[2024] 7 S.C.R. 992 : 2024 INSC 645

Javed Gulam Nabi Shaikh
v.
State of Maharashtra and Another

(Criminal Appeal No. 2787 of 2024)

03 July 2024

[J.B. Pardiwala and Ujjal Bhuyan, JJ.]

Issue for Consideration

High Court whether justified in denying bail to the appellant, an under-trial prisoner prosecuted under Unlawful Activities (Prevention) Act, 1967 and Penal Code, 1860.

Headnotes†

Bail – Denial – When not justified – Constitution of India – Article 21 – Right to speedy trial – Applicability of, irrespective of the seriousness of crime – Unlawful Activities (Prevention) Act, 1967 – Penal Code, 1860 – ss.489B, 489C, 120B, 34 – National Investigation Agency Act, 2008 – s.19 – Fake counterfeit Indian currency notes seized from the appellant-accused – In custody as an under-trial prisoner for four years – Bail denied:

Held: Bail is not to be withheld as a punishment – 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 u/Article 21, then it should not oppose the plea for bail on the ground that the crime committed is serious – Howsoever serious a crime may be, an accused has a right to speedy trial – Article 21 applies irrespective of the nature of the crime – Petitioner is still an accused and not a convict – He has been in jail as an under-trial prisoner for four years – No charges have been framed till date – There are around eighty witnesses to be examined, no clarity as to when the trial will ultimately conclude – 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 – Right of the accused to have a speedy trial was infringed thereby violating Article 21 – Impugned order passed by the High Court set aside – Appellant granted bail. [Paras 7, 8, 9, 19-21, 22, 23]

Criminal Law – Humanist approach towards delinquents – Need for – Discussed. [Para 18]

Javed Gulam Nabi Shaikh v. State of Maharashtra and Another

Case Law Cited

Gudikanti Narasimhulu & Ors. v. Public Prosecutor [1978] 2 SCR 371 **: (1978) 1 SCC 240;** *Gurbaksh Singh Sibba v. State of Punjab* [1980] 3 SCR 383 **: (1980) 2 SCC 565;** *Hussainara Khatoon v. Home Secy., State of Bihar* [1979] 3 SCR 169 **: (1980) 1 SCC 81;** *Kadra Pahadiya & Ors. v. State of Bihar* **(1981) 3 SCC 671;** *Abdul Rehman Antulay v. R.S. Nayak* [1991] Supp. 3 SCR 325 **: (1992) 1 SCC 225;** *Mohd Muslim @ Hussain v. State (NCT of Delhi)* [2023] 3 SCR 697 **: 2023 INSC 311;** *Union of India v. K.A. Najeeb* [2021] 1 SCR 443 **: (2021) 3 SCC 713;** *Satender Kumar Antil v. Central Bureau of Investigation* [2022] 10 SCR 351 **: (2022) 10 SCC 51 – relied on.**

List of Acts

Constitution of India; Unlawful Activities (Prevention) Act 1967; National Investigation Agency Act, 2008; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Bail; Bail denied; Under-trial prisoner; Accused not convict; Article 21 of the Constitution of India; Speedy trial; Fundamental right of accused to speedy trial; Seriousness of crime; Nature of crime serious; Accused presumed to be innocent until proven guilty; Criminal jurisprudence; Criminal law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2787 of 2024

From the Judgment and Order dated 05.02.2024 of the High Court of Judicature at Bombay in CRLA No. 1060 of 2023

Appearances for Parties

Sherali S. Khan, Sushant Kumar Yadav, Ankur Yadav, Advs. for the Appellant.

Abhikalp Pratap Singh, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Aagam Kaur, Aditya Krishna, Ms. Preet S. Phanse, Ms. Yamini Singh, Adarsh Dubey, Kartikey, Shubhendu Anand, Siddharth Sinha, Madhav Sinhal, Amit Sharma B, Arvind Kumar Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. This appeal arises from the order passed by the High Court of Judicature at Bombay dated 5th February 2024 in Criminal Appeal No 1060 of 2023 by which the High Court declined to release the appellant on bail in connection with his prosecution under the provisions of the Unlawful Activities (Prevention) Act 1967 (for short 'UAPA').

3. When this matter was taken up for hearing, both, the counsel appearing for the National Investigation Agency (NIA) as well as the counsel appearing for the State prayed for time. Having regard to the fact that the appellant is in custody past four years, we declined to adjourn the matter and proceeded to hear the same on merits.

4. It appears from the materials on record that on 9th February 2020 at about 9.30 am, on the basis of some secret information, the appellant herein was apprehended by Mumbai Police of the DCB CID Unit VIII from a bus stop at Terminal II Chhatrapati Shivaji Maharaj International Airport, Andheri. The search of the person of the appellant was undertaken. The appellant had a bag with him and from the bag 1193 numbers of counterfeit Indian currency notes of the denomination of Rs 2,000 were recovered. The counterfeit notes were seized and the appellant herein was arrested. The First Information Report was registered at the Sahar Police Station for the offences punishable under Sections 489B, 489C, 120B read with Section 34 of the Indian Penal Code.

5. It is the case of the prosecution that the consignment of the counterfeit notes was smuggled from Pakistan to Mumbai. Having regard to the nature of the crime as alleged, the investigation was ultimately taken over by the NIA. As a result, Case No RC/03/20/NIA/Mumbai came to be registered for the offences enumerated above. The investigation further revealed that on 6th February 2020, the appellant visited Dubai, and while he was in Dubai, he is said to have received the counterfeit notes from one of the absconding accused persons. On 9th February 2020, he is said to have returned to India.

6. The materials on record further reveal that two co-accused were arrested in connection with this offence and both are on bail as on

today. So far as one of the co-accused is concerned, the order granting bail to him is now the subject matter of challenge before this Court.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

   (i) The appellant is in jail as an under-trial prisoner past four years;

   (ii) Till this date, the trial court has not been able to even proceed to frame charge; and

   (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor***, High Court reported in (1978) 1 SCC 240. We quote:

> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox] :*
>
> > *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."*

11. The same principle has been reiterated by this Court in ***Gurbaksh Singh Sibba v. State of Punjab*** reported in (1980) 2 SCC 565 that

the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in ***Hussainara Khatoon v. Home Secy., State of Bihar*** reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

13. The aforesaid observations have resonated, time and again, in several judgments, such as ***Kadra Pahadiya & Ors. v. State of Bihar*** reported in (1981) 3 SCC 671 and ***Abdul Rehman Antulay v. R.S. Nayak*** reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

> *"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not*

often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In ***Mohd Muslim @ Hussain v. State (NCT of Delhi)*** reported in 2023 INSC 311, this Court observed as under:

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State reported in 1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner:

> *"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."*

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further

deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in ***Union of India v. K.A. Najeeb*** reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

"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."

17. In the recent decision, ***Satender Kumar Antil v. Central Bureau of Investigation*** reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

> *"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."*

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.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

22. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.

23. The appellant is ordered to be released on bail subject to the terms and conditions which the trial court may deem fit to impose. However, we on our own would impose the condition that the appellant shall not leave the limits of Mumbai city and shall mark his presence at the concerned NIA office or police station once every fifteen days. Any other condition which the trial court may deem fit to impose, it may do so in accordance with law.

24. Pending applications, if any, stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey