IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1342 OF 2024

Adv. Surendra Gadling]
Age : 50 years, Occupation : Lawyer]
Indian inhabitant, Residing at Misal]
Lay-out, Bhim Chowk, P.S. Jaripatka,]
Nagpur – 440 014]
Currently lodged in Yeravada Central]
Prison Pune, District : Pune] … Appellant

V/s.

1. The State of Maharashtra]
Through the Investigating Officer,]
ACP, Swargate, Pune City, Pune]

2. National Investigating Agency,]
Through Its Superintendent]
Vikram Khatate, Off: Cumbala Hill,]
Peddar Road, Mumbai] … Respondents

Mr. Sudeep Pasbola, Senior Advocate a/w Mr. Neeraj Yadav, Adv. Susan Abraham, Mr. Chinmay Godse, Mr. Nagraj Tarade and Ms. Divya Singh i/b Rahul Arote for Appellant.

Mr. Anil Singh, Additional Solicitor General of India a/w Mr. Chintan Shah, Special P.P., Mr. Sagar Bhandare, P.P., Ms. Rama Gupta, Mr. Krishnakant Deshmukh and Mr. Adarsh Vyas for Respondent No.2-NIA.

Mr. Vishal Gaikwad, Dy.S.P., NIA, Mumbai, present.
Mr. Akhilesh Singh, P.I., NIA, Mumbai, present.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
DATE : 4th May 2026

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

1) This is an Appeal under Section 21(4) of the National Investigation Agency Act, 2008 (for short 'NIA Act') by the original Accused No.3, impugning the Order dated 6th November 2019, passed in Criminal Bail Application No. 3170 of 2018, in Special A.T.S. No. 1 of 2018, by the learned Additional Sessions Judge, Pune. By the impugned Order, the Application for bail filed by the Appellant under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 117, 120-B read with 34 of the Indian Penal Code, 1872 (IPC) and Sections 13, 16, 17, 18, 18B, 20, 38, 39, 40 of the Unlawful Activities (Prevention) Act, 1967, (UAPA Act), has been rejected by the trial Court.

2) The present Appeal was filed on 17th December 2019. The reasons for pendency of Appeal for several years can be easily discerned from the various Orders passed prior to this.

3) It is an admitted fact on record that, all the other 15 co-accused have been granted bail either by this Court or by the Hon'ble Supreme Court and he is the only Appellant, who is still behind bars. It is further an admitted fact on record that, as of today, the Appellant has undergone about

7 years and 11 months in pre-trial incarceration i.e. much more than the other accused persons, who have been released on bail by this Court. The Appellant is therefore entitled to be released on bail on the ground of parity with other accused persons and predominantly with Sudhir Dhavale (accused No.1) and Hany Babu (accused No. 12).

4) Mr. Singh, learned Additional Solicitor General of India, opposed the Appeal. He submitted that, the Appellant is also an accused in Sessions Case No. 57 of 2023, pending on the file of learned Additional Sessions Judge, Aheri, District Gadchiroli. He submitted that, offence alleged therein is of a more serious nature, than the case in hand, and therefore, the Appellant ought not be released on bail. He submitted that, in the case of *Gulfisha Fatima Vs. State (Govt. of NCT of Delhi), reported in 2026 SCC OnLine SC 10,* in para Nos. 56, 58 and 61, the Hon'ble Supreme Court has reconsidered the position of prolonged incarceration of an accused person and has also distinguished the case of *Union of India Vs. K.A. Najeeb*. He submitted that, mere prolonged incarceration cannot be the sole ground for releasing an accused on bail. He therefore prayed that, the Appeal may be dismissed.

5) A three Judge Bench of the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb, reported in (2021) 3 SCC 713*, in paragraph Nos. 17 and 18 has held as under:

"17. It is thus clear to us that the presence of statutory

restrictions like Section 43-D(5) of the 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 the 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."*

6) After applying the ratio enumerated by the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb (supra)* and in the light of admitted facts noted hereinabove, we are of the view that, the Appellant is entitled to be released on bail during the pending of his Appeal.

7) Hence, the following Order :-

[i] The impugned Order dated 6th November 2019, passed in Criminal Bail Application No. 3170 of 2018, in Special A.T.S. No. 1 of 2018 is set aside;

[ii] Appellant is directed to be released on bail in C.R. No. 4 of 2018, originally registered with Vishrambaug Police Station, Pune and culminated into filing of Special A.T.S. No. 1 of 2018, which is now converted into Special Case No. 414 of 2020, pending on the file of learned Special Judge, (NIA Act), City Civil and Sessions Court, Greater Mumbai, on his executing P.R. bond in the sum of Rs. 1,00,000/- with one or more solvent local sureties to make up the amount;

[iii] Before his release from jail, the Appellant shall inform the NIA, Mumbai, so also to the trial Court, his prospective place of residence;

[iv] Appellant shall surrender his passport, if any, in his possession, before the trial Court, before his release from

Jail;

[v] Appellant shall also provide his mobile and/or landline number to NIA, Mumbai and to the trial Court, on which he can be contacted;

[vi] Till the Appellant complies with the aforesaid conditions No.(ii) to (v), the Appellant is permitted to furnish cash surety of Rs.1,00,000/- before the trial Court;

[vii] After the Appellant complies with the afore-noted condition Nos. (ii) to (v) above, the Appellant is entitled for return of the said cash security amount from the trial Court;

[viii] After his release from jail, the Appellant shall attend the office of NIA, Mumbai on every first Monday of every calender month between 11.00 a.m. and 1.00 p.m. and shall mark his presence till the conclusion of trial;

[ix] Appellant shall not leave the territorial jurisdiction of this Court without prior permission of the learned Special Judge, (NIA Act), City Civil and Sessions Court, Greater Mumbai, seized of Special Case No.414 of 2020;

[x] Appellant shall attend all the dates before the trial Court unless precluded on medical grounds;

[xi] Appellant shall not tamper with the prosecution witnesses and/or evidence in any manner.

8) Appeal is allowed in the aforesaid terms.

9) All the concerned to act on the basis of an authenticated copy of this Judgment.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**