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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

241

CRA-D-1060-2023(O&M)

Date of decision : 03.10.2024

Jivtesh Sethi

... Appellant

Versus

State of Punjab

.. Respondent

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present:- Mr. Arnav Sood, Advocate for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

Anupinder Singh Grewal, J. (Oral)

CRM-36938-2023

This is an application seeking condonation of delay of 172 days in preferring the appeal against the order dated 09.02.2023 passed by the Additional Sessions Judge, Shaheed Bhagat Singh Nagar vide which bail application of the applicant-appellant was rejected.

2. Learned counsel for the applicant/appellant submits that the applicant is in custody as an undertrial, was not aware about the period of limitation. His family members had later approached the counsel and therefore, the delay has occurred in filing the appeal.

3. Issue notice in the application to the non-applicant/respondent.

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4. At the asking of the Court, Mr. Aftar Singh Khara, Sr. DAG, Punjab, accepts notice on behalf of the respondent.

5 Heard.

6. The appeal against an order rejecting the application for bail is provided under Section 21 of the National Investigation Agency Act, 2008. The period of limitation which is prescribed therein is 30 days which can be condoned up to 90 days with sufficient cause. It has been held by the Division Bench of the Bombay High Court in the case of **Faizal Hasamali Mirza versus State of Maharashtra and another, 2023 SCC (online) Bom 1936**, that the period of 30 days prescribed under Section 21 of the National Investigation Agency Act, 2008 would be directory in nature as the right to appeal is one of the essential components of Article 21 of the Constitution of India which guarantees protection of life and personal liberty. It has been held that in case the delay is not condoned then it would deprive the undertrial the right of appeal which is provided by the Statute which impinges on the life and liberty of the under trial as enshrined in the Constitution of India. It was held as under: -

“(i) that the Appellate Courts have the power to condone delay beyond the 90 days period, despite the language of the 2nd proviso to Section 21(5) of the NIA Act and that this can be done by virtue of [Section 5](#) of the Limitation Act, 1963, the applicability of which is not excluded under the provisions of the NIA Act. Thus, an application seeking to condone delay beyond 90 days in filing an appeal against the judgment, sentence, order, not being

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an interlocutory order, passed by a Special Court is maintainable, on sufficient cause being shown;

(ii) that the word 'shall' in the 2nd proviso to sub-section (5) of [Section 21](#), be read down, to read as 'may', and hence, directory in nature.”

7. In the instant case, the applicant/appellant is in custody as an under trial. The delay appears to be unintentional and not deliberate. It would, therefore, be in the interest of justice, if the appeal is heard and decided on merits. Consequently, the application is allowed and delay of 172 days in preferring the appeal is condoned.

Main case

The appellant has challenged the order dated 09.02.2023 passed by the Additional Sessions Judge, Shaheed Bhagat Singh Nagar whereby his bail application in FIR No.241 dated 08.11.2021, registered under Sections 307, 427, 212, 120-B IPC; Sections 3, 4, 5 of the Explosive Substances Act; Sections 13, 16, 17, 18, 18-B, 20 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA') and Section 25/54/59 of the Arms Act at Police Station City Nawanshahr, has been dismissed.

2. Learned counsel for the appellant submits that the appellant was not named in the FIR and has been arraigned as an accused on the statement of co-accused Kuldeep Kumar @ Sunny who had stated that he disclosed the places to the appellant and the appellant used to transport the tiffin bombs and explosives and give it to him in lieu of money. The water cooler kept outside the office and glass window panes were stated to have been damaged in the blast. No person was

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injured due to the occurrence. Besides the statement of co-accused, there is no material which would connect the appellant with the commission of the offence. No recovery has been effected from him except a mobile phone. The appellant has been in custody for 02 years, 04 months & 27 days. He has relied upon the judgments of the Supreme Court in the cases of **Union of India versus K.A. Najeeb, (2021) 3 SCC 713** and **Shoma Kanti Sen versus State of Maharashtra and another, 2024 SCCOnline SC 498**, wherein it has been held that long custody by itself would entitle the accused under UAPA to grant of bail by invoking Article 21 of the Constitution of India. He has also relied upon the judgments of the Supreme Court in the cases of **Vernon versus The State of Maharashtra and another, 2023 SCCOnline 885**, **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari versus State of Uttar Pradesh**, bearing Criminal Appeal No.2790 of 2024, decided on 18.07.2024 and **Javed Gulam Nabi Shaikh versus State of Maharashtra, another**, bearing Criminal Appeal No.2787 of 2024, decided on 03.07.2024.

3. Learned State counsel has filed the custody certificate which indicates that the appellant is in custody for 02 years, 04 months & 27 days. The appellant used to transport tiffin bombs and explosives in lieu of money on the asking of co-accused Kuldeep Kumar @ Sunny. He, upon instructions, submits that 12 out of 50 prosecution witnesses have been examined.

4. Heard.

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5. The allegation against the appellant is that he used to transport tiffin bombs and explosives in lieu of money on the asking of co-accused Kuldeep Kumar @ Sunny. However, there does not seem to be any other material which would connect the appellant with the commission of the offence especially when no incriminating material either in the form of arms, explosives or any dubious bank transaction indicating the financial motive has surfaced at this stage. We are conscious of the fact that the conditions for granting bail to an accused under UAPA are stringent. However, at the same time, it is the duty of the Court to carefully scrutinize the material against the appellant. We do not find adequate material against the appellant which would justify his further incarceration. The appellant has been in custody for 02 years, 04 months & 27 days.

6. Article 21 of the Constitution of India enshrines the fundamental right to protection of life and liberty which also includes the right to speedy trial, which is sacrosanct. It has been held by the Supreme Court in a catena of judgments that long custody by itself would entitle the accused under UAPA to the grant of bail by invoking Article 21 of the Constitution of India. In the instant case, 12 out of 50 prosecution witnesses have been examined and in such a situation, it would be difficult to hazard a guess about the conclusion of the trial. The appellant is in custody for 02 years, 04 months & 27 days. The Constitutional Court would like to prevent a situation where the lengthy and arduous process of trial, becomes the punishment in itself. Reference can be made to the judgment of the Supreme Court in the case of **Union of India versus K.A. Najeeb (supra)**

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wherein it has been held that long custody would be an essential factor while granting bail under UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under UAPA. It has also been held that the embargo under Section 43-D of UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India. The relevant extract of the judgement is reproduced hereunder:-

“It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA *per se* does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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Instead, Section 43-D(5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”

7. In the case of **Shoma Kanti Sen(supra)**, the Supreme Court has held that generally pre-conviction detention at the investigation stage is necessary to

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maintain purity in the course of trial and also to prevent an accused from being a fugitive from justice or to prevent further commission of an offence. Once it is apparent that a timely trial is not possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge them on bail as any form of deprivation of liberty must be proportionate to the facts of the case and also follow a just and fair procedure. A balance must be made between the prosecution's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously, the respondent's rights guaranteed under Part-III of the Constitution. The relevant extract thereof is reproduced hereunder:-

“This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on [Article 21](#) of the Constitution of India. This was in the case of Najeeb (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprivation of liberty results in breach of [Article 21](#) of the Constitution of India and must be justified on the ground of being reasonable,



following a just and fair procedure and such deprivation must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-chargesheet stage."

8. The Supreme Court in the case of **Vernon versus The State of Maharashtra and another(supra)** has held that serious allegations against accused by itself cannot be a reason to deny bail to the accused. The relevant extract thereof is reproduced hereunder:-

"In the case of Zahoor Ahmad Shah Watali (supra) reference was made to the judgment of Jayendra Saraswathi Swamigal -vs- State of Tamil Nadu [(2005) 2 SCC 13] in which, citing two earlier decisions of this court in the cases of State -vs- Jagjit Singh (AIR 1962 SC 253) and Gurcharan Singh -vs- State of (UT of Delhi) [(1978) 1 SCC 118], the factors for granting bail under normal circumstances were discussed. It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tempered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. **Juxtaposing the appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967**



Act, we have referred to the materials available against them at this stage. These materials cannot justify continued detention of the appellants, pending final outcome of the case under the others provisions of the 1860 Code and the 1967 Act.”

9. In the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari versus State of Uttar Pradesh(supra)**, it has been held 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 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. The relevant extract thereof is reproduced hereunder:-

“In Gurwinder Singh (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial 25 of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.



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 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.

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continued incarceration of the appellant cannot be justified. ”

10. In the case of **Javed Gulam Nabi Shaikh versus State of Maharashtra, another**(supra), the Supreme Court has observed that criminals are not born out but made. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India. Moreover, the purpose of bail is only to secure the attendance of the accused at the trial and bail is not to be withheld as a form of punishment. The relevant extract thereof is reproduced hereunder:-

“13. The aforesaid observations have resonated, time and again, in several judgments, such as *Kadra Pahadiya & Ors. v. State of*



Bihar reported in (1981) 3 SCC 671 and Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

14. In *Mohd Muslim @ Hussain v. State (NCT of Delhi)* reported in 2023 INSC 311, this Court observed as under:

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.



22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in [A Convict Prisoner v. State](#) reported in 1993 Cri LJ 3242, as “a radical transformation” whereby the prisoner loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

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18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime.



Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.”

11. In view of the above especially when the appellant is in custody for 02 years, 04 months & 27 days and the end of the trial is not in sight as only 12 out of 50 prosecution witnesses have been examined, we deem it appropriate to allow the appeal. Consequently, the appeal is allowed and the impugned order is set aside. The appellant is ordered to be released on regular bail subject to following conditions besides furnishing of requisite bail bonds to the satisfaction of the trial Court/Duty Magistrate concerned:-

- (i) He shall furnish bond of Rs.1 lakh with two sureties of Rs.1 lakh each;
- (ii) He shall surrender his passport, if any, in the Trial Court, if he is holding the same and is still with him;
- (iii) He shall appear before Trial Court on each and every date unless exempted by Court;
- (iv) He shall appear before the Investigating Officer as and when summoned;
- v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness;



- vi) He shall not involve in any criminal activity and if during the pendency of trial, he is found involved in commission of any offence punishable under UAPA, the prosecuting agency would be free to approach this court for recalling this order and cancellation of his bail;
- vii) He shall not sell, transfer or in any other manner create third party right over his immovable property;
- viii) He shall furnish an undertaking to the effect that in case of their absence, Trial Court may proceed with trial and he shall not claim re-examination of any witness.
- ix) At the time of release of the appellant, the SHO, Police Station City Nawanshahr, District SBS Nagar shall be informed. He shall appear before the SHO on every alternate Monday till the conclusion of the trial.

12. In the event there is a breach of any of the abovementioned conditions, or of the conditions to be imposed by the Trial Court independently, it would be open to the prosecution to seek cancellation of the bail of the defaulting appellant without any further reference to this Court. Similarly, if the appellant seeks to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the concerned appellant by making appropriate application before the Trial Court.

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13. Needless to mention that the observations made hereinabove are only for the determination of appeal seeking bail and shall have no bearing on the merits of the trial.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

03.10.2024
Prince

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No