



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.710 OF 2023

Appellant : : Chotu alias Srinu Mulla Gawade,
 Aged 23 years, Occupation : Agriculture,
 R/o Bhangarampeth, Taluka Ahiri,
 District Gadchiroli (Maharashtra),
 (Presently in Chandrapur Jail in MCR)

– Versus –

Respondent : : State of Maharashtra,
 through Police Station, Dhamaracha,
 Tehsil Ahiri, District Gadchiroli.

 Mr. Salim I. Khan, Advocate for the Appellant.
 Mrs. M.H. Deshmukh, A.P.P. for the Respondent/State.

CORAM : **NTTIN B. SURYAWANSHI AND**
M.W. CHANDWANI, JJ.

RESERVED ON : **10th JANUARY, 2025.**

PRONOUNCED ON : **17th JANUARY, 2025.**

J U D G M E N T : (Per M.W. Chandwani, J.)

This is an appeal under Section 21(4) of the National Investigation Agency Act, 2008. The appellant-original accused No.9 was arrested on 21.08.2022 in Crime No.02/2022, registered with Sub-Police Station, Dhamracha, Tq. Ahiri, District Gadchiroli for the offences

punishable under Sections 13, 18, 20, 23 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAP Act' for short), Sections 6 and 9 (b) of the Explosives Act, 1884, Sections 4 and 5 of the Explosive Substances Act, 1908 and Sections 34 and 120-B of the Indian Penal Code, 1860.

02. The First Information Report indicates that on 19/02/2022, Incharge Police Station, Sachin Ghodke, had received secret information that the persons named; Raju Gopal Salla and Mohd. Kasim Shadulla s/o of Mohd. Kasim, both residents of Karimnagar, have procured explosives for the banned organization CPI (Maoist) to overthrow the constitutionally formed democratic Government and have kept the said explosive substances at Mouja Bhangarampetha in the dwelling house of Kashinath alias Ravi Mulla Gawde, Sadhu Lacchu Talandi and Chhotu alias Shinu Mulla Gawde.

03. The aforesaid information was shared with the Superintendent of Police, Additional Superintendent of Police, Gadchiroli and Sub Divisional Police Superintendent, Jimalgatta. The police party along with panchas then, under the supervision of the aforesaid officers, entered the deep forest and reached the house of Sadhu Laccha Talandi. The informant

police officer called Sadhu and in response, four persons came out of the house. Their names were Sadhu, Kashinath, Raju and Mohd. Kasim Shadulla. Thereafter, house search was conducted in the presence of panchas. Incriminating material including Naxal pamphlets, banners, FM Transceiver, battery, cortex wires, etc. was found in the house. On interrogation, four persons informed police that those materials were procured for sabotaging the police party with the motive to commit anti-national activity. It is then stated that the name of the appellant and one other person was disclosed by accused persons. The investigating officer then recorded statements of witnesses. Appellant-accused was arrested and at his instance, gelatin sticks used for explosion came to be recovered. It was revealed that the appellant used to supply the gelatin sticks to the co-accused for carrying out explosions.

04. Mr. Salim Khan, learned Counsel appearing on behalf of the appellant would submit that the learned Special Judge has erroneously rejected the bail application of the appellant by ignoring the fact that the alleged recovery of cortex wires and gelatin sticks came to be made after six months and therefore, it is not believable. According to him, the alleged recovery is suspicious and doubtful. If this material is ignored, then there is no material on record which establishes a *prima facie* case

against the appellant of having committed the offence under the UAP Act and therefore, the bar under Section 43-D(5) will not be applicable to the case of the appellant. To buttress his submission, he seeks to rely on the decision of the Supreme Court in the case of Krishan vs. State of Haryana¹, wherein the Supreme Court in paragraph 8 has observed as under :

“8. More than one factor renders the prosecution theory regarding recovery very suspicious and doubtful. The first factor is that the recovery was allegedly made one month and four days after the occurrence. Secondly, the recovery was made from open space in a garden. Thus, the place was easily accessible to many. Thirdly, neither PW-15 nor PW-20 have stated that the weapon and cartridges were buried underground were recovered only after digging. Lastly, though independent witnesses were available, they were not made witnesses to the Panchnama made pursuant to the alleged statement made by the appellant. As the recovery of the weapon at the appellant’s instance cannot be believed, the decisions relied upon by the learned counsel for the respondent are not significant at all. She relied upon the decisions which hold that in certain cases, a conviction can be based on the recovery of the weapon of offence at the instance of the accused.”

05. Next learned Counsel Mr. Khan would submit that the appellant is in jail since 21/08/2022; the trial has not begun and even the

¹ 2024(2) Mh.L.J. (Cri.) 535

charge is not framed, therefore, there is a violation of the accused's right to speedy trial guaranteed under Article 21 of the Constitution of India and therefore, the statutory restriction under Section 43-D(5) of the UAP Act does not oust the power of the constitutional court to grant bail on the ground of violation of fundamental rights. To buttress his submission, he seeks to rely on a series of decisions, which are as under :

- (1) *Union of India vs. K.A. Najeeb – 2021 AIR Supreme Court 712.*
- (2) *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh – 2024(3)SCC (Cri.)603.*
- (3) *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another – 2024(9) SCC 813.*
- (4) *Jalaluddin Khan vs. Union of India – delivered by Supreme Court in Criminal Appeal No.3173 of 2024.*

The common golden thread running from these authorities is that, 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 undertrial accused under Article 21 of the Constitution of India has been infringed. The provisions of a penal statute, howsoever, stringent it may be, Constitutional Court has to lean in favour of the constitutionalism and the rule of law of which, liberty is an intrinsic part.

06. Conversely, learned Additional Public Prosecutor Mrs. M.H. Deshmukh appearing on behalf of the State vehemently objected the appeal on the ground that there is material against the appellant in the charge-sheet and the accusations are *prima facie* true and therefore, Section 43-D(5) of the UAP Act comes into play. According to her, there are statements of witnesses against the appellant and the recovery of incriminating articles at his instance goes to *prima facie* connect the appellant with the crime under the provisions of the UAP Act. Therefore, the Special Judge has rightly rejected the application. According to her, the appellant was absconding and has been arrested after six months. The offence is serious in nature and requires thorough investigation which has to be conducted by the investigating agency. There is nothing on record to suggest that due to the fault of the prosecuting agency, the trial has not begun and the period of incarceration is not so significantly long that it would lead to the violation of Article 21 of the Constitution of India. Hence, she sought rejection of the appeal.

07. In support of her argument, she seeks to rely on the case of *Gurwinder Singh vs. State of Punjab and another*² and *National Investigation Agency vs. Zahoor Ahmad Shah Watali*³.

2 (2024) 5 SCC 403

3 (2019) 5 SCC 1

08. With the able assistance of the learned Counsel for the appellant as well as the learned A.P.P., we have gone through the charge-sheet, particularly the statement of witnesses Pramod Madhukar Kodape and Mohan Malayya Pannela. Both of them have stated in their statements that in the month of June, the appellant supplied a bundle of red coloured wire to the co-accused. The charge-sheet further reveals that on 25/08/2022, a pink coloured plastic bag containing gelatin sticks which is used for the purpose of carrying out explosions, has been recovered and seized from appellant.

09. Needless to mention that, the proviso to Section 43-D(5) of the UAP Act creates embargo on releasing the accused on bail if the Court finds that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. After considering the aforesaid material, we can satisfactorily say that there are reasonable grounds for believing that the accusation against the appellant as regards commission of the offence under the UAP Act is *prima facie* true. Therefore, we find that the learned A.P.P. is right in her submission that the bar under Section 43-D(5) of the UAP Act will be applicable to the case in hand. A reference can also be made to the case of **Gurwinder Singh** (*supra*) relied upon by the learned A.P.P. for the State, wherein the Supreme Court in paragraph

28 has observed as under :

“28. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a ‘rule’, if after hearing the Public Prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the ‘tripod test’ (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43-D, which lays down that the restrictions, on granting of bail specified in sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.”

10. So far as the case of **Krishan** (*supra*) relied upon by the appellant is concerned, the Supreme Court was dealing with the appeal of the accused against conviction for a double murder. While appreciating the evidence of recovery, the Court made the above said observations and in absence of other evidence, acquitted the appellant therein. Whereas, in the present case, there is a statutory bar under Section 43-D(5) of the UAP

Act, which speaks about *prima facie* case and the question whether the recovery is believable or not is a matter of trial. Therefore, the appellant will not get any help from the decision in the case of Krishan (*supra*).

11. This takes us to the next point raised by the appellant regarding his incarceration and infringement of his fundamental right under Article 21 of the Constitution of India. There is no dispute that if Article 21 of the Constitution of India is infringed, statutory restriction under special statute would not come in the way.

12. We have gone through the charge-sheet. It appears that the offence came to be registered on 19/02/2022 and since then, the appellant was absconding and came to be arrested on 21/08/2022. No doubt, till date the charges have not been framed, but no material has been brought on record by the appellant to show that in spite of his readiness, the matter could not be taken up. Be that as it may, the observations of the Supreme Court in the decisions relied upon by the appellant were made in the cases wherein, the accused persons were in the jail for a period ranging between four years to ten years and the trial had not begun. Whereas, in the present case, the offence was uncovered in the year 2022 and the appellant himself was absconding for about six months.

13. Considering the facts of the present case, it cannot be said that the fundamental right of the appellant is being infringed due to delay in the trial. We find no infirmity in the order of the designated Court and therefore, the impugned order does not require any interference. For the reasons mentioned in the foregoing paragraphs, the appeal fails and it is dismissed accordingly.

**sandesh*

(M.W. Chandwani, J.)

(Nitin B. Suryawanshi, J.)