the Arms Act and Section 37(1) along with 135 of the Maharashtra Police Act, on furnishing P.R.Bond of Rupees Twenty-Five Thousand with one solvent surety in the like amount;

iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

iv) Liberty is granted to the State as well as to the informant for cancellation of bail in case of there is breach any condition or if the applicant commits any serious offence.

vi) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)