

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1193 OF 2024

Allahrakha Abu Bakar Manoori	..Appellant
Versus	
The National Investigation Agency	..Respondent

Mr. Mateen Shaikh a/w. Sharif Shaikh, S. V. Kshirsagar, Umair Ahmad, Muskan Shaikh, Jammu Shaikh, Ansar Tamboli, Shahid Nadeem, Arshad Shaikh and Razique Shaikh for Appellant.

Mr. Sandesh Dadasaheb Patil, Spl. P. P. a/w. Chintan Shah for the Respondent/NIA.

Mr. J. P. Yagnik, APP for the State.

Mr. Abhijeet Pawar, I.O. a/w. Akhilesh Shingh for NIA-Mumbai.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

**RESERVED ON : 19 MARCH 2025
PRONOUNCED ON : 28 MARCH 2025**

ORDER: (*Per Sarang V. Kotwal, J.*)

1. Heard Mr. Mateen Shaikh, learned counsel for the Appellant, Mr. Sandesh Patil, learned Special P. P. for the Respondent-NIA and Mr. Yagnik, learned APP for the State.
2. The Appellant has preferred this Appeal against the

order dated 14.10.2024 passed by the learned Special Judge, NIA, Greater Mumbai, below Exhibit-165 in NIA Special Case No.1599 of 2021. The Appellant is the original Accused No.2 in the said special case. In effect, he is seeking bail in connection with the said special case. In the past, the Appellant had approached this Court for the same relief of being released on bail vide the Criminal Appeal No.1459 of 2019 in NIA Special Case No.4 of 2018. There is no dispute that the Appellant had preferred Criminal Appeal No.1459 of 2019 in the same subject matter. That Appeal was dismissed by a Division Bench of this Court vide the order dated 31.01.2020.

3. The order passed by the Division Bench in Criminal Appeal No.1459 of 2019 was challenged by the Appellant before the Hon'ble Supreme Court vide the Special Leave to Appeal (Crl.) No.2982 of 2020. That Special leave petition was dismissed vide the order dated 16.07.2020. The Hon'ble Supreme Court passed the following order:

“ The Court is convened through Video Conferencing.
Heard learned counsel for the petitioner and carefully

perused the record.

We see no reason to interfere with the impugned order passed by the High Court dismissing the appeal filed by the petitioner.

The special leave petition is, accordingly, dismissed.

As a sequel to the above, pending interlocutory applications also stand disposed of.

However, keeping in view the facts and circumstances of the present case, we direct the trial court to expedite the trial.”

4. Now, the present Appeal is filed by the Appellant challenging the order passed by the learned Special Judge, as mentioned earlier. The learned Special Judge had observed that, it was the 4th bail application filed by the Appellant in the same subject matter. Besides challenging the order on the merits, the learned counsel for the Appellant submitted that there are changes in the circumstances. Mr. Shaikh, learned counsel for the Appellant submitted that, another Division Bench of this Court, vide the order dated 27.08.2024 allowed the Criminal Appeal No.749 of 2024 preferred by the co-accused of the Appellant namely Faizal Hasamali Mirza @ Kasib and granted him bail. Mr. Shaikh submitted that, Faizal is attributed a much serious role in the

offence than what is attributed to the present Appellant. Therefore, on the ground of parity this Appeal be allowed.

The next contention of Mr. Shaikh was that the Appellant is in custody for around 7 years and, therefore, considering the long period in custody as an under-trial prisoner, this Appeal be allowed. Mr. Shaikh submitted that, till today only 29 witnesses are examined and the prosecution intends to examine more than 40 witnesses; therefore, the trial is not likely to conclude within a reasonable time. He, therefore, submitted that, on these fresh grounds, the Appeal be entertained and allowed.

5. Brief facts leading to filing of the Appeal are as follows:

The Appellant was arrested on 16.05.2018 in connection with C.R.No.10 of 2018 registered with ATS police station, Mumbai, on 11.05.2018. The investigation was carried out and the charge-sheet was filed under sections 16, 18, 18(A), 18(B) and 20 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA'), and under sections 420, 465, 468, 471, 201, 120B of the I.P.C. The prosecution case as is

reflected in the charge-sheet is that the Anti Terrorism Squad, Juhu Unit, Mumbai received a reliable information that one Farooq, who was originally from Mumbai, now staying at Sharjah, was recruiting youth from India and was sending them for training in a terrorist camp at Pakistan via Sharjah. Farooq had sent the accused No.1 Faizal, resident of Jogeshwari, for terrorist training in a camp situated in Pakistan. Faizal was arrested. During his inquiry, it was revealed that Farooq was his cousin and his name was Farooq Devdiwala @ Farooq Abdulgani Memon @ Hajrat @ Vakar Memon. After Faizal went to Sharjah, he was sent to the terrorist training camp near Rawalpindi, Pakistan with the help of one Qayam who was an ISI agent. Faizal was given training for 12 days for handling weapons, constructing IEDs, Lone Wolf attack etc. After completing his training, he was sent back to Dubai via Karachi Airport. Faizal was arrested on 11.05.2018. The allegation against the Appellant was that, Farooq had explained to Faizal about the conspiracy of causing terrorist strike at Mumbai, Gujarat and U.P. Faizal was told that the present Appellant would provide him required vehicles for carrying out bomb explosion. The

Appellant was previously staying at Jogeshwari and had shifted to Gandhidham, Gujarat since about one year prior to his arrest. The investigation revealed WhatsApp chats between the Appellant and Farooq from 17.02.2018 to 16.03.2018. Those chats disclosed that the Appellant was entrusted with carrying weapons from Surat to Mumbai and providing them to Faizal for certain terrorist acts. The data was extracted from the mobile phone seized from the Appellant. It showed 13 images of motor bikes and their parts. Six images showed Gujarat State Petroleum Corporation tanks and its surrounding area. Those images were recovered from the deleted extracted data from his mobile phone. Those images indicated that the Appellant had carried out *recce* of those places and had sent those images by Instant Messaging App 'Hike' to somebody. His phone contained two images of fire arms and one image showing the persons carrying ISIS flag. 22 images of screenshots of WhatsApp chats with accused Farooq were also found. During the investigation, Email account used by the Appellant was searched and 227 screenshots and downloaded data of his account was copied on a DVD recorder under a panchanama. There were

various International mobile numbers in his contact list of the countries like Lebanon and Turkey. His map search history showed that he had viewed the area around Pakistan on 17.04.2018. He had viewed Kandla International Container Terminal on 02.04.2018. He had viewed area around Dwarka and area around Gir Somnath on 22.10.2017. He had searched on You Tube for Syria live and had visited Burma rights.

6. A Division Bench of this Court while rejecting the Appellant's Appeal and thereby rejecting his prayer for bail vide the order dated 31.01.2020 in Criminal Appeal No.1459 of 2019 had considered the material collected against the Appellant. A reference was made to Section 43D(5) of UAPA. Some portion of the WhatsApp conversation was reproduced. The images found in his phone were considered and in the concluding paragraph following observations were made:

“Considering over all material on record, the case of the prosecution against the appellant cannot be said to be inherently improbable or wholly unbelievable. Non-mentioning of name of the appellant in the FIR, therefore, by itself is not sufficient to enlarge the appellant on bail. The Trial Court was therefore, justified in rejecting the bail application of the appellant. No interference is called for in

the impugned order. Hence, we dismiss the appeal.”

Thus, the Appeal preferred for bail was rejected on consideration of merits of the matter. This order and the observations were confirmed by the Hon’ble Supreme Court in the order dated 16.07.2020 passed in Special Leave to Appeal (Crl.) No.2982 of 2020; referred to herein above. Therefore, though, Mr. Shaikh tried to reopen the argument on merits by submitting that this material was not incriminating, it is not permissible for us to go beyond the observations made by the earlier Division Bench on merits of the matter, which were confirmed by the Hon’ble Supreme Court. The only circumstances on which we are considering this Appeal are the order granting bail to the co-accused passed by a Division Bench and the submissions regarding long period in custody of the Appellant as an under-trial prisoner.

7. From that point of view, we have heard both the learned counsel. They made submissions before us with reference to various judgments passed by the Hon’ble Supreme Court. In this

connection, Mr. Shaikh invited our attention to the order dated 27.08.2024 passed by a co-ordinate Bench of this Court in Criminal Appeal No.749 of 2024. Mr. Shaikh submitted that the role attributed to Faizal who is granted bail was much more serious than the role attributed to the Appellant. Faizal had actually undergone the training in Pakistan. Therefore, on the grounds of parity, as the Appellant is attributed a much lesser role, the Appellant also deserves to be released on bail.

8. Mr. Shaikh relied on the following judgments of the Hon'ble Supreme Court in support of his contention that, in such cases, bail has to be granted to the accused who are in custody for a long period.

i) **Union of India Versus K. A. Najeeb¹;**

ii) **Javed Gulam Nabi Shaikh Versus State of Maharashtra and another²;**

iii) **Udhaw Singh Versus Enforcement Directorate³.**

9. Learned Special P. P., Mr. Patil, on the other hand, submitted that this Court cannot enter into the merits of the

1 (2021) 3 Supreme Court Cases 713

2 (2024) 9 Supreme Court Cases 813

3 2025 SCC OnLine SC 357

matter for consideration of bail because the earlier Division Bench had rejected that prayer and the said order was confirmed by the Hon'ble Supreme Court. He submitted that the Appellant cannot claim parity on the ground that his role is much lesser than the co-accused Faizal. He further submitted that the trial has progressed substantially. 29 witnesses are already examined. PW-19 Mr. Gadvi has deposed that the notices were displayed in the premises of Mundra Port stating that taking snaps was prohibited. PW-19 has further deposed that, he had not seen any poster in the Mundra Port, but there were notices at a number of places within the premises. Mr. Patil, therefore, submitted that the trial is well in progress and as of today 29 witnesses are already examined. Mr. Patil, on instructions from the I.O. who is present in the Court, stated that the prosecution will take all the steps to complete the trial by the end of December 2025. Mr. Patil, on instructions of the I.O., also stated that the prosecution intends to examine 35 more witnesses. He further stated that the prosecution had filed an application below Exhibit-238, under section 19 of the NIA Act for conducting the trial on a day to day basis. The trial Court, vide the

order dated 25.02.2025 has allowed that application. He submitted that, there is a definite difference between the case of the co-accused Faizal and the present Appellant. The merit of the material against the co-accused Faizal was never considered by the Division Bench of this Court. But in the case of the present Appellant, as submitted earlier, the merits of the matter were considered by another Division Bench of this Court. The prayer for bail was rejected and that order was confirmed by the Hon'ble Supreme Court. Therefore, there is a difference in the case of the co-accused Faizal and the present Appellant for consideration for grant of bail.

Mr. Patil relied on the following judgments of the Hon'ble Supreme Court, in support of his submissions.

- i) **Tarun Kumar Versus Assistant Director, Directorate of Enforcement⁴**
- ii) **Gurwinder Singh Versus State of Punjab and another⁵**
- iii) **Union of India through the Assistant Director Versus Kanhaiya Prasad⁶.**

4 2023 SCC OnLine SC 1486

5 (2024) 5 Supreme Court Cases 403

6 2025 SCC OnLine SC 306

REASONING

10. As discussed earlier, considering the fact that the Appellant's prayer for bail was rejected by a Division Bench of this Court on merits and the said order was confirmed by the Hon'ble Supreme Court, we cannot record any findings against that order on merits. As mentioned earlier, we are considering the submissions regarding effect of the co-accused being granted bail and the Appellant's custody as an under-trial prisoner being from 16.05.2018.

11. As rightly submitted by Mr. Patil, a co-ordinate Bench of this Court while allowing Criminal Appeal No.749 of 2024 preferred by the co-accused Faizal had not considered the merits of the matter. The Division Bench considered the principle "bail is the rule and jail is an exception". It was observed that, Mr. Patil representing NIA had informed that 25 witnesses were examined till then and about 48 more witnesses were to be examined. The Division Bench observed that, considerable length of time was likely to be consumed in examining 48 witnesses and the Court

entrusted with this trial was having 12 time-bound trials before it. The Division Bench, therefore, observed that they did not intend to direct the learned Judge to perform an impossible task of expeditiously concluding the trial. It was further observed that, justice hurried was justice buried and the Division Bench did not want the Judge to hurry up the trial under their orders. It was further observed that, right to speedy trial is well recognized right of the co-accused, being covered under Article 21 of the Constitution of India. The Division Bench deemed it appropriate to allow that Appeal and release the co-accused on bail.

From these observations, it is quite clear that, bail was not granted on merits, but was granted because the trial was likely to take a long time to conclude. The Division Bench did not deem it fit to expedite the trial. However, it may be noted here that perhaps it was not brought to the notice of the Division Bench that the Hon'ble Supreme Court had already expedited the trial as is reflected in the order passed in Special Leave to Appeal (Crl.) No.2982 of 2020, on 16.07.2020. Thus, the learned Trial Judge was bound to expeditiously conclude the trial.

12. The relevant paragraphs in the case of **Union of India Versus K. A. Najeeb (supra)** are as follows:

“14. The facts of the instant case are more egregious than these two above-cited instances. Not only has the Respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, two opportunities were given to the Appellant-NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co-Accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can therefore be legitimately expected that if found guilty, the Respondent too would receive a sentence within the same ballpark. Given that two-third of such incarceration is already complete, it appears that the Respondent has already paid heavily for his acts of fleeing from justice.

17. 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. Indeed, both the restrictions under a Statue 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the Respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down

the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the Appellant'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 our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under the UAPA. Instead, Section 43-D(5) of the 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.

13. Mr. Shaikh, therefore, submitted that, in that case the charges were grave and a serious threat to the societal harmony, as observed by the Hon'ble Supreme Court. But even then, since the trial was not likely to be completed soon, the High Court had granted bail and that view was upheld by the Hon'ble Supreme Court. It was observed that, an attempt was made to strike a balance between the prosecution's right to lead evidence, and simultaneously, the accused's rights guaranteed under Part III of

the Constitution of India were well protected. Mr. Shaikh further submitted that the Hon'ble Supreme Court had observed that the conditions U/s.43-D(5) of the UAPA were comparatively less stringent than Section 37 of the NDPS Act.

14. In response to the arguments of Mr. Shaikh based on **Najeeb's case (supra)**, Mr. Patil submitted that these observations will have to be read in the background of the facts of that case. He submitted that, in that case the co-accused were sentenced to maximum 8 years of R.I. and since the said accused Najeeb was already in custody for more than 5 years, benefit was given to him. Mr. Patil submitted that the said aspect was considered by making a specific reference to **Najeeb's case (supra)** by the Hon'ble Supreme Court in **Gurwinder Singh's case (supra)**.

15. Before referring to **Gurwinder Singh's case (supra)**, the facts of **Najeeb's case (supra)** can be seen. In Najeeb's case, a group of people with a common object had attacked the victim-professor while he was returning home with his mother and sister after attending Sunday mass at a local Church. The members of an

unlawful assembly had intercepted his car, restrained him and had chopped off his right palm. Country-made bombs were also hurled at bystanders. An F.I.R. was lodged under sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326, 506(H), 307, 149 of the I.P.C. and under section 3 of the Explosive Substances Act. During investigation, it emerged that the attack was part of a larger conspiracy. Several dozen persons including the accused in that case before the Hon'ble Supreme Court were arraigned by the police. He was alleged to be one of the main conspirators and along with those provisions of the I.P.C., Sections 16, 18, 18-B, 19 and 20 of the UAPA were also invoked. But he was untraceable. He was declared as an absconder and his trial was split up from the rest of his conspirators. His co-accused were tried and most of them were found guilty and were awarded cumulative sentence between two and eight years' rigorous imprisonment.

Thus, in the facts of that case, the Hon'ble Supreme Court observed that, maximum sentence which was awarded to his co-conspirators was eight years. He was in custody for more than 5 years and, therefore, he was granted bail.

Such is not the case in the present case before us; as rightly submitted by Mr. Patil. In the present case, the minimum sentence provided is 5 years, but the maximum sentence may extend upto life imprisonment and, therefore, on facts and on the possible sentence; the present Appellant's case is quite different from **Najeeb's case (supra)**.

16. This particular aspect was considered in **Gurwinder Singh's case (supra)**. In that Judgment, the Hon'ble Supreme Court has also referred to **K.A.Najeeb's case (supra)**. Paragraphs-44, 45 and 46 of that Judgment are relevant; which are as under:

“44. The appellant's counsel has relied upon K.A. Najeeb's case to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance.

45. In K.A. Najeeb's case this Court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this Court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this Court took it as a factor influencing its assessment to grant bail. Further, in K.A. Najeeb's case the trial of the

respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said Accused therefore this Court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined.

46. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organisation involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.”

17. These observations support the contentions of Mr. Patil who specifically emphasized the observations in paragraph-46 that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. Therefore, gravity of the offences is a serious consideration.

18. **Gurwinder Singh’s** Judgment also refers to the principle “bail is the rule, jail is the exception”; as is observed by the co-ordinate Division Bench of this Court in Criminal Appeal No.749 of

2024. In that context, paragraph-26 of **Gurwinder Singh's** judgment is important; which reads thus:

“26. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - “bail is the rule, jail is the exception” - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The “exercise” of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D(5)- “shall not be released” in contrast with the form of the words as found in Section 437(1) Cr.P.C.- “may be released”- suggests the intention of the Legislature to make bail, the exception and jail, the rule.”

19. Thus, the observations of the Hon'ble Supreme Court in that paragraph are binding and, therefore, Mr. Shaikh cannot rely on the Division Bench's judgment granting bail to the co-accused, which is based on the principle “bail is the rule and jail is an exception”.

20. Mr. Shaikh relied on the case of **Javed Gulam Nabi Shaikh (supra)** and in particular relied on paragraph-17 which reads thus:-

“17. 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.”

21. Mr. Shaikh submitted that, it was not possible for the Special Court to conclude the trial within a reasonable period and, therefore, the Appellant deserves to be released on bail. However, as discussed above, the criteria laid down by **Gurwinder Singh’s case (supra)**, will have to apply in grave and serious case under UAPA. Mr. Patil relied on the case of **Kanhaiya Prasad (supra)**, in which, the Hon’ble Supreme Court was considering the gravity of the offences under the Prevention of Money Laundering Act, 2002 (for short ‘PMLA’) and it was observed that, those offences were not trivial in nature. A reference was made to Section 45(1)(b)(ii) of the PMLA. It was observed that, it was an error on the part of the High Court in releasing the accused on bail without recording satisfaction as required U/s.45 of the PMLA.

In the present case also it is not possible to record the satisfaction that the Appellant has not committed the offence as

required under Section 43D of the UAPA, because that issue is already concluded by the previous order passed by the Division Bench; confirmed by the Hon'ble Supreme Court.

22. In **Tarun Kumar's case (supra)**, the Hon'ble Supreme Court observed that, while applying principle of parity, the Court is required to focus on the role of accused whose application is under consideration. As discussed earlier, for claiming parity, Mr. Shaikh could not point out consideration of material against the co-accused Faizal as compared to the material against the present Appellant. Therefore, in this case, there is no question of applying parity on merits of the matter, as far as, the Appellant is concerned, because the co-accused Faizal was not granted bail on merits of the matter.

23. Mr. Shaikh relied on the observations of the Hon'ble Supreme Court in the case of **Udhaw Singh (supra)**. However, that case was under PMLA and the maximum sentence that could be awarded was of 7 years. The Appellant in that case was in custody for one year and two months. There were 225 witnesses sought to

be examined, out of which only one was examined, therefore, the trial was not likely to be concluded in a few years. In that background, he was granted bail.

In the present case, the maximum punishment is life imprisonment. The trial has already started and has substantially progressed further. As of today, 29 witnesses are examined. Therefore, the observations of the Hon'ble Supreme Court in the case of **Udhaw Singh (supra)** are not applicable in the present case.

24. As a result of the above discussion, it is quite clear that, on merits, the matter is quite serious. There is sufficient material against the Appellant. The allegations pertain to the acts which are a threat to the security of the country. The gravity of the offence cannot be overlooked. The trial has already progressed substantially and the prosecution intends to complete it by the end of December 2025; as stated by Mr. Patil on instructions. As submitted by Mr. Patil, the Trial Court has passed an order for hearing the trial on day to day basis, therefore, the trial is likely to

be concluded within a reasonable time.

25. In this view of the matter, the Appellant cannot be released on bail. The Appeal is dismissed.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)

CRIMINAL APPEAL NO. 1193 OF 2024

Allahrakha Abu Bakar Manoori

..Appellant

Versus

The National Investigation Agency

..Respondent

ORDER: (*PER S.M. MODAK, J*)

1. I have an opportunity to read the judgment written by my esteemed brother. He has narrated the facts in detail. He has also referred judgments cited by both the sides. I fully agree with the observations noted by him. I intend to give certain additional reasons in support of his observations.

2. It is true the original charge-sheet is filed by Anti Terrorism Squad, Mumbai against two named accused and other unknown accused persons. The named accused are Accused No. 1-Faizal and Accused No. 2-Allahrakha, who is present Appellant. Charge-sheet is filed for the offences punishable under Sections 16, 18, 18A, 18B, Section 20 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA').

3. Considering the reasons and gravity and its ramifications, the Central Government by exercising power under **Section 19** of

the NIA Act directed the National Investigating Agency to take up the investigation as per the order dated **31.07.2018**. That is how, they have filed supplementary charge-sheet. My esteemed brother already referred the facts disclosed from the charge-sheet.

4. The Appellant applied for bail before the Special Court as per the NIA Act. It was rejected as per order dated **14.10.2024**. In this appeal, the bail is asked mainly on two grounds. One on the ground of the parity because co-accused-Faizal is granted bail by the Division bench of this Court and second is long incarceration. I fully agree with the conclusion drawn by my esteemed brother. I am also of the same opinion that considering the facts available against this Appellant, he cannot be granted benefit of the bail.

5. There is no dispute that co-accused Faizal is granted bail by the Division bench of this Court in **Criminal Appeal No. 1459 of 2019 passed on 27.08.2024**. What is in dispute is whether the same benefit can be extended to this Appellant. No doubt rule of parity is recognized in bail jurisprudence. Prior to giving the benefit, the Court is required to consider the role of the individual

accused and the circumstances in which the accused is granted bail. There is a strong reason for denying this benefit to the present Appellant. As narrated by my esteemed brother, this Appellant has not only failed before the trial Court but also before this Court and the Hon'ble Supreme Court. There is definite conclusion to be drawn on the basis of this refusal. When the bail is refused, it indicates the concerned Court have applied their mind to the material against the Appellant. It indicates the Court have arrived at a satisfaction as contemplated under Section 43D(5) of the UAPA Act. It indicates the opinion expressed by the Courts about reasonable grounds for believing that the accusation is *prima-facie* true. These were not the facts available in case of co-accused Faizal. At least when we have read the order granting him bail, it nowhere reflects that it was pointed out about any bail application filed by him and decision thereon. There is reason to believe that decision on bail application of Faizal on merits is not available. So purely the Division bench has granted him bail only on the ground of long incarceration.

6. Learned Advocate Shri Patil is justified in relying upon the

observations in case of **Tarun Kumar V/s Assistant Director, Directorate of Enforcement**⁷ specifically in para no. 19 of the judgment:-

“It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

Long incarceration

7. There cannot be a dispute about right to speedy trial to a prisoner. He may be a citizen or a non-citizen. It is also true there

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are certain special provisions relating to bail in certain statutes like MCOC, NDPS, PMLA, UAPA. They are different from regular provisions relating to bail contained in Criminal Procedure Code (for short 'Cr.PC.'). It is also true when there is an occasion, the Hon'ble Supreme Court has recognised the fundamental right to speedy trial over the special provisions of bail.

8. Learned Advocate Shri Patil, on one hand, has differentiated facts from the judgment cited by learned Advocate Mr. Mateen Shaikh and on the other hand he had placed reliance on the few of those judgments. My esteemed brother has dealt with them elaborately.

9. It is no doubt true the Constitutional Court is required to recognise the right of the speedy trial and has also granted bail. It is said a judgment is an authority on the basis of the facts of that case and law interpreted. When the punishment is less, when trial has not begun and number of prosecution witnesses are enormous, the Hon'ble Supreme Court has granted bail. But it is also a fact that the Hon'ble Supreme Court has refused to extend the said

benefit considering the allegations and seriousness of the offence. Considering the fact, the Appellant has lost in getting bail earlier, benefit of long incarceration cannot be extended to him when such ground is taken.

10. For this additional reasoning, I support the opinion arrived at by my esteemed brother. The outcome of which is rejection of the appeal.

(S. M. MODAK, J.)