



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

Criminal Appeal No. 104 of 2026

[Sanjay S/o Gagaram Avthare **vs.** State of Maharashtra through P.S.O. Sironcha,
P.S. Sironcha, Tah. Sironcha, Distt. Gadchiroli]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. H. P. Lingayat, Advocate for the appellant
Mr. A. B. Badar, A.P.P. for the State/respondent

CORAM: ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.

DATE : 02-04-2026.

On 1-4-2026, following order was passed.

“On 11th March, 2026, the following order was passed:

“The appellant is seeking to quash and set aside order dated 25-7-2025 passed below Exhibit 93 by the learned Special Judge (UAP Act), Aheri in Sessions Case No. 71/2023 thereby rejecting the application seeking bail. This order was subject matter of appeal before this Court being Criminal Appeal No.428/2025, which was disposed of vide order dated 2-12-2025 in terms of following order.

“One of the issue which is involved is pendency of trial for want of permanent Additional Public Prosecutors.

2. Learned Senior Advocate and Public Prosecutor Shri D. V. Chauhan submits that corrective measures have been taken. Two Additional Public Prosecutors have been deputed. The State Government is in the process of issuing advertisement for appointment of Additional Public Prosecutors. The advertisement will be published in due course.

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3. *Thus, the State Government has taken cognizance of the issue involved at the Court at Aheri.*

4. *So far as present case is concerned, the appellant-original accused No.1 approached this Court seeking release on bail for delay in trial.*

5. *We are informed that in view of special arrangement made, 17 witnesses have been examined till date. The trial is being taken up on day- today basis. It appears that trial will conclude shortly.*

6. *In the circumstances, we dispose of the appeal with liberty to the appellant to revive the prayer after two months if substantial progress is not achieved in time.*

7. *Copy of this order shall be served upon the trial Court."*

As could be seen, the learned Senior Counsel/Public Prosecutor submitted that corrective measures have been taken, two Additional Public Prosecutors have been deputed, the State Government is in the process of issuing advertisement for appointment of Additional Public Prosecutors and that the advertisement will be published in due course.

When enquired as to whether advertisement is issued, learned Additional Public Prosecutor submits that he has no instructions. Learned counsel for the appellant submits that to be best of his knowledge, advertisement is not yet issued.

Another issue as highlighted by appellant is that after 17 witnesses, the prosecution has not examined the single witness till date.

In this regard, the order dated 2-12-2025 indicates that we were made to believe that special arrangement is made by deputing two Additional Public Prosecutors and accordingly 17 witnesses have been examined. This arrangement appears to have been not working now. Thus, it is of extreme importance to appoint Additional Public Prosecutor, failure to do so will affect the process of administration of

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justice and in a given case, may amount to interference in the administration of justice, if the trial is not completed expeditiously.

We accordingly call upon learned Additional Public Prosecutor to furnish before us the names of officials, who are responsible for appointment of Additional Public Prosecutors. He shall also seek instructions as to why necessary steps for issuing advertisement were not taken and why should we not direct/recommend action against the erring officials. He shall further take instructions why should the appellant not released for failure of State Government to make arrangement, which otherwise is its duty.

At this stage, learned counsel for the appellant submits that material witnesses have been examined and have not supported the prosecution case and there are no criminal antecedents against the appellant. We are, therefore, inclined to release the appellant pending trial.

Learned Additional Public Prosecutor, however, shall take instructions as regards antecedents of appellant.

Kept back.

Steno copy of order be supplied to learned Additional Public Prosecutor.

Later on

Learned Additional Public Prosecutor seeks time to take instructions on the count that the officials are busy in legislative session. Time granted.

Stand over to 16-3-2026.”

02. Thus, we had shown our inclination to release the appellant during pendency of the trial, considering the fact that the material witnesses have not supported the prosecution case and, secondly, that there are no criminal antecedents against the appellant. That apart, an additional reason why the appellant should be set free, is the delay in conducting the trial, where undisputedly, the appellant is not responsible.

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03. On the previous date i.e. on 16th March, 2026, we were informed that the Additional Public Prosecution has been appointed. Thereafter, only one witness is examined and he was examined on 30th March, 2026. Thus, it took 13 days after appointment of the A.P.P. to examine the witness in the trial. With this speed, we do not see that the right of the appellant to have speedy trial will be protected.

04. When enquired, the learned A.P.P. seeks time to go through the evidence. Copy of which was supplied to him on 27th March, 2026. Thus, the prosecution at all levels is casual. We, however, grant a days' time to the A.P.P. to go through the evidence and make statement.

05. List the matter on 2nd April, 2026."

2. In response to the order, learned Additional Public Prosecutor (APP) has taken us through the evidence of couple of witnesses, which according to him, are material witnesses. First evidence is of P.W. 3, who is Police Constable. He was on duty at the border of Maharashtra and Telangana. According to him, Police Inspector Shri Ahirkar had received secret information that certain amount will be sent to the naxalite at Telangana through the said border. P.W. 3 and his team were inspecting the vehicles. One Scorpio vehicle was inspected. The vehicle was driven by one Sudhir Raut (he is said to have been discharged). Another person found in the vehicle was appellant. When enquired, both the persons did not give satisfactory answers about possessing cash of Rs. 1.20 Crores. They, however, said that this amount is meant for labour payment of *Tendupatta*. They failed to show the documents. He informed P.W. 3 that amount

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belongs to contractor Mohammed Basu Miya (original accused no. 7), who is released on bail. He further informed that cashier of the said contractor, namely, Aliuddin employed by the contractor has given the cash. Nothing more has been said by this witness.

3. As could be seen, evidence indicates that amount of Rs. 1.20 Crores was found in the vehicle. There is absolutely nothing in his testimony to establish that this amount was meant for funding naxalite.

4. Second such witness is P.W. 4 – Police Inspector, who received secret information in this regard. His evidence on the point of inspection and seizure of amount is in tune with P.W. 3. Thereafter, he deposed that he had doubt that said amount was meant for funding naxalite. The amount was seized in the presence of panchas.

5. Learned counsel for the appellant argued that even the testimony of this witnesses will not establish role of appellant in the crime.

6. We find substance in the argument. The appellant and co-accused are charge-sheeted for the offence punishable under Sections 17, 18 and 21 of the Unlawful Activities (Prevention) Act, 1967. Section 17 provides for raising funds for an individual terrorist, terrorist gang or terrorist organisation. Section 18 provides for punishment for conspiracy, etc. Section 21 provides for punishment for holding proceeds of

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terrorism.

7. The evidence pointed out by learned APP, in our view, does not *prima facie* establish the ingredients of these provisions. As noted earlier, the argument of the appellant is that material witnesses are examined and nothing incriminating has come on record. When enquired with learned APP as to whether any other material witness is to be examined, he said that witnesses from bank and the witnesses of seizure are yet to be examined. These witnesses, according to us, cannot be said to be material witnesses, inasmuch as the appellant is not disputing the seizure of amount rather he maintains the stand that the cash belong to Mr. Basu and that it was meant for payment of labours. What is important is to prove nexus of the accused with the naxalite with cogent evidence that the cash is meant for funding terrorist act. The testimony of witnesses examined till date, does not really establish such status.

8. That being so and considering the speed in which the trial is progressing, in our view, the appellant has made out a case for releasing him on bail, particularly, since there are no criminal antecedents against him, at least, learned APP has not placed before us any evidence in this regard.

9. Learned APP, however, has opposed the release of appellant on bail in the light of order passed by the Hon'ble Supreme Court dated 27-11-2024 in the case of *X Vs. State of Rajasthan and anr.* in *Special*

Leave Petition (Criminal) No. 13378/2024. He has invited our attention to paragraph nos. 14 to 16 which read as under :-

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

As could be seen, in serious offences, once trial has commenced, the Court should be loath in entertaining the bail application of the accused. The Supreme Court also deprecated the practice of the Courts below to comment on testimony of victim which has potential to

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have impact on the final outcome.

10. We are, in the present case, not on the testimony of the victim but on the testimony of material witnesses examined till now. Further, our concern is more on the delay in trial, that too, for no fault of the appellant. He was arrested on 5-6-2020. The trial got delayed earlier for want of regular APP. Now, the APP is appointed, however, in last 13 days, only one witness has been examined. This would affect the right of accused to have speedy trial.

11. That being so and considering the fact that the testimony of witnesses examined till now is *prima facie* wanting nexus of the cash recovered with the allegations of funding naxalite, which of course will be subject to testimony of other witnesses and further considering the aspect of delay and the status of the evidence recorded till now and particularly because the prosecution is not coming up with a case that trial will be completed in a stipulated time, we are of the considered view that the appellant is entitled to be released on bail.

12. Learned trial Court has rejected the application saying that the bail cannot be granted by the Sessions Court on the grounds of delay. We do not find any impediment on this point. Nonetheless, since prosecution has cited about 60 witnesses and only 19 witnesses have been examined till date, delay in completing trial is obvious, we are inclined to grant

bail.

13. Learned APP submits that similar such plea was taken by the appellant earlier. It was turned down by this Court. Learned counsel for the appellant has rightly countered this plea saying that the appeal so filed earlier was disposed of with liberty to the appellant to approach afresh, if no substantial progress is achieved in trial.

14. Undisputedly, substantial progress has been not made and, therefore, filing the present appeal is justified. The previous order will not act as impediment to grant relief in the present appeal.

15. Accordingly, appeal is allowed.

16. Appellant Sanjay S/o Gangaram Avthare be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/-(Rupees Twenty Five Thousand) with one or two sureties in the like amount to the satisfaction of the trial Court on following conditions.

(i) The appellant shall not leave the jurisdictional limit of the trial Court without the leave of trial Court.

(ii) The appellant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

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(iii) The appellant shall attend Police Station, Sironcha, Tq. Sironcha, Dist. Gadchiroli, twice in a month i.e. on first and third Monday of every month between 11:00 a.m. and 02:00 p.m.

(iv) The appellant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The appellant shall regularly attend the Court and cooperate the learned Trial Court to complete the trial for the above offence. The appellant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The appellant shall maintain law and order.

(vii) In case of breach of any conditions, the learned Trial Court shall be at liberty to cancel the bail after giving opportunity of hearing to both the sides.

17. The appeal is disposed of in above terms.

(JUDGE)

(JUDGE.)

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