

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

APPEAL NO. 1017 OF 2025

Sheikh Lalbaba Mohammed Hussain

Aged 40 years, Occ: Nil

R/O Hodgki, Solapur, Tal. & Dist. Solapur

{Lodged in Central Prison Nashik since 2010}

... Appellant

V/s.

State of Maharashtra

Through A.T.S. Mumbai Kalachawki Police Station

... Respondent

Mr.Ishrat Ali Khan a/w Ms. Tarannum Ara, Mr. Mohammed Ahmed Khan, Mr. Nabeel Janaid Khan, Zikra S. Ansari, Ms.Alisha N. Khan, Ms.Saniya Khan, for the Appellant.

Mr. Vinod Chate, A.P.P for the Respondent- State.

API- Mr. V.M. Gaikwad, ATS, Nashik, present.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 11th DECEMBER 2025.

JUDGMENT (Per A. S. Gadkari, J.) :-

1) This is an Appeal under Section 21(4) of the National Investigating Agency Act, 2008, ('NIA' Act) impugning the Order dated 02nd December 2024, passed below Exhibit 461 in Sessions Case No. 192 of 2010, by the learned District Judge-1, Nashik, rejecting the Application of the Appellant under Section 439 of the Code of Criminal Procedure for bail in C.R. No. 21 of 2010 registered with ATS Police Station, Kalachowki, Mumbai for the offences punishable under Sections 419, 420, 465, 467,

468, 471, 153(A), 109 and 120(B) read with Section 34 of the Indian Penal Code, 1860, Sections 4, 5, 6 of the Explosive Substance Act, 1908, Sections 10, 13, 15, 16, 18, 18-A, 18-B, 20 of the Unlawful Activities (Prevention) Act, 1967 and Section 12(1)(c) of the Passport Act, 1967.

2) Heard Mr.Khan, learned Advocate appearing for the Appellant and Mr. Chate, learned APP for State. Perused record.

3) Learned Advocate for the Appellant submitted that, the Appellant (Accused No.1) is behind bars since the date of his arrest i.e. 7th September 2010 and has undergone about 15 years and 3 months of incarceration at pre-trial stage. He submitted that the co-accused namely, Mirza Himayat Beig @Umar (Accused No.2) has been directed to be released on bail by the co-ordinate Bench, by its Judgment dated 5th January 2024 in Criminal Appeal No. 656 of 2023 and therefore the Appellant is also entitled to be released on bail on the ground of parity.

4) Per contra, learned APP opposed the Appeal and submitted that, the Appellant is the prime accused in the said crime. He submitted that, approximately 700 grams of RDX, 4 detonators, mobile phones and other incriminating documents were recovered at the instance of Appellant from a flat where the accused persons were residing. He submitted that, as of today, the prosecution has examined 27 witnesses and thus, the trial is steadily progressing. He therefore prayed that the Appeal of the Appellant may be dismissed.

5) Perusal of record indicates that the co-accused- Mirza Himayat Beig @Umar has been directed to be released on bail vide Judgment dated 5th January 2024, by the co-ordinate Bench of this Court. The last five sentences of paragraph No. 16 of Judgment dated 5th January 2024 reads as under :-

“.....Admittedly, the charge-sheet in the said case was filed on 4th December 2010; charge was framed on 9th March 2012 and the first witness was examined on 22nd September 2017. Till date, evidence of 23 witnesses is over and the 24th witness is in the witness-box. According to the prosecution, they propose to examine 30 more witnesses.”

6) As per the submission of the learned APP that, as of today 27 witnesses have been examined by the prosecution. It is thus clear that on 5th January 2024, the recording of evidence of 24th witness was in progress and in last about one year and eleven months, the prosecution has examined only 3 more witnesses. As per the list of witnesses annexed to the charge-sheet, the Investigating Agency has cited 116 witnesses. The fact that the Appellant is behind bars for about fifteen years and three months at pre-trial stage, is not in dispute.

6.1) A three Judges Bench of the Supreme Court, in the case of *Union of India Vs. K.A.Najeeb* reported in 2021 SCC OnLine SC 50, in paragraph Nos. 17 & 18, has held as under :

“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 the constitutional courts to grant bail on grounds of violation of

Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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."

7) The ratio laid down by the Supreme Court in the case of *K.A. Najeer (supra)* is consistently followed by it and there is no deviation from it. In the case of *Sheikh Javed Iqbal alias Ashfaq Ansari alis Javed Ansari Vs. State of Uttar Pradesh*, reported in (2024) 8 SCC 293, the Hon'ble Supreme

Court has distinguished the case of *Gurwinder Singh Vs. State of Punjab*, reported in (2024) 5 SCC 403. Para Nos. 41 and 42 of the decision in the case of *Sheikh Javed Iqbal (supra)*, it is held as under :

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

42. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted.

It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb being rendered by a three-Judge Bench is binding on a Bench of two Judges like us.”

8) After applying the principles enunciated by the Supreme Court in the case of *K.A. Najeeb (supra)* and in the case of *Sheikh Javed Iqbal (supra)*, we are of the considered view that the Appellant is entitled to be released on bail on the ground of prolong incarceration without completion of trial.

8.1) Hence, the following order.

- i) The Order dated 2nd December 2024, passed by the learned District Judge-1, Nashik below Exhibit - 461, in Sessions Case No.192 of 2010, rejecting the Appellant's Bail Application, is quashed and set aside;
- ii) The Appellant be enlarged on bail on furnishing PR.Bond in the sum of Rs.1,00,000/-, with two solvent sureties in the like amount;
- iii) The Appellant shall report to the office of the ATS Police Station, Kalachowki, Mumbai, on the second Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial.
- iv) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released

and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

- v) The Appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
 - vi) The Appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;
 - vii) The Appellant shall not leave the jurisdiction of Mumbai, without the permission of the trial Court;
 - viii) An undertaking to the aforesaid clauses (ii) to (vii), shall be filed by the Appellant, in the Registry of the trial Court, within one week of his release;
 - ix) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to file an Application seeking cancellation of the Appellant's bail.
- 9) Appeal is allowed in the aforesaid terms.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)