Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1352 OF 2024

Salman Kayyum Shaikh .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Prashant Pandey a/w. Mr. Dinesh Jadhwani, Ms. Riddhima Mangaonkar and Mr. Pramod Sharma, Advocates i/by Prajyot Shrivastav for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 08, 2025.

P.C.:

1. Heard Mr. Pandey, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.328 of 2020 registered with Ghatkopar Police Station for offence under Sections 302, 307, 504 and 506 read with 34 of the Indian Penal Code, 1860 (for short '**IPC**'). Applicant is arrested on 08.12.2020 and is incarcerated since 4 years and 5 months.

3. I have heard Mr. Pandey, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

4. On 19.03.2025, after hearing learned Advocates for the parties, the following order was passed.

> *"**1.** Heard Mr. Dubey, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.*
>
> ***2.** Perused the record of the case. Prima facie pursuant to the previous order a clear dichotomy is noticed with respect to the number of witnesses that were required to be examined by the prosecution. I have expressed my complete displeasure to the prosecution about it. However, Mr. Karmakar, learned APP has called the concerned Officer who is present in the Court today and on taking instructions he would persuade the Court not to make any observations and permit the prosecution to complete the trial within a period of one month from today.*
>
> ***3.** Though as counter argument Mr. Pandey has also attempted to plead and persuade this Court to observe this conduct prima facie with respect to the delay that has occurred post passing of the order by this Court (Coram: Manish Pitale, J.), I would like to give the benefit of doubt to the prosecution considering the extent and work which the prosecution is required to do in the present case. Without going into and examining the merits of the matter, the prosecution is granted time by the Court. It is expected that the prosecution shall complete the trial as noted above.*
>
> ***4.** Needless to state that present Application shall be heard and finally decided on the next adjourned date which shall be noted by the prosecution.*
>
> ***5.** Stand over to **21st April, 2025.**"*

5. Most unfortunately, the same situation prevails even today when the bail Application is heard. The prosecution has repeatedly committed a flip flop on the number of witnesses remaining to be examined. Trial was expedited by this Court in the year 2023. At that time, prosecution desired to examine only 8 more witnesses. However, when the previous order on 07.01.2025 was passed, prosecution had stated that 12 more witnesses are to be examined. Inevitably the trial is protracted. All that is submitted by the learned Prosecutor is that

Applicant is having several antecedents and therefore, if he is released on bail, he is likely to re-offend himself and hence the Bail Application be rejected. I am not willing to accept this submission for more than one reason.

6. Applicant is arrested in the present crime on 08.12.2020 and is in incarceration for the past 4 years amd 5 months pending trial. Probability of trial being completed in the near foreseeable future is bleak. This Bail Application was itself filed on 27.03.2024. The *Roznama* of the case before Trial Court is placed on record by Mr. Pandey beginning on 07.03.2025 upto 06.05.2025 pursuant to passing of order dated 19.03.2025. Though the matter was made time bound by this Court 2 years ago and even once again this year and the matter was listed before the Trial Court on 31 different dates after March, 2025, save and except adjournments, nothing has happened in the matter and trial has not proceeded any further. Once this position is seen by Court and the Court having granted indulgence to the prosecution on two earlier occasions on the statement of APP that the trial would be concluded within one month which is recorded in the order dated 19.03.2025 and the trial has not progressed, then the Court will have to step in. This is because of the order dated 23.08.2023 passed by this Court (Coram: M.S. Karnik, J.) directing Trial Court to conclude the trial within 6 months, however it is seen that the trial is still not over. At that time prosecution has cited 61

witnesses to be examined and with a lapse of more than 1.5 years thereafter, the trial is still not completed. In that view of the matter on the facet of long incarceration pending trial, Applicant has made out a case for grant of bail since there is no likelihood of the trial being concluded in the near foreseeable future.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

8. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. It is brought to the notice of the Court that trials are taking perpetuity to conclude and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long period and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by

the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates as on date houses anywhere between 220 – 250 inmates. Such an incongruity leads us to answer the proposition: **"*How can Courts find a balance between the two polarities?*"**

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 4 years and 5 months, a situation impacting the rights of under-trial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence.

10. In the case of ***Emperor Vs. H.L. Hutchinson***[1]*,* the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must

1 AIR 1931 ALL 356

be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukerji writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

11. In the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[2], in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

> ***"Prevailing situation***
>
> ***6.*** *Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to*

2 (2022) 10 SCC 51

be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

Definition of trial

7. *The word "trial" is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.*

8. *Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.*

Definition of bail

9. *The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.*

10. *It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:*

> *"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."*

11. *Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:*

> *"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of*

those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."

Bail is the rule

12. *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)*

> *"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)*
>
> > *'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All*

14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

> *"1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."*

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> *"29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."*

30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

> *"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."*
>
> *It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'*
>
> * * *
>
> *24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ."*

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial*

> *but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
>
> *23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*
>
> ***Presumption of innocence***
>
> ***14.*** *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.*
>
> ***15.*** *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."*

12. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor, High Court***[3] *observed as under:-*

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…" (emphasis supplied)*

3 (1978) 1 SCC 240

13. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

13.1. In the landmark judgement of ***Maneka Gandhi Vs. Union of India***[4], the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

13.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[5] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

4 1978 (1) SCC 248
5 (1980) 1 SCC 81

13.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***[6] dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

> *"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's case (supra), 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."*

13.4. The Supreme Court in the case of ***Union of India Vs. K.A. Najeeb***[7] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

> *"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."*

6 1996 SCC (2) 616
7 [2021] 1 S.C.R. 443

14. Applicant in present case has been in custody for 4 years and 5 months. There is no possibility of the trial concluding in the near future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.***[8] the Supreme Court held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***
>
> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;***

8 1992 (1) SCC 225

> *(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
>
> *(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.*
>
> *(4) – (11) -------x-------"* *(emphasis supplied)*

15. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

16. In the case of ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India***[9], the Supreme Court has held that:-

> *"17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place*

9 (1995) 4 SCC 695

> *the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

17. This Court in the case of ***Ganesh Madhukar Mendarkar Vs. The State of Maharashtra***[10] while referring to an article dated 01.05.2018 "***How prison changes people"*** [11] written by Dr. Christian Jarret, Editor of British Psychological Society's Research Digest published on BBC discussed the negative effects on a person's mental and physical health due to long incarceration and granted bail to the Accused who suffered incarceration of more than 9 years in a matter under 302 of IPC. Paragraph No.29 of the judgment is relevant and reads as under:-

> *"29. In view of the above decisions and considering the long incarceration of the Applicant, I would like to highlight one more important issue which persuades me to consider the present case and that is the effect of long incarceration. Long incarceration can have many negative effects on a person's mental and physical health. Long incarceration can lead to post-incarceration syndrome which can include depression, anxiety and poor self-esteem. It can promote unhealthy behaviours like drug abuse. Inmates face social stigma which can disrupt relationships with family and friends. Incarceration persons often suffer long-term consequences from having been subjected to pain, deprivation and extremely atypical patterns and norms of living and interacting with others. Prima facie incarceration*

10 Bail Application No.597 of 2025 decided on 14.02.2025 (Bombay HC)
11 Available at https://www.bbc.com/future/article/20180430-the-unexpected-ways-prison-time-changes-people

> *rather long incarceration exposes under-trial accused to carceral environment which can be inherently damaging to the mental health of the under-trial accused coupled with the appalling conditions in the prisons. Researchers have even theorized that incarceration can lead to Post-Incarceration Syndrome, a syndrome similar to PTSD."*

18. It is observed by the Delhi High Court in the case of ***Sandeep Tilwani Vs. State Govt. of NCT of Delhi***[12] that endless incarceration without trial being completed in the near foreseeable future falls foul of Article 21 of the Constitution of India. The Court held that if Accused is suffering a prolonged incarceration without a timely trial in the case, Courts would ordinarily be obligated to release the Accused on bail. This is in context of Article 21 of the Constitution of India which deals with right to life and personal liberty. Court held that law in such cases preferred "bail over jail" aiming to balance right of Accused with the requirement of criminal justice system and even though if offence was serious, long incarceration was a relevant factor. Court held that object of bail was to secure appearance of Accused during the trial.

19. The Supreme Court in the case of ***Ankur Chaudhary Vs. State of Madhya Pradesh***[13] while considering a similar situation on the facet of long incarceration granted bail under the NDPS Act despite the Accused therein not meeting the stringent criteria of Section 37 of the NDPS Act by holding that long incarceration due to undue trial delays

12 Bail Application No.4648 of 20224 decided on 24.12.2024
13 Special Leave to Appeal (Crl.) No. 4648 of 2024. decided on 28.05.2024

contradicts the fundamental right under Article 21 of the Constitution of India thus allowing conditional liberty to supersede the statutory restrictions in such cases.

20. In the case of ***Mohd. Muslim Vs. State (NCT of Delhi)***[14], and ***Rabi Prakash Vs. State of Odisha (2023)***[15] Supreme Court held that when Accused faces prolonged incarceration conditional liberty can supersede the statutory restrictions outlined in Section 37 of the NDPS Act which implies that if trial experiences undue delay it can serve as a valid ground for granting bail to Accused despite the stringent provisions of Section 37 of the NDPS Act. In the said decision, the Supreme Court has referred to a piece authored by Donald Clemmer titled 'The Prison Community' in 1940, to highlight the dangers of unjust imprisonment. Quoting the author and a decision of the Kerala High Court, the Supreme Court has flagged the risk of 'prisonisation', that is the risk of an under-trial losing his identity; coming to be known only by a number; losing his personal possessions and personal relationships; status, dignity and autonomy over his personal life, all of which affects his self-perception. It has also been highlighted that if an under-trial belongs to the weaker economic strata of society, imprisonment leads to immediate loss of livelihood, scattering of families and alienation from society. The Supreme Court has observed that Courts must be sensitive to these aspects, since in the event of

14 Criminal Appeal No(s).Of 2023 @ Special Leave Petition (Crl.) No(S). 915 Of 2023.
15 2023 SCC OnLine SC 1109.

acquittal, these losses would be irreparable.

21. Considering the above pronouncements, I recently came across an article / blog dedicated to under-trials prisoners languishing in prisons of India titled "Proof of Guilt" written by two under-trial accused persons detained in prison since long. Considering long incarceration a question was posed in the article which in my opinion is relevant to answer if any Court is considering the facet of long incarceration pending trial for grant of bail. At the outset, I need to clarify that mere long incarceration is not an absolute proposition for grant of bail as Court will have to also consider and hear the prosecution objections, but it is an important, rather most important issue which needs consideration if raised considering right to speedy trial. The question posed in the article is "How long is too long a period of incarceration as an under-trial for a Court to conclude that the right to speedy trial is defeated?" The paradox in the aforesaid question is relevant *prima facie* and there cannot be one definite answer.

22. It is seen that this question was raised by the Delhi High Court in the case of ***Mohamed Hakim Vs. State (NCT of Delhi)***[16] in the context of grant of bail to an under-trial prisoner. In this case a Division Bench of Delhi High Court has urged Courts to act as *doctors* instead of *coroners* to highlight that it is crucial for a Court to recognise and be conscious of the right of an accused to speedy trial

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and to prevent that right from getting defeated, rather than wake up much too late and lament that such right has been defeated. The Court has held that a Court seized of a bail must assess the pace at which the trial is proceeding and to not wait for too long by which time the Article 21 right of an accused is already trampled upon.

23. In the case of ***Mohamed Hakim (supra)*** in an exhaustive paragraph the Court has referred to the seminal ruling in the case of ***P. Ramachandra Rao Vs. State of Karnataka***[17] wherein a 7 Judge Constitutional Bench of the Hon'ble Supreme Court delved into the issue of Speedy Trial and explained its genesis in Article 21 of the Constitution of India. The said paragraph 19 is apt and relevant in deciding Bail Applications on the facet of "Long Incarceration" pending trial *vis-a-vis* right of the accused person to "Speedy Trial" / justice and is reproduced below for reference:-

> ***"19.*** *In its seminal ruling in P. Ramachandra Rao v. State of Karnataka, a 7-Judge Constitutional Bench of the Hon'ble Supreme Court dwelt into the issue of speedy trial and explained its genesis in Article 21 in the following words:*
>
> *"R.C. Lahoti, J. (for Bharucha, C.J., Quadri, J., himself and Hegde, Ruma Pal and Pasayat, JJ.)—* ***No person shall be deprived of his life or his personal liberty except according to procedure established by law — declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully****. Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can.* ***The mental***

17 (2002) 5 SCC 1

agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial — in short everything commencing with an accusation and expiring with the final verdict — the two being respectively the terminus a quo and terminus ad quem — of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the legislature and the statutes have not chosen to do so — is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength.

** * * * **

"8. The width of vision cast on Article 21, so as to perceive its broad sweep and content, by the seven-Judge Bench of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] inspired a declaration of law, made on 12-2-1979 in Hussainara Khatoon (I) v. Home Secy., State of Bihar [(1980) 1 SCC 81 :980 SCC (Cri) 23] that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. The Court said (SCC p. 89, para 5)—

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

Many accused persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled,

by Hussainara Khatoon (I) [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] statement of law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. … The proponents of right to speedy trial strongly urged before this Court for taking one step forward in the direction and prescribing time-limits beyond which no criminal proceeding should be allowed to go on, advocating that unless this was done, Maneka Gandhi [(1978) 1 SCC 248] and Hussainara Khatoon (I) [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] exposition of Article 21 would remain a mere illusion and a platitude. ***Invoking of the constitutional jurisdiction of this Court so as to judicially forge two termini and lay down periods of limitation applicable like a mathematical formula, beyond which a trial or criminal proceeding shall not proceed, was resisted by the opponents submitting that the right to speedy trial was an amorphous one, something less than other fundamental rights guaranteed by the Constitution****. The submissions made by proponents included that the right to speedy trial flowing from Article 21 to be meaningful, enforceable and effective ought to be accompanied by an outer limit beyond which continuance of the proceedings will be violative of Article 21. It was submitted that Section 468 of the Code of Criminal Procedure applied only to minor offences but the court should extend the same principle to major offences as well. It was also urged that a period of 10 years calculated from the date of registration of crime should be placed as an outer limit wherein shall be counted the time taken by the investigation.*

"9. The Constitution Bench, in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93], heard elaborate arguments. ***The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage****. Guidelines (8), (9), (10) and (11) are relevant for our purpose and hence are extracted and reproduced hereunder : (SCC pp. 272-73, para 86)*

"(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and

determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. ***The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.***

(10) ***It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be a qualified one****. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint.* ***The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.***

(11) ***An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.****"*

"10. During the course of its judgment also, the Constitution Bench made certain observations which need to be extracted and reproduced:

"83. But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. ***One may ask — speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings****. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. … it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory." (SCC pp. 268-69, para 83)*

*"[****E****]****ven apart*** *from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever*

there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders." (SCC p. 260, para 65)

(emphasis supplied)

* * * * *

"21. Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanism available for achieving the same end? ***The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression****. Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Explanation 2 to Section 309 confers power on the court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the courts. … In appropriate cases, inherent power of the High Court, under* ***Section 482*** *can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice.* ***The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings****. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.*

* * * * *

"28. … We have in the earlier part of this judgment extracted and reproduced passages from A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93]. ***The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences. Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules****. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93]. In Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899]* ***the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state:***

"92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors — (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay." *(SCC pp. 639-40, para 92)*

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] [as modified in Common Cause (II) [(1996) 6 SCC 775 : 1997 SCC (Cri) 42] and Raj Deo Sharma (I) (1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) ***It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings****. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589], Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and Raj Deo Sharma (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] could not have been so prescribed or drawn and are not good law.* ***The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made*** *in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589], Raj Deo Sharma case (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324]. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted.* ***Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.***

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. ***In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions****.*

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and

qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms.

* * * * *

"32. Secondly, ***though we are deleting the directions made respectively by two-and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy****. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in Hussainara Khatoon (IV) [Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40]:*

The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. ***The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability****. (SCC p. 107, para 10)".*

(emphasis supplied)

24. In paragraph No.20 of the same judgement (Mohamed Hakim), the Delhi High Court referred to the decision of the Supreme Court in the case of ***State of Kerela V. Raneef*** [18] and held that in deciding Bail Applications, an important factor which should certainly be taken into consideration by Court is the delay in concluding trial. The Court held that the trial often takes place several years and if the

18 AIR 2011 SC 340

accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Paragraph No.20 reads thus:-

> ***20.*** *In State of Kerala v. Raneef, the Hon'ble Supreme Court said:*
>
> *"…. The appellant has filed this appeal challenging the impugned order of the Kerala High Court dated 17-9-2010 granting bail to the respondent, Dr. Raneef, who is a medical practitioner (dentist) in Ernakulam District in Kerala, and is accused in Crime No. 704 of 2010 of PS Muvattupuzha for offences under various provisions of IPC, the Explosive Substances Act, and the Unlawful Activities (Prevention) Act.*
>
> * * * * *
>
> *"15.* ***In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail****. In the present case the respondent has* ***already spent 66 days in custody*** *(as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."*
>
> *(emphasis supplied)*

25. In the same judgement, paragraph No.30 is also relevant wherein the Court has reiterated the foundational principles of bail in the masterful words of the apotheosis of jurisprudence, Justice V.R. Krishnaiyer as being never out of place. Paragraph No.30 reads thus:-

> **"*30.*** *A reminder of the foundational principles of bail, in the masterful words of the apotheosis of jurisprudence, Justice V.R. Krishna Iyer, is never out of place. In Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh as upheld in a subsequent decision in Babu Singh v. State of UP, the Hon'ble Supreme Court said in the opening para:*

> ""*Bail or jail?" — at the pre-trial or post-conviction stage — belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.* *As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion.* ***Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.***
>
> "*2. The doctrine of police power, constitutionally validates punitive processes for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution."*
>
> *(emphasis supplied)*

26. It is seen that detaining an under-trial person in prison for a long period only serves to legitimise the award of "Surrogate Punishment" to that person without trial which amounts to pre-trial punishment. It is argued by one author that if presumption of innocence is one of the corner stone of criminal jurisprudence then would long incarceration be also considered as legitimate.

27. The facet of long incarceration is also sought to be argued *vis-a-vis* the concept of "bail not jail" being adopted by Courts in India.

Undoubtedly on the flip side the prosecution can always argue the consequences of enlargement on bail *qua* the impending trial which in some deserving cases needs consideration. Reference is also made to the case of ***In re : UTP Dipak Joshi @ Jaisi @ Jaishi***[19] when the under-trial accused came out of prison / correctional home after a staggering 41 years following intervention of the Calcutta High Court which in itself is an eye opener to all of us on the facet of long incarceration.

28. Similarly in a judgement of the Supreme Court in the case of ***News Item "38 yrs in Jail without trial" published in Hindustan Times Vs. Union of India***[20] it is seen that a news item was published on 14.10.2009 mentioning that one Machal Lalung, a resident of Assam continued to languish in prison in its psychiatric hospital for a period of 38 years even after he was declared fit in 1967. It is held in the judgement that series of orders were passed and he was directed to be released by the Supreme Court.

29. In the case of ***Amit Agrawal Vs. State of NCT Delhi***[21] the Delhi High Court in paragraph No.13 of the said decision has given a quick overview of the principles of bail jurisprudence by the Supreme Court which ae necessary for consideration by a bail Court considering the right of speedy trial of an under-trial accused. These principles are enumerated therein as follows:-

19 WPA (P) 27 of 2021 decided on 17.03.2021
20 (2007) 15 SCC 18
21 Bail Appln 4475/2024 decided on 01.05.2025

"13.1. An undertrial is required to post bail in order to secure his presence at the trial, for which purpose an undertrial is handed-over from the custody of the court to the custody of an appropriate surety. The effect of granting bail is not to set an undertrial completely at liberty but to release him from the custody of law and entrust him to the custody of his surety; and the surety is bound to ensure his production at the trial.

13.2. Bail may be denied if the court is not satisfied that an accused would remain available to face trial; or the court is of the view that he would intimidate witnesses or tamper with evidence or otherwise interfere in the course of justice. The 'operative' test that a court must apply for grant or denial of bail is the test of 'necessity', namely to answer why it is necessary to detain an undertrial in custody.

13.3. The purpose of pre-trial custody is neither 'punitive' nor 'preventative', meaning that an accused cannot be held in custody only with the intention of punishing him for an offence which is yet to be proved against him; nor is bail to be denied on the presumption that he would commit an offence if enlarged from custody (except where additional twin conditions prescribed by the Legislature under certain special statutes).

13.4. Pertinently, bail must not be denied as a mark of disapproval of the alleged conduct of an accused; nor should it be denied for giving to an accused the taste of imprisonment as a lesson. This is a common pitfall since oftentimes courts get swayed by the allegations contained in an FIR or a chargesheet and tend to proceed on the textual gravity of the offences alleged, meaning that courts get blinded by the multitude of penal sections foisted against an accused by the prosecution, which builds a textual narrative in the FIR or in the chargesheet. It is important therefore, for a court to look into the specific allegations against a particular accused, and how, if at all, those allegations are supported by the material or evidence available on record.

13.5. It is extremely important to appreciate that the consequences of pre-trial detention are grave : an accused, who is otherwise presumed innocent until proven guilty, is subject to psychological and physical deprivations of jail life; and is even prevented from contributing to the preparation of his defense.

13.6. ….

13.7. It would therefore be sacrilege for a court to disregard the presumption of innocence which enures to the benefit of an accused, while on the other hand failing to ensure speedy trial. The right to speedy trial is the flip-side of the presumption of innocence. It has been held that the right to speedy trial is implicit in the broad-sweep of Article 21 of the Constitution; and a procedure prescribed by law that deprives a person of liberty can only be said to be reasonable, fair and just on the anvil of Article 21 if it also ensures speedy trial."

30. It is seen that role of the Judge in a trial assumes a lot of importance. The Trial Judge should enquire with the prosecution as to why they intend to examine the witness if such witness is going to depose the very same thing which such a witness might have deposed earlier. This is in the context of considering the issue of delay in trial for grant of bail. The Supreme Court in the case of ***Tapas Kumar Palit Vs. State of Chhattisgarh***[22] has held that if an accused is to get a final verdict after incarceration of 6 – 7 years in jail as an under-trial prisoner, then definitely it could be said that his right to have a speedy trial has been infringed. The Supreme Court held that stress of long trial on accused persons who remain innocent until proven guilty can also be significant. The Supreme Court held that accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. In the bargain, they may also have lost a job or accommodation, experienced damage to personal relationships while in long incarceration and spent a considerable expense on legal fees. The Supreme Court held that if an accused person is not found guilty, they have likely endured many months of being stigmatized and ostracized and will have to rebuild their lives with their own available resources. The Supreme Court held that delay in trial is bad for the accused and extremely bad for the victims as also for the Indian Society and for the credibility of our justice system which is valued.

22 Criminal Appeal No.738 of 2025 – Decided on 14.02.2025.

31. In the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.***[23] in the context of delay in trial *vis-a-vis* speedy trial as enshrined in Article 21 of the Constitution of India, the Supreme Court has categorically held that 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 under Article 21 of the Constitution of India, then the State or prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. The Supreme Court held that Article 21 of the Constitution of India applies irrespective of the nature of the crime. This is a very significant statement.

32. While sitting as a Bail Court what I have experienced is that public prosecutors oppose bail pleas vehemently even in the cases of long incarceration pending trial under the mistaken impression that the crime in question is serious and therefore the Court should not grant bail to the accused person. This mindset and approach of the prosecution needs to change. It is observed that in cases under POCSO, the statute itself provides a speedy trial within 1 year under Section 35 of the POCSO Act, but that is seldom achieved. Even in such cases where trials are pending over 5 years without even being commenced, the prosecutors raise vehement objection to Bail Applications on the ground of severity of the crime.

23 (2024) 9 SCC 813

33. The Supreme Court in the above case has hastened to add that the accused person is still an under-trial prisoner and not a convict and the overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly however stringent the law may be.

34. Attention is invited to Section 309 of Cr.P.C. which reads thus :-

> *"309. Power to postpone or adjourn proceedings.*
>
> *(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:Provided that when the inquiry or trial relates to an offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB of the Indian Penal Code, the inquiry or trial shall] [Substituted by Criminal Law (Amendment) Act, 2013] be completed within a period of two months from the date of filing of the charge sheet.]*
>
> *(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody :*
>
> *Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :*
>
> *Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :*
>
> *Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.*

> *Provided also that- (a)no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;*
>
> *(b)the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;*
>
> *(c)where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."*

35. The above is a statutory provision. In the present BNSS there are similar statutory provisions. They are however seldom followed due to various reasons. Undoubtedly Prosecution cannot be solely blamed for protraction of trial as the reasons for delay are sometimes beyond their control. Hence, I am of the opinion that facet of long incarceration pending trial assumes significance in the realm of Article 21 and Article 22 (2) of the Constitution of India for consideration by every Court deciding a bail Application.

36. In the following cases, the Supreme Court and this Court has considered long incarceration pending trial as a principal ground for granting bail to an under-trial accused in view of his right to speedy trial and personal liberty emanating from Article 21 of the Constitution of India.

36.1. In the case of ***Avinash Ashok Torane Vs. The State of Maharashtra***[24], this Court (Coram: N.J. Jamadar, J.) while dealing with

24 Bail Application No.3535 of 2023 decided on 08.01.2024

a bail application for offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail considered the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant and enlarged him on bail.

36.2. In the case of ***Sonu Parmeshwar Jha Vs. The State of Maharashtra***[25] this Court (Coram: M.S. Karnik, J.) was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering circumstantial evidence against the accused as well as long incarceration of accused of 1 year 7 months enlarged him on bail.

36.3. In the case of ***Rup Bahadur Magar @ Sanki @ Rabin Vs. State of West Bengal***[26]***,*** in a case under Sections 394, 395, 397, 307 readwith 120-B of IPC, the Supreme Court granted bail to the accused considering long incarceration undergone by him of 2 years and 9 months.

36.4. In the case of ***Santosh Ramprasad Hairijan Vs. The State of Maharashtra***[27]***,*** in a case under Section 302 of IPC this Court taking into account long period of incarceration undergone by accused of 3 years 4 months granted him bail.

25 Bail Application No.4122 of 2021 decided on 18.01.2023
26 Criminal Appeal No.4144 of 2024 decided on 04.10.2024
27 Bail Application No.1819 of 2024 decided on 29.11.2024

36.5. In the case of ***Javed Gulam Nabi Shaikh*** *(supra)*, the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

> *"16. Criminals are not born 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.*
>
> *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."*

36.6. In the case of ***Balwinder Singh Vs. State of Punjab and Anr.***[28], in a case under Sections 302 and 307 of IPC the Supreme Court granted bail to the accused who was behind bars for 4 years citing unlikelihood of completion of trial in the near future as also on parity with the co-accused.

36.7. In the case of ***Roland Victor Monterio Vs. State of Maharashtra***[29], this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302, 304-B and 498-A of the IPC granted bail to the accused on account of his long incarceration of 4 years. Similarly in the case of

28 SLP (Crl.) No.8523 of 2024
29 Bail Application No.1981 of 2023 decided on 11.01.2024

Naresh Harishchandra Mali Vs. The State of Maharashtra[30], this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302 and 307 of IPC granted bail to the accused as he was in prison for a period of more than 5 years.

36.8. Recently, the Delhi High Court in the case of ***Raghvendr Singh Vs. State of NCT of Delhi***[31] granted bail to the Accused who was indicted for offence of murder citing his long incarceration for a period of 5 and half years and enlarged him on bail.

36.9. In the case of ***Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra***[32], in a case under Sections 302 and 396 of IPC the Supreme Court granted bail to the accused who had undergone 6 years of pre-trial incarceration. Similarly in the case of ***Indrani Pratim Mukerjea Vs. Central Bureau of Investigation***[33] the Supreme Court in a case under Section 302 of IPC granted bail to the accused, she having undergone pre-trial incarceration of 6 and a half years.

37. In view of my above *prima facie* observations and judicial pronouncements considering the long period of incarceration of Applicant pending trial for 4 years and 5 months coupled with delay on part of prosecution to conclude the trial is therefore considered as the sole ground for releasing the Applicant on bail. Hence, present

30 Bail Application No.3858 of 2022 decided on 27.07.2023
31 2025 SCC Online Del 21
32 SLP (Crl.) No.2543 of 2021 decided on 17.09.2021
33 SLP (Crl.) No.1627 of 2022

Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

38. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

39. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2025.05.12 16:40:00 +0530