

2025 SCC OnLine Bom 4913

In the High Court of Bombay

(BEFORE A.S. GADKARI AND RANJITSINHA RAJA BHONSALE, JJ.)

Hany Babu ... Appellant;

Versus

National Investigation Agency and Another ...
Respondents.

Criminal Appeal (ST) No. 12301 of 2024

Decided on December 4, 2025, [Reserved On : 3rd October, 2025]

Advocates who appeared in this case:

Dr. Yug Mohit Chaudhry with Mr. Anush Shetty for the Appellant.

Mr. Anil C. Singh, Additional Solicitor General of India a/w Mr. Chintan Shah, Mr. Sandeep Sadawarte, Mr. Adarsh Vyas, Ms. Rma Gupta, Mr. Krishnakant Deshmukh and Mr. Rajdatt Nagre for Respondent No. 1-NIA.

Mr. Ajay Patil, A.P.P. for the Respondent No. 2-State.

Mr. Pravin Ingawale, SP, NIA Mumbai present.

Mr. Vishal Gaikwad, Dy.SP, NIA, Mumbai present.

The Judgment of the Court was delivered by

A.S. GADKARI, J.:— This is an Appeal under Section 21(4) of the National Investigation Agency Act, 2008 (for short 'NIA Act') by the Original Accused No. 12, impugning the Order dated 14th February 2022, passed below Exh. 535, in NIA Special Case No. 414 of 2020, by the learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai. By the impugned Order, the Application for bail filed by the Appellant under Section 439 of the Criminal Procedure Code, 1973 (Cr.P.C.) for the offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 115, 120-B, 201 read with 34 of the Penal Code, 1860 and Sections 13, 16, 17, 18, 18-A, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, has been rejected by the trial Court.

2. Record reveals that, against the said Order dated 14th February 2022 passed below Exh.535, the appellant had filed Criminal Appeal No. 351 of 2022 before this Court. The co-ordinate Bench by its Judgment dated 19th September 2022, dismissed the said Appeal. The said Judgment dated 19th September 2022, was assailed by the Appellant before the Hon'ble Supreme Court by filing Petition(s) for Special Leave to Appeal (Cri.) No(s). 1596 of 2024. As in the

intervening period there was change of circumstance, the learned counsel appearing for the Appellant did not press the said Appeal by submitting before the Hon'ble Supreme Court that, the Appellant would approach the High Court for an appropriate remedy. The Hon'ble Supreme Court by its Order dated 3rd May 2024, dismissed the said Special Leave to Petition as not pressed for. The Appellant thereafter filed present Appeal on 10th June 2024. By an Administrative Order dated 3rd March 2025, the Hon'ble the Chief Justice was pleased to assign the Appeal to this Bench.

2.1. After service of notice upon the Respondent No. 1, Mr. Anil Singh, learned Additional Solicitor General of India appeared on 2nd May, 2025 and raised preliminary objections about the maintainability of this Appeal. The objections raised by learned A.S.G. Mr. Singh and the submissions on behalf of the Appellant by learned counsel Dr. Chaudhry, have been recorded in Order dated 2nd May, 2025.

2.2. In view of the observations of this Court in paragraph No. 5 of Order dated 2nd May 2025, the Appellant had preferred Miscellaneous Application No. 1208 of 2025 in SLP (CRL) No. 1596 of 2024, before the Hon'ble Supreme Court. By its Order dated 16th July, 2025, the Hon'ble Supreme Court disposed off the said Miscellaneous Application. Paragraph No. 2 of the said Order reads as under:—

“2. We do not find any substance in this application and the same is, accordingly, dismissed leaving it open for the applicant/petitioner to take his remedies either before the High Court or before the trial Court or may seek revival of the Special Leave Petition.”

3. In this background learned counsel for the Appellant requested this Court to hear this Appeal. Mr. Singh, learned Additional Solicitor General of India, with the usual fairness at his command acceded to the request of the Appellant for hearing of the Appeal before the High Court.

4. Heard Dr. Chaudhry, learned counsel for the Appellant, Mr. Singh, learned Additional Solicitor General of India for the Respondent No. 1-N.I.A. and Mr. Patil, learned APP for the Respondent No. 2-State. Perused entire record and the Affidavit in Reply filed by the Superintendent of Police, N.I.A. Mumbai Branch.

5. Dr. Chaudhry, learned counsel for the Appellant submitted that, the Appellant is seeking his enlargement on Bail mainly on the ground of prolonged incarceration at pretrial stage or without trial and not on merits. He submitted that, the co-accused i.e. Sudhir Dhawale (A-1) and Rona Wilson (A-2) have been released on Bail on the said ground by this Court. He submitted that, as of today 9 accused persons in the said crime have been granted bail either by the Hon'ble Supreme Court

or by the High Court and therefore the Appellant is entitled to be released on bail on the ground of parity also.

Dr. Chaudhry, submitted that, the Appellant as of today is 54 years old. That, he is a distinguished scholar in the field of linguistics with a doctorate from the Central Institute of English and Foreign Languages, Hyderabad. That, at the time of his arrest the Appellant was a Professor at Delhi University. The Appellant has no criminal antecedent at his discredit. Dr. Chaudhry, submitted that, the charge-sheet/record of the present case is voluminous, having about 20000 pages in 54 volumes. The prosecution has cited approximately 363 witnesses in support of its case. The discharge application filed by the Appellant is pending for adjudication before the trial Court for more than 3 years. He submitted that, the Advocate for the Appellant initially advanced his arguments on discharge Application on 15th December, 2022 i.e. about 2 years and 9 months ago. That, the said Application was reargued on 19th June 2025, after change of the learned Special Judge. The prosecution is yet to reply on the said application for discharge. He submitted that, the trial of the present case will take substantially long period and may be a decade to complete. He submitted that, the Hon'ble Supreme Court by its Order dated 18th August 2022, in the case of *Vernon v. State of Maharashtra*, Petition(s) for Special Leave to Appeal (Cri.) No(s).5423 of 2022, had initially directed the learned Judge of the trial Court to decide the Applications for discharge within 3 months from passing of the said Order, however the same could not be done. That, the learned Judge of the trial Court thereafter sought extension of one year for deciding the said Applications, however till date the application for discharge of the Appellant is not decided. He therefore submitted that, the Appellant be released on bail during the pendency of the trial on the afore-noted grounds.

6. Mr. Singh, learned Additional Solicitor General of India submitted that, merely because the Appellant is behind bars for about 5 years and 3 months itself cannot be a ground for releasing him on Bail. He submitted that, in the case of co-accused *Vernon*, the Hon'ble Supreme Court has also considered the merits of the matter. That, the co-accused who have been released on bail either by Hon'ble Supreme Court or by this Court had approximately completed 6 years and therefore the principle of parity cannot be made applicable to the Appellant who is yet to complete the said period. Mr. Singh submitted that, mere prolonged incarceration itself is not a ground for granting bail and an application for bail must be considered on merits also. He submitted that, in the case of *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403, wherein also the provisions of UAPA Act were invoked, the Hon'ble Supreme Court has considered the said aspect.

Mr. Singh further submitted that, the Appellant has yet not reached the stage as contemplated under Section 436-A of the Cr. P.C. i.e. he has not yet undergone 50% of sentence and therefore also the Appellant may not be released on Bail on the ground of prolonged incarceration at pretrial stage. He therefore requested this Court to dismiss the Appeal.

7. In rejoinder to the arguments advanced by the learned Additional Solicitor General, Dr. Chaudhry for the Appellant submitted that, the Hon'ble Supreme Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttarpradesh*, Criminal Appeal No. 2790 of 2024, dated 18th July, 2024, has distinguished its decision in the case of *Gurwinder Singh* (supra) and therefore placing reliance on the case of *Gurwinder Singh* (supra) by the prosecution is of no avail to the Respondent No. 1.

8. Perusal of entire record clearly indicates that, the Appellant was arrested on 14th April, 2020 and as of today is in pretrial incarceration for more than 5 years and 7 months. The prosecution has cited about 363 witnesses in support of its case. The record/charge-sheet of the case is of 20000 pages. As submitted by the learned counsel for the Appellant, the discharge Application of the Appellant is pending for final adjudication for last about 3 years and therefore the charge is yet to be framed against him.

9. It be noted here that, the co-accused namely Sudhir Dhawale (A-1) and Rona Wilson (A-2) have been granted Bail by this Court predominantly on the ground of prolonged incarceration without trial and therefore the Appellant is entitled to claim parity with the said two accused. Record further indicates that, three other accused persons have been granted bail either by the Hon'ble Supreme Court or by this Court on merits also. As of today more than 9 accused persons in the said crime have been released on bail.

10. A three Judge Bench of the Hon'ble Supreme Court in the case of *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, in paragraph Nos. 10, 11, 12, 15 and 17 has held as under:

"10. It is a fact that the High Court in the instant case has not determined the likelihood of the Respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA.

11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Association (supra),

laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case : (SCC p. 622 para 10)

“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 case 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.”

(emphasis supplied)

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia alias Mamumia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

10.1. In the case of *Javed Gulam Nabi Shaikh v. State of Maharashtra*, Criminal Appeal No. 2787 of 2024, dated 3rd July, 2024, while considering the Application for Bail of the Appellant therein, who was facing prosecution under the provisions of the Unlawful Activities (Prevention) Act, 1967, in paragraph Nos. 18, 19 and 20 the Hon'ble Supreme Court has held as under:—

"18. Criminals are not born out 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.

19. 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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

10.2. The Hon'ble Supreme Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttarpradesh*, Criminal Appeal No. 2790 of 2024, dated 18th July, 2024, has distinguished its decision in the case of *Gurwinder Singh* (supra). In paragraph Nos. 31

and 32 of the said decision the Hon'ble Supreme Court has held as under:

31. *In Gurwinder Singh (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other coaccused 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.*

32. *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 (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.*

11. It is thus clear that, the reliance placed by Mr. Singh on the decision of *Gurwinder Singh* (supra), is of no avail to the prosecution as the said decision has been distinguished by the Hon'ble Supreme Court in a subsequent decision in the case of *Sheikh Javed Iqbal* (supra).

It be noted here that, it is by now a well settled and recognized principle of law that, prolonged incarceration without trial amounts to infringement of right of an accused enshrined under Article 21 of the Constitution of India. The prolonged incarceration and unlikelihood of the trial being completed in reasonable time or near future, necessitates a consequential release of the under trial on Bail.

12. As noted above, the Appellant is already in pretrial incarceration for more than 5 years and 7 months as of today. Taking into consideration the ratio laid by the Hon'ble Supreme Court in afore-

noted decisions and in particular enunciated in the case of *Union of India v. K.A. Najeeb* (supra), in our opinion, the Appellant can be enlarged on bail during the pendency of his trial.

13. Hence, following Order:—

- (i) The impugned Order passed below Exh.535 in Special Case No. 414 of 2020 is set aside.
- (ii) Appellant is directed to be released on bail in Special Case No. 414 of 2020 arising out of C.R. No. 4 of 2018 originally registered with Vishrambaug Police Station, Pune and subsequently investigated by Respondent N.I.A. pending on the file of learned Special Judge, NIA, 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 having or 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 calendar 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, 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;

13.1. Appeal is allowed in the aforesaid terms.

14. At this stage, Mr. Singh, learned Additional Solicitor General requested this Court to stay the operation and implementation of the present Order to enable Respondent No. 1, to test its correctness before

the Apex Court.

14.1. Taking into consideration the fact that, as of today, the Appellant is in pretrial incarceration for more than 5 years and 7 months, the prayer of stay is rejected.

15. All the concerned to act on an authenticated copy of this Judgment.

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