

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 967 OF 2024**

Sudhir S/o. Pralhad Dhavale

.....Appellant

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Mihir Desai a/w Ms. Devyani Kulkarni and Ms. Pritha Paul for the Appellant.

Mr. Anand Subhash Shalgaonkar, APP for the Respondent No.1-State.

Mr. Devang Vyas, Additional Solicitor General of India a/w Mr. Sandesh Patil, Adv. Chintan Shah, Adv. Sheelang Shah, Adv. Jalaj Prakash and Adv. Vaibhavi Chaudhary for the Respondent No.2-NIA.

Mr. Pravin Ingawale, S.P, NIA, Mumbai present.

Mr. Pradip Bhale, Dy.S.P, NIA, Mumbai present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 8th JANUARY, 2025.

PC.:-

1) By the present Appeal under Section 21(4) of the National Investigation Agency Act, 2008, the Appellant, original Accused No.1, has impugned Order dated 6th November, 2019 passed in Bail Application No.4552 of 2018 in Special A.T.S. No. 1 of 2018 by the learned Additional Sessions Judge, Pune, is seeking his enlargement on bail under Section 439

of the Code of Criminal Procedure, 1973, in C.R. No.4 of 2018 originally registered with Vishrambaug Police Station, Pune under Sections 153(A), 505(1)(B), 117, 120(B), 34 of the Indian Penal Code and under Sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short, "*the UAPA*") and subsequently investigated by the National Investigation Agency (for short, "*the NIA*"), culminated into filing of Special A.T.S. No.1 of 2018. The said case is subsequently transferred to Mumbai and is numbered as Special Case No.414 of 2020.

2) Heard Mr. Desai, learned senior counsel appearing for the Appellant. Mr. Vyas, learned Additional Solicitor General of India for the NIA-Respondent No.2 and Mr. Anand Shalgaonkar, learned APP for Respondent No.1-State. Perused entire record.

3) At the outset, Mr. Desai, learned senior counsel appearing for the Appellant submitted that, the Appellant is seeking release or enlargement on bail of the Appellant predominantly on the ground of prolonged incarceration without trial and not on merits. He submitted that, Appellant has been arrested in the present crime on 6th June, 2018 and for the last more than six and half years, he is in incarceration without trial. That, the trial Court till date has not framed charge and the possibility of completion of trial in near future is remote. He therefore submitted that, the Appellant be released on bail on that count alone.

4) Mr. Vyas, learned Additional Solicitor General of India submitted that, delay in conducting the trial may not be attributable to the prosecuting agency alone, as there are various reasons in not conducting the trial expeditiously. That, the stage of Section 207 of the Cr.P.C. has already completed by the prosecution and many of the accused have filed Discharge Applications. The hearing of the Discharge Applications is being conducted by the trial Court and therefore it adds delay in proceeding with the stage of framing of charge, which has cumulatively resulted in delay in conducting the trial. However, with the usual fairness at his command, he requested this Court to pass necessary Orders in the interest of justice.

5) Perusal of record reveals that, the Appellant has been arrested by Vishrambaug Police Station, Pune on 6th June, 2018. After taking into consideration the gravity of the offence, subsequently by an Order of the Government of India, the investigation of the present crime was transferred to the NIA i.e. the Respondent No.2. The NIA after completion of investigation has filed charge-sheet/sheets.

5.1) Perusal of charge-sheet indicates that, in the list of witnesses annexed thereto, the prosecution has cited approximately 363 witnesses in support of its case. Admittedly, till date the charge has not been framed, rather it is yet to be framed and the chances of completing the trial in near future are bleak.

6) The Hon'ble Supreme Court in the case of *Union of India Vs.*

K.A. Najeel (*Supra*) in paragraph Nos.10, 11, 12, 15 and 17 has held as under:-

“10. *It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA.*

11. *The High Court’s view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p.622, para 10)*

“10. *Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] , on the presumption that the trial of the accused will take place without*

undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

(emphasis supplied)

12. *Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) (1999) 9 SCC 252 : 1999 SCC (Cri) 1156, Babba v. State of Maharashtra (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118 and Umarmia v. State of Gujarat (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”*
- “15. *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts*

unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. 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.”

“17. *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, 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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*

7) The principles of law enunciated by the Hon’ble the Supreme

Court in the case of *Union of India Vs. K.A. Najeed (Supra)* have been consistently followed by it in subsequent decisions.

8) It is thus by now a settled and recognized principle of law that, the prolonged incarceration without trial amounts to infringement or violation of Article 21 of the Constitution of India of an accused. That, long period of incarceration and unlikelihood of the trial being completed in the near future necessitates consequential release of the undertrial on bail.

8.1) It be noted here that, no minimum sentence is prescribed under Section 13 of UAPA and the maximum sentence prescribed is upto 7 years. The minimum sentence prescribed under Section 16(1)(b) of UAPA for commission of an act under Section 15 is 5 years, which may extend to imprisonment for life.

9) As noted earlier, the Appellant has already in pre-trial incarceration for more than six and half years as of today. After applying the principles of law and as enunciated in the case of *Union of India Vs. K.A. Najeed (Supra)*, in the opinion of this Court, the Appellant can be enlarged on bail.

10) Hence the following Order-

- (i) Appellant is directed to be released on bail in C.R. No.4 of 2018 registered with Vishrambaug Police Station, Pune and culminated into filing of Special A.T.S. No.1 of 2018, which is now converted into Special Case No.414 of 2020

pending on the file of learned Special Judge, (NIA Act), Mumbai on his executing P.R. bond in the sum of Rs.1,00,000/- with one or more solvent local sureties to make up the amount;

- (ii) Appellant shall not tamper with the prosecution witnesses and/or evidence in any manner;
- (iii) Before his release from jail, the Appellant shall inform the NIA, Mumbai so also to the trial Court, his prospective place of residence.
- (iv) After his release from jail, the Appellant shall attend the office of NIA, Mumbai on every first Monday of every calender month between 11.00 a.m. and 1.00 p.m. and shall mark his presency till the conclusion of trial;
- (v) Appellant shall not leave the territorial jurisdiction of this Court without prior permission of the learned Special Judge, (NIA Act), Mumbai, seized of Special Case No.414 of 2020;
- (vi) Appellant shall attend all the dates before the trial Court unless precluded on medical grounds.
- (vii) Appellant shall surrender his passport, if having or in possession of him, before the trial Court, before his release from Jail.

(viii) Appellant shall also provide his mobile and/or landline number to the NIA, Mumbai and to the trial Court, on which he can be contacted;

12) It is to be noted here that, the Appellant is enlarged on bail only on the ground of prolonged incarceration without trial and not on merits involved in the Appeal.

13) In view of the ground raised by the Appellant that, the trial is not concluded expeditiously, we request the learned Special Judge, (NIA Act), Mumbai, seized of Special Case No.414 of 2020 to expedite the stage of framing of charge and as far as possible the trial itself. The stage of framing of charge be completed within a period of 9 months from today.

14) Appeal is allowed in the aforesaid terms.

15) All the parties to act on the basis of an authenticated copy of this Order.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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