

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 18th April, 2023
Pronounced on: 25th April, 2023
+ BAIL APPLN. 86/2023

MOHAMMAD SABER Petitioner
Through: Mr. Mohit Chaudhary, Mr. Kunal
Sachdeva & Ms. Srishti Bajpai,
Advocates.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Aman Usman, APP for State with
Insp. Mintu Singh Gautam, ISC Crime
Branch.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. This is the second application under Section 439 read with Section 436A of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in case FIR No. 166/2015, dated 16.11.2015, under Sections 3 and 9 of the Official Secrets Act, 1923, registered at P.S. Crime Branch. The first application filed on behalf of the present applicant (BAIL APPLN. 1625/2017) was dismissed as withdrawn *vide* order dated 31.02.2018 passed by a coordinate bench of this Court, with a direction to the learned trial Court to expedite the trial.

2. Briefly stated, the facts of the present case, as alleged in the chargesheet are as under:

- i. Secret information was received at P.S. Crime Branch regarding alleged anti-national activities supported by Pakistan based intelligence operatives. The said operative had an Indian handler, who collected information regarding deployment of Indian Army and Border Security Force ('BSF') in Jammu & Kashmir and passed the same to persons across the border, thereby endangering national security. The aforesaid handler had a Pan-India network of informers which compromised of security personnel as well.
- ii. The mobile numbers involved were intercepted and based on important intercepts, names of two persons involved - Kafaitullah Khan and Abdul Rasheed were surfaced. Kafaitullah Khan was based in Rajouri District of Jammu & Kashmir and Abdul Rasheed served in the BSF. It was revealed that Abdul Rasheed passed on secret information to Kafaitullah Khan in lieu of money, who then passed on the same to Pakistan intelligence operatives.
- iii. Based on the said information, the present FIR was registered against both Kafaitullah Khan and Abdul Rasheed under Sections 3 and 9 of the Official Secrets Act, 1923.
- iv. During the course of investigation, information was received that Kafaitullah Khan was planning to travel somewhere from Manjakote and was going to Bhopal from Jammu via Delhi by the Malwa Express train. Based on the said information, Kafaitullah Khan was apprehended on 25.11.2015 at New Delhi Railway Station. During the search of his person, sensitive documents relating to Army were recovered. He was interrogated at the office of ISC, Crime Branch and he admitted to spying for Pakistan and also revealed the involvement of

some security personnel. The mobile phone that he used for communicating with his associates was also recovered. His passport having details of his travel to Pakistan, alongwith a letter of recommendation from 'Jammu Kashmir Freedom Movement Organisation' requesting the Pakistan High Commission to issue a visa was also recovered. During interrogation, he revealed that he was working at the instance of one Faizal-ur-Rehman. He was formally arrested in the case on 26.11.2015.

- v. During his interrogation, he revealed that he was contacted by Faizal-ur-Rehman, who was a Pakistan intelligence operative, who asked him to work for Pakistan intelligence. Faizal-ur-Rehman had asked him to contact retired defence personnel and introduced them to the former. He revealed that in lieu of the work, Faizal-ur-Rehman had promised him to pay a handsome sum of money. Faizal-ur-Rehman had contacted Kafaitullah Khan on his mobile phone and asked to speak with some ex-servicemen, to which the latter replied that he was still trying to get in touch with them.
- vi. In the market, Kafaitullah Khan came across his close friend Mohammad Saber, i.e., the present applicant, who was a primary school teacher. In confidence, Kafaitullah Khan told the applicant about his meeting with the aforesaid Pakistan intelligence officer and the tasked assigned to him. At the same time, Kafaitullah Khan received a phone call from Faizal-ur-Rehman. Since, the applicant was also present at the spot, he also spoke with him and directly asked about how much money he would be getting in lieu of work. Within a fortnight, the applicant agreed to the task. Kafaitullah Khan got in

touch with an ex-serviceman, Munawar, through the present applicant. When Kafaitullah Khan and the applicant met with Munawar, Farid Khan, an army personnel, who was at that time posted at JACK-LI, Poonch, was also present. Munawar told them that Farid Khan (code name Surgeon) had agreed to working for Faizal-ur-Rehman.

- vii. After about a month, Farid Khan had passed on some documents to Munawar, which was then passed on to Faizal-ur-Rehman through the present applicant. After some time, in May/June, 2014, Farid Khan gave a CD and pendrive to Munawar, which again were sent to Faizal-ur-Rehman through the applicant.
- viii. During his interrogation, Kafaitullah Khan had revealed that Faizal-ur-Rehman had transferred money to his and Munawar's account on a few occasions. After some time, in August/September, 2014, Munawar told Kafaitullah Khan that Farid had been transferred to Darjeeling and that he will not be working in the future, after which Kafaitullah Khan destroyed his SIM card and purchased a new one.
- ix. In January/February, 2015, Faizal-ur-Rehman contacted Kafaitullah Khan on his new mobile number as well and lured him to resume work. In March 2015, Kafaitullah Khan asked Abdul Haq (brother of co-accused Abdul Rasheed), who worked in the BSF to work with them, however, the latter refused instantly. Later in August 2015, Kafaitullah Khan met Abdul Rasheed, who was posted at Rajouri Headquarters in G-Branch. He told Abdul Rasheed about Faizal-ur-Rehman and told him that he would receive good money if he agrees to work with them. Two to three days later, Abdul Rasheed agreed to work with them. Abdul Rasheed had passed on documents to Faizal-ur-Rehman for

which the latter had transferred money in his account on a few occasions.

- x. During further investigation, a CD was recovered from the house of Kafaitullah Khan, which contained the conversations of accused persons regarding passing secret information. The residence of Abdul Rasheed in Rajouri was searched and important documents relating to Indian Army were recovered. Abdul Rasheed was arrested in the present case on 29.11.2015 and he admitted to working for Faizal-ur-Rehman, a Pakistan intelligence operative. During interrogation, Kafaitullah Khan and Abdul Rasheed disclosed the name of the present applicant as the mastermind and a cyber expert working as a teacher in District Rajouri. They also disclosed that Munawar Ahmed Mir, an ex-Army official and Fareed Ahmed, a serving Army official provided information relating to deployment of Indian Army. They disclosed that the said information was passed across the border by the present applicant through e-mail, Whatsapp and Viber.
- xi. On 04.12.2015, Munawar Ahmed Mir, was arrested from Thanamandi, Rajouri, Jammu & Kashmir. The present applicant was arrested from his house in Fatehpur Aity, Rajouri, Jammu & Kashmir on 05.12.2015. Farid Ahmed @ Farid Khan @ Surgeon was arrested from 17 JAK LI unit, Sukna, Siliguri, West Bengal on 06.12.2015.
- xii. Mobile phones were recovered from Kafaitullah Khan, Abdul Rasheed, Munawar Ahmed Mir, Farid Khan and the present applicant. The Call Detail Records ('CDR') of the mobile numbers belonging to the said persons were obtained from the concerned mobile operators. Analysis

of the said CDRs revealed that the accused persons were in touch with each other directly or indirectly.

- xiii. Bank account details of all the accused persons were obtained from the concerned banks. The bank statements were scrutinized and it was found that Rs. 40,000/- were deposited in the account of Kafaitullah Khan, Rs. 10,000/- were deposited in the account of one Joginder Singh for Farid Khan, Rs. 20,000/- were deposited in the account of Abdul Rasheed, Rs. 10,000/- were deposited in the account of the applicant and Rs. 20,000/- were deposited in the account of Munawar Ahmed Mir.
- xiv. The documents related to the Indian Army which were recovered were sent to the concerned authorities to ascertain their nature. It was found that the said documents were classified in nature.
- xv. On completion of investigation, the first chargesheet in the present case was filed on 23.02.2016 *qua* Abdul Rasheed Khan, Munawar Ahmed Mir, Farid Ahmed @ Surgeon, Kafaitullah Khan and the present applicant.
- xvi. On 22.04.2016, sanction in terms of Section 13(3) of the Official Secrets Act, 1923 was obtained from the Ministry of Home Affairs (IS-I Division) *vide* order bearing no. 17017/4/2016-IS-I.
- xvii. The FSL report dated 29.07.2016 with regard to analysis of the recovered laptops and mobile phones belonging to the accused persons was placed on record by way of a supplementary chargesheet. The said report revealed that the deleted data of the mobile phone of Kafaitullah Khan, contained messages regarding documents, deployments and training provided to the villagers by the Army. The recovered messages

also revealed communication between Kafaitullah Khan and Faizal-ur-Rehman about documents/maps relating to security deployments.

xviii. The learned Trial Court, *vide* order dated 07.03.2018, framed charges *qua* the accused persons under Sections 3 and 9 of the Official Secrets Act, 1923.

3. Learned counsel appearing on behalf of the applicant submitted that the latter was arrested on 05.12.2015 and has been in judicial custody for more than 7 years. It was further submitted that he has been incarcerated for more than half the maximum sentence prescribed for the offences that he has been accused of committing. Therefore, as per the provision of Section 436A of the CrPC, the applicant is entitled to be released on bail. In support of the said contention, learned counsel appearing on behalf of the applicant placed reliance on '**Vijay Madanlal Choudhary and Others v. Union of India and Others, 2022 SCC OnLine SC 929**' and '**Satender Kumar Antil v. Central Bureau of Investigation, 2022 10 SCC 51**'.

4. It was further submitted that the applicant was not named in the FIR and the allegations against him are solely on the basis of disclosure of Kafaitullah Khan and Abdul Rasheed. Learned counsel for the applicant further submitted that on 23.12.2016, the Investigation Officer filed the second supplementary chargesheet in the present case alongwith FSL report, in which no incriminating evidence was found *qua* the present applicant.

5. Learned counsel appearing on behalf of the applicant submitted that no incriminating evidence has been recovered from the possession of the applicant or from his residence. Further, no incriminating material was found on his laptop or camera. It was further submitted that the prosecution has not been able to substantiate their allegation that the e-mail account used by the

applicant was in fact, used for the purpose as alleged in the chargesheet. It was submitted that the prosecution has not been able to connect the Rs. 10,000/- transferred to the bank account of the applicant with any of the allegations made against him. The fact that the said amount was received in lieu of the work allegedly done by the applicant for Pakistan intelligence operative is just a bald allegation.

6. Learned counsel further submitted that there is no evidence on record which shows that the data alleged to be transmitted was passed on by the applicant. In sum and substance, it is the argument of the learned counsel appearing on behalf of applicant that there is no forensic/documentary evidence available on record, directly or indirectly linking the present applicant to the allegations made against him.

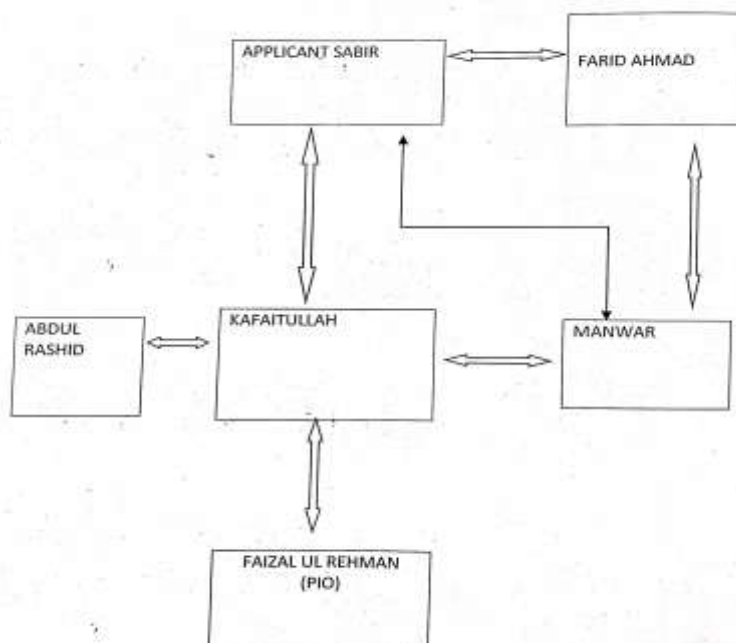
7. *Per contra*, learned APP for the State opposed the present application on the ground that there are specific allegations against the present applicant. It was submitted that as per the conversation between the applicant and Kafaitullah Khan, which was recorded in the CD recovered from the latter's house, the applicant was referring to a sum of Rs. 10,000/-, which he received on asking. It was submitted that on 17.07.2014, a sum of Rs. 10,000/- in cash was deposited to his account and the same was withdrawn on 18.07.2014. Learned APP further submitted that the voice in the conversation recorded in the said CD was also identified to be that of the present applicant.

8. A transcript of the conversation between co-accused Kafaitullah Khan and the present applicant has been placed on record alongwith the status report dated 27.02.2023, authored by Sh. Ramesh Chandra Lamba, Assistant Commissioner of Police, Inter State Cell, Crime Branch. Learned APP for the State submitted that a perusal of the said transcript reveals that the present

applicant was involved with the alleged network of persons which passed on sensitive information to persons across the border. Learned APP for the State drew the attention of this Court to a part of the transcript, wherein, the present applicant is discussing about ‘Orbit-T-Plans’ with co-accused Kafaitullah Khan and is also acknowledging the receipt of Rs. 10,000/- which is corroborated with his account statement. It was also pointed out that some part of the transcript of the aforesaid conversation reflects that the present applicant was planning to visit Pakistan with co-accused Kafaitullah Khan. It is pertinent to note that transcript placed on record with the status report does not mention date/time of any of the calls.

9. Learned APP for the State by way of status report dated 06.02.2023, authored by Sh. Ramesh Chander Lamba, Assistant Commissioner of Police, ISC, Crime Branch sought to establish that the present applicant was in touch with other co-accused persons and to demonstrate the same, he drew the attention of this Court to the following flow chart:

7. That applicant was telephonically connected by other accused as under:



The above chart demonstrates that out of the 4 other co-accused persons, the applicant was in touch with Kafaitullah Khan, Farid Ahmed and Munawar.

10. In response to the said submission made by learned APP for the State, learned counsel appearing on behalf of the applicant submitted that the CD in which the alleged conversation between the applicant and Kafaitullah Khan was recorded was not supported by a certificate under Section 65B of the Indian Evidence Act, 1872. It was further submitted that as per the transcript placed on record by the prosecution itself, there is no reference to Faizal-ur-Rehman, the alleged Pakistan intelligence operative. Learned counsel for the applicant drew the attention of this Court to the cross-examination of ASI Ajay Kumar, who prepared the transcript of contents the aforesaid CD, wherein he admitted that he himself never listened to the alleged conversation between the applicant and any other person. Learned counsel for the applicant submitted that the transcript of the conversation does not refer to any document which is the subject matter of the trial in the present case. It was urged that, for the sake of argument, that the aforesaid conversation at best creates a ring of suspicion but cannot be substituted for evidence beyond reasonable doubt. It was further argued that the merits of the case apart, the present applicant should be granted benefit of bail under Section 436A of the CrPC. It is further submitted that the connection sought to be proved by the prosecution between the present applicant and his co-accused is on the basis of call detail records but there is no material on record with respect to the contents/context of these calls.

11. Learned APP for the State further submitted that even as per the first proviso to Section 436A of the CrPC, this Court, after hearing the learned

public prosecutor, by way of recording reasons in writing, can order continued detention of a person for a period longer one-half of the maximum period of imprisonment specified for the offence he has been charged with and therefore, the benefit of bail under Section 436A of the CrPC is not an unfettered right. It was submitted that there are sufficient reasons on record to persuade this Court to order continued detention of the present applicant despite the fact, he has undergone more than half the sentence of the maximum provided for the offences he has been charged with. It was further submitted that as per the explanation to Section 436A of the CrPC, the benefit of the said section can be granted if, while computing the period of detention, delay has not been caused by the accused. It was further submitted by the learned APP that in the present case, the period of pandemic should also be excluded while computing the detention period.

12. Learned APP for the State relied upon a judgment dated 20.10.2013 passed by the Hon'ble Division Bench of High Court of Calcutta in **CRM No. 10983/2013** titled '**Ainul Haq v. State of West Bengal**', whereby in a case under the Official Secrets Act, despite the accused having undergone detention for a period extending upto one-half of the maximum sentence, the Court, by recording reasons therein ordered continued detention of the accused.

13. Heard learned counsel for the parties and perused the record.

14. It is the case of the prosecution that the present applicant was involved with a network of persons who were involved in alleged anti-national activities. The present applicant was arrested from his residence on 05.12.2015 on the basis of the disclosures of Kafaitullah Khan and Abdul Rashid. Case of the prosecution *qua* the present applicant is based on the

transcript of the alleged conversation between the applicant and Kafaitullah Khan. The other material relied upon by the prosecution is the connection of the present applicant with other co-accused persons over mobile.

15. As per the original and supplementary chargesheets, no incriminating material has been recovered from the possession of the applicant so far. The recovered documents pertaining to the Indian Army which were allegedly classified in nature were also recovered from co-accused Kafaitullah Khan and Abdul Rashid. Admittedly, nothing incriminating has been retrieved from the laptop and mobile phone recovered from the present applicant. It has also come on record that the applicant does not have any gmail account, which was allegedly used by him to transmit classified information. As pointed out hereinabove, no data has been brought on record relating to any transmission or possession of such classified information from the present applicant.

16. Apart from the disclosures of Kafaitullah Khan and Abdul Rashid, the only material sought to be relied upon by the prosecution to link the present applicant with the alleged activities is the transcript of the conversation alleged to have taken place between the applicant and Kafaitullah Khan. The said transcript is disputed and is a matter for trial. The veracity of the same cannot be examined by this Court at this stage, while deciding an application for bail. However, a perusal of the said transcript shows that there is no reference therein relating to any classified information which is the subject matter of trial in the present case. The transcript also does not reflect any date/time of the alleged conversations either.

17. Section 436A of the CrPC provides as under:

“436A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an

offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties: Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

18. It was the contention of the learned APP for the State that the period of detention was also on account delay caused by the present applicant and to demonstrate the same, a synopsis of the effective dates of hearing before the learned trial Court had been placed on record by way of status report dated 14.02.2023 authored by Sh. Ramesh Chander Lamba, Assistant Commissioner of Police, ISC, Crime Branch. The same is reproduced herein under:

S.No.	Date of hearing	Synopses of order
1.	24.02.2016	IO filed chargesheet against the accused.
2.	16.03.2016	IO submitted that he has applied for sanction under OSA Act.
3.	17/03/2016	IO submitted that he has applied for sanction under official secret act, accused Sabir moved application u/s 167(2) for grant default bail as sanction under official secret act has not been received so cognizance can't be taken same give to file replied on 28/03/2016
4.	28/03/2016	Copy of chargesheet supplied, IO file reply of

		Sabir and accused Abdul Rashid, Farid and Manawar also moved application u/s 167(2) for grant default bail as sanction under official act has not been received so cognizance can't be take same given to IO to file reply on 07/04/2016. Put up for further proceedings on 11/04/2016.
5.	07/04/2016	Both parties submitted that matter is fixed for 11/04/2016 so same is fix for 04/11/2016.
6.	11/04/2016	Reply of bail filed by 10, Accused Saber has filed application for deficient copy, put up for argument on bail, Scrutiny of document and further proceeding on 25/04/2016, IO seeks time to file sanction of official secret act.
7.	19/04/2016	Bail argument heard put for order on bail on 21/04/2016, IO seeks time to file sanction u/s of official secret act.
8.	21/04/2016	No time left, put for order for bail on 23/04/2016
9.	23/04/2016	Put up for order on bail on 25/04/2016
10.	25/04/2016	Accused Kafatulla, Abdul Rasheed Khan also moved application for same supplied to IO for reply, put for reply and order on previous bail on 28/04/2016. Sanction of official secret act is awaited.
11.	28/04/2016	Reply file by IO, Counsel of accused Kafatulla and Rasheed seek time to argument on bail. Put for argument and order on previous bail on 09/05/2016
12.	19/05/2016	I.O submit that sanction has been received and to be filed through supplementary chargesheet put for same 01/06/2016
13.	01/06/2016	TO filed supplementary chargesheet with Sanction u/s 13(3) of official Secret act, copy supplied to accused. Put for Cognizance on 29/06/2016 and argument on bail on 03/06/2016
14.	03/06/2016	Counsel of accused seeks adjournment for argument on bail fixed for 29/06/2016
15.	29/06/2016	Link M.M past order to fixed the same purpose on 16/07/20116
16.	16/07/2016	Bail of accused Saber, Farid and Manawar U/s 167(2) Cr.P.C and regular bail of the Rasheed and Kafatulla has been dismissed put for

		10/08/2016
17.	10/08/2016	Counsel of accused want to make argument on cognizance, IO submitted that FSL result is pending, IO directed to send priority letter. Put up for argument for cognizance on 19/08/2016 and file FSL result on 24/08/2016
18.	19/08/2016	No time left put for 24/08/2016
19.	24/08/2016	Link M.M ordered to put up for the same purpose for 07/09/2016
20.	30/08/2016	Put up for argument on bail on 01/09/2016
21.	01/09/2016	Link M.M ordered put up for the same purpose on 06/09/2016
22.	05/09/2016	Session Court dismissed the regular bail of accused Kafatulla and Rashid on 06/9/2016
23.	06/09/2016	Interim bail of accused Dismissed
24.	07/09/2016	Information received that FSL report has been received put for 15/09/2016
25.	15/09/2016	Link M.M ordered put for the same purpose for 22/09/2016
26.	22/09/2016	Accused Rahseed and Kafatulla moved application U/s 207 Cr.P.C same supplied to the I.O accused Saber has filed Interim Bail application as his father has been expired on 16/09/2016 put up for reply on dated 27/09/2016
27.	27/09/2016	Interim bail heard notice issue I.O/S.H.O. whether custody parole of 8 hrs. In Kashmir is possible put up on 30/09/2016
28.	30/09/2016	Reply filed by I.O none on the behalf of the accused put up for 01/10/2016
29.	03/10/2016	I.O filed reply that they are unable to provide Custody parole in Kashmir application dismissed
30.	06/10/2016	IO absent B.W. of I.O issued put up for further proceeding on 20/10/2016
31.	20/10/2016	I.O absent B.W of Rs 1000 of I.O issued put up for further proceeding on 03/11/2016
32.	03/10/2016	I.O submitted that he has transferred from Crime Branch FSL result has been received same to be filed by new I.O, Issue notice to new I.O SI Neeraj to file FSL result on 17/11/2016
33.	17/11/2016	I.O seeks time to file FSL result as FSL result is bulky, Notice to DCP to ensure the

		supplementary chargesheet to be filed before 16/12/2016
34.	16/12/2016	I.O absent put up for same 24/12/2016
35.	24/12/2016	Supplementary chargesheet on behalf of I.O filed. Copy Supplied, Notice to I.O for further proceeding on 07/01/2017
36.	07/01/2017	I.O absent B.W of Rs 5000 of I.O. issued put up for 13/01/2017
37.	13/01/2017	I.O present and submit that FSL result qua voice sample not received, Priority letter has been to send to FSL. Notice issue to FSL. Accused Sabeer moved application U/s 345 Cr.P.C for discharge copy supplied, I.O seeks time to filed reply put up for 27/01/2017
38.	27/01/2017	I.O filed supplementary chargesheet copy supplied put up for scrutiny on 08/02/2017
39.	08/02/2017	Accused submit that application U/s 207 Cr.P.C is pending and requested to transfer the case to session court. Put up for disposal of above application 14/02/2017
40.	14/02/2016	Submission of I.O and Counsel heard put up for order 22/02/2017
41.	22/02/2017	Saber bail dismissed N.D.O.H 06/03/2017
42.	06/03/2017	Application 207 Cr.P.C dismissed as the document could not be provide being confidential put up for the 15/03/2017
43.	15/03/2017	Notice issue to ACP/I.O to remain present on 17/03/2017
44.	17/03/2017	Notice issue to ACP/I.O to remain present on 20/03/2017
45.	20/03/2017	ACP present Cognizance taken, accused file application for commit the session trial to be heard in session committed to session on 03/04/2017
46.	03/04/2017	File received from Ld. C.M.M put up for argument on charge 26/04/2017
47.	26/04/2017	Accused Saber filed regular bail application, accused Manawar filed 2 days custody parole application, I.O seeks times to file reply put up for argument for bail on 05/05/2017 and

		argument on charge 15/05/2017
48.	05/05/2017	Bail application dismissed, accused Kafatulla filed application U/s 207 Cr.P.C put up for reply on 15/05/2017
49.	15/05/2017	Put up for order on application U/s 207 Cr.P.C on 22/05/2017
50.	22/05/2017	Application Us 207 Cr.P.C has been disposed put up for further proceeding on 06/06/2017
51.	06/06/2017	Put up for argument on charge on 26/07/2017
52.	26/07/2017	Counsel of accused submitted that complete set not provided to the accused. Notice to I.O to supply the same and put up for argument on charge 24/08/2017
53.	24/08/2017	Copy supplied, fixed for argument on charge on 23/09/2017
54.	23/09/2017	Part argument on charge heard put up for further argument on charge put up for 03/10/2017
55.	03/10/2017	I.O absent notice issue to I.O for 13/10/2017
56.	13/10/2017	Both I.O present counsels not appear due to strike put up for the same on 24/10/2017
57.	24/10/2017	Direction received from High Court to frame the charge before 09/11/2017. Additional P.P is on Leave put up for argument on charge on 06/11/2017
58.	06/11/2017	New P.P requested presence of old P.P and I.O to assist him to put up for 07/11/2017
59.	07/11/2017	Counsel of the accused seeks time for argument on charge and submit that they will approach the Hon'ble High Court for order to frame the charge till 09/11/2017 put up for same 24/11/2017
60.	24/11/2017	Notice to both I.O put up for argument on charge 14/12/2017
61.	14/12/2017	1 st I.O send request, 2 nd I.O present issue notice to both I.O for argument on charge on 15/01/2018
62.	15/01/2017	Part argument on charge heard put up on further argument on charge 27/01/2018
63.	27/01/2018	Accused not produced from J.C. put up for argument on charge on 30/01/2018
64.	30/01/2018	P.P want assists of I.O issue notice to both I.O for 06/02/2018

65.	06/02/2018	Argument on charge heard put up for order on charge on 17/02/18 summon issue to 1st I.O for some clarification
66.	17/02/2018	I.O send request issue fresh notice to first I.O put up for order on charge 24/02/2018
67.	24/02/2018	I.O sent request put up for same for 07/03/2018
68.	07/03/2018	Charge made out U/s 3/9 official secret act put for framing charge on 19/03/2018
69.	19/03/2018	Charge framed put up for P.E 01/05/2018 and 04/05/2018
70.	01/05/2018	P.W Inspector Surinder Sindhu and Inspector P.C. Yadav sent request no other P.W called put up for 04/05/2018
71.	04/05/2018	PW Rakesh and Ajay sent request put up for P.E on 04/06/2018
72.	04/06/2018	PWI Rakesh Kumar partially examined put up for P.E 01/08/2018
73.	01/08/2018	PW2 Insp P.C.Yadav Examined put up for P.E on 03/10/2018,09/10/2018 and 11/10/2018
74.	03/10/2018	P.W Insp Surinder Sindhu and Rajesh Kumar sent request for put for same on 09/10/2018
75.	09/10/2018	PW3 Ajay Kumar examined I.O Neeraj sent request put up for 11/10/2018
76.	11/10/2018	P.W Insp Sanjeev Kumar Sent request put up for P.E. 24/12/2018, 11/01/2019, 1601/2019, 1701/2019 and 18/01/2019
77.	24/12/2018	1 st IO Insp Sanjeev Kumar Supply C.D to all accused
78.	11/01/2019	PW HC Vijender Present not examined as Ld P.O was on leave put up for date fixed 16/01/2019
79.	16/01/2019	Pw ASI Ajay Kumar and Insp Surinder Sindhu sent request put up for dated fixed 17/01/2019
80.	17/01/2019	Pw Lt. Col Vivek Sheel and Constable Mohit not Examined as Ld. P.O was on leave put up for P.E. on 8/01/2019
81.	08/01/2019	Ld. P.O was on leave put up for same purpose on 12/03/2019
82.	12/03/2019	Pw 4 Constable Mohit examined and Cross examined and Pw 5, Lt. Col Vivek Sheel Examined put up for P.E 06/05/2019, 15/05/2019

		and 21/05/2019
83.	06/05/2019	PW-5 sent request, issue notice to other PW, IO ensure the presence of PWs, put up for PE on 15/05/2019 and 21/05/2019.
84.	15/05/2019	PW-6, HC Vijender Examined, no other PW present put up for PE 21/05/2019 and 09/07/2019 for PE.
85.	21/05/2019	PW-7, PW-8 examined
86.	09/07/2019	PW-9 examined.
87.	18/03/2020	Put up for PE on 20/05/2020
88.	25/08/2020	Put up for PE on 22/09/2020
89.	22/09/2020	Put up for PE on 02/12/2020
90.	02/12/2020	Put up for PE on 02/03/2021
91.	02/03/2021	Put up for PE on 03/06/2021
92.	24/09/2021	Put up for PE on 27/10/2021
93.	30/03/2022	File received on transferred put u p for PE on 08/04/2022
94.	08/04/2022	Notice of PW HC Deepchand received unserved, Inps Surinder Sindhu send request, Witness Inspector Surender Sandhu, Branch Manager HDFC, Nodal Officer IDEA Cellular, Nodal Officer Airtel Cellular and Nodal Officer Reliance summons, Put up for PE on 16/04/2022
95.	16/04/2022	PW-7, Nodal officer examined, PW Insp Surinder Sindhu sent request. Put up for PE on 21/04/2022
96.	21/04/2022	PW-11 Amit Kumar Sharma examined and discharged, PW from HDFC bank appeared but not produced record. PW, HC Deepchand, Insp Surender Sindh and Captain Rajnikant not present Put up for PE on 26/04/2022
97.	26/04/2022	PW-12 ASI Deep Chand, PW-13 Amit Kumar and Pw-14 Inspector Surinder Sindhu Examined, Put up for PE on 04/05/2022.
98.	04/05/2022	PO on leave put up for PE on 09/05/2022
99.	09/05/2022	PW-3 and 15 recalled and cross-examined, PW-3 summons for further cross-examined, Put up for PE on 19/05/2022
100.	19/05/2022	PW-3 further cross-examined and re-called for further cross-examined, Put up for PE on 02/06/2022

101.	02/06/2022	PW-3 further cross-examined and re-called for further cross-examined, Put up for PE on 05/07/2022.
102.	05/07/2022	PW-3 ASI Ajay sent request, PW-3, re-called for further cross-examined, Put up for PE on 21/07/2022.
103.	21/07/2022	PW-3 recalled further cross examined and discharged. Let PW - 1 HC Rakesh and IO be summoned, put up for PE-02/08/2022
104.	15/09/2022	PW-3 present, Ld. PO on leave put for the same on 12/10/2022.
150.	12/10/2022	Put up for PE 27/10/2022
106.	27/10/2022	Put up for PE 15/11/2022
107.	15/11/2022	Put up for PE 08/12/2022
108.	08/12/2022	Put up for PE 19/12/2022
109.	19/12/2022	Put up for PE 21/12/2022
110.	21/12/2022	Put up for PE 11/01/2023
111.	11/01/2023	PW-16, PW-17 examined, Put up for PE 12/01/2023
112.	12/01/2023	Put up for PE 13/01/2023
113.	13/01/2023	Put up for PE 01/02/2023
114.	01/02/2023	Put up for PE 02/02/2023
115.	02/02/2023	Put up for PE 03/02/2023
116.	03/02/2023	Put up for PE 13/03/2023

A perusal of the aforesaid list of dates reflects that no material delay can be attributed to the applicant which could deprive him from availing the benefit under Section 436A of the CrPC.

19. In the present case, the applicant has been chargesheeted for offences punishable under Sections 3 and 9 of the Official Secrets Act. The maximum punishment provided under Section 3(1) of the Official Secrets Act is 14 years. The applicant was arrested in the present case on 05.12.2015 and has therefore, been in judicial custody for more than 7 years.

20. The Hon'ble Supreme Court, in Satender Kumar Antil (*supra*), while taking note of the provisions of Section 436A of the CrPC held as under:

“64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that “bail is the rule and jail is an exception” coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This Court in *Bhim Singh v. Union of India* [*Bhim Singh v. Union of India*, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663] , while dealing with the aforesaid provision, has directed that : (SCC pp. 606-07, paras 5-6)

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months,

the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

xxx

86. Now we shall come to Category C. 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.”

(emphasis supplied)

Similarly in Vijay Madanlal Choudhary (*supra*), the Hon’ble Supreme Court held as under:

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to

be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners*, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence].

421. In our opinion, therefore, Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail.”

(emphasis supplied)

21. Admittedly, the present applicant has been in judicial custody for more than 07 years, which satisfies the basic requirement of Section 436A of the CrPC, inasmuch as he has already undergone half the sentence provided for the offence he is charged with. The synopsis of the effective dates of hearing placed on record by learned APP for the State shows that delay in the trial cannot be attributed to the applicant to place his case under the exception. Learned counsel for the applicant submitted that delay on account of pandemic cannot be attributed to the latter.

22. The Hon'ble Supreme Court, in **S. Kasi v. State through Inspector of Police, (2021) 12 SCC 1** had an occasion to examine the effect of an order dated 23.03.2020, passed by Hon'ble Supreme Court in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 on the effect of non-filing of chargesheet and the consequent grant of statutory bail under Section 167(2) of the CrPC. In the aforesaid case, the order impugned before the Hon'ble Supreme Court was a decision of the Madurai Bench of the Hon'ble High Court of Madras, where the learned Single Judge, while noting the aforesaid order of the Hon'ble Supreme Court extending the period of limitation for filing petitions, applications, appeals and other proceedings held that the non-filing of the chargesheet within the stipulated period would not result in grant of statutory bail as the aforesaid order of the Hon'ble Supreme Court extended the limitation for filing the chargesheet as well and the same would apply to the provisions of Section 167(2) of the CrPC. The Hon'ble Supreme Court, while setting aside the impugned judgment held as under:

“19. The limitation for filing petitions/applications/suits/appeals/all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective courts/tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/suits/appeals/all other proceedings would become time-barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/applications/suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. **The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10] cannot be read to mean that it ever intended to extend the period of filing charge-sheet by police as contemplated under Section 167(2)CrPC. The investigating officer**

could have submitted/filed the charge-sheet before the (Incharge) Magistrate. Therefore, even during the Lockdown and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (Incharge) and the investigating officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).

20. If the interpretation by the learned Single Judge in the impugned judgment [*S. Kasi v. State*, 2020 SCC OnLine Mad 1244] is taken to its logical end, due to difficulties and due to present Pandemic, police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57CrPC, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognise the right of personal liberty of a person as enshrined in the Constitution of India. **The order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] never meant to curtail any provision of the Code of Criminal Procedure or any other statute which was enacted to protect the personal liberty of a person.** The right of prosecution to file a charge-sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge-sheet after 60 days/90 days but without filing a charge-sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge-sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge-sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167CrPC.

xxx

29. We, thus, are of the view that neither this Court in its order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] can be held to have eclipsed the time prescribed under Section 167(2)CrPC nor the restrictions which have been imposed during the Lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge-sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] .”

(emphasis supplied)

As already pointed out hereinabove, the Hon'ble Supreme Court in Vijay Madan Lal Choudhary (*supra*), in Para 421 has observed that “*Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of 1973 Code.*”

23. This Court is of the opinion that the period of the pandemic cannot be excluded while computing the detention period of the present applicant and it is further pertinent to note that even after the pandemic and directions for an expedited trial passed by a coordinate Bench of this Court in BAIL APPLN. 1625/2017 *vide* order dated 13.10.2018, the trial has not concluded.

24. The other aspect of Section 436A of the CrPC stressed upon by learned APP for the State was that the present case is covered under the exception as there are sufficient reasons for continued detention of the applicant and if he is released on bail, he is likely to affect the security of the country and there is every chance of his absconding. It is further argued that the present applicant is charged with offences for his actions which are prejudicial to sovereignty and integrity of the country and have a direct bearing on the national security.

25. As mentioned hereinabove, the Hon'ble Supreme Court in Satender Kumar Antil (*supra*) has held that the word ‘shall’ in Section 436A of the CrPC denotes the mandatory compliance of the said provision. In fact, it has been observed that there is no requirement of moving a bail application in cases where the accused person has undergone more than half of the maximum sentence provided for the offences that he is charged with and the reasons for delay are not attributable to the said accused. Insofar as the exception with regard to reasons for continued detention is concerned, it was held that such an exercise of power is to be undertaken sparingly keeping in view the principle that ‘bail is the rule and jail is an exception’ and the

underlying principle of presumption of innocence in criminal jurisprudence. Similarly, the Hon'ble Supreme Court in Vijay Madanlal Chaudhary (*supra*) has held that Section 436A of the CrPC is in the nature of a beneficial provision for addressing the right to a speedy trial guaranteed by Article 21 of the Constitution of India. It is further pertinent to note that there is no restriction with respect to grant of bail under the Official Secrets Act, 1925, as provided in other special statutes such as the Narcotics Drugs and Psychotropic Substances Act, 1985 and the Unlawful Activities (Prevention) Act, 1967, etc. In absence of such a provision, the onus shifts on the prosecution to establish that the case of the applicant is covered by the exception to Section 436A of the CrPC with regard to continued detention. The factors that may be relevant for a case being covered by the said exception and consequent refusal for grant of bail could be, for instance, previous involvements of similar nature or where the accused is capable of tampering with the evidence and influencing the witnesses or has conducted himself in a manner which gives reason to believe that he/she will be not available to face the trial.

26. The argument of learned APP for the State is that the exception carved out in Section 436A of the CrPC is applicable in the present case on account of the seriousness and gravity of the offences for which the present applicant is charged with. It may be noted that the Hon'ble Supreme Court, in **Union of India v. K.A. Najeeb, (2021) 3 SCC 713**, while granting bail to an accused charged for offences under Sections 143, 147, 148, 120B, 341, 427, 323, 324, 326, 506 Part II, 201, 202, 153-A, 212, 307, 149 of the IPC, Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967 had observed that if a timely trial

is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of constitutional courts to grant bail on grounds of violation of fundamental rights enshrined in Part III of the Constitution. It was held as under:

“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* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , 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, the 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, the courts would ordinarily be obligated to enlarge them on bail.

xxx

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."

(emphasis supplied)

It is pertinent to note that Section 20 of the Unlawful Activities (Prevention) Act, 1967 provides for a maximum sentence of life imprisonment.

27. The offences for which the present applicant is charged with are, no doubt, serious and grave in nature and he will continue to face trial. It is noted that only 20 prosecution witnesses (all official in nature) were cited in the chargesheet and despite passage of 7 years, only 15 of them have been examined so far. The Hon'ble Supreme Court, in **Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731**, while dealing with the period of incarceration *vis-a-vis* the Narcotics Drugs and Psychotropic Substances Act, 1985 has held as under:

"15...In substance the petitioner now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of

this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and

nourish each other and any law depriving a person of “personal liberty” must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See *Hussainara Khatoon (IV) v. Home Secy., State of Bihar* [(1980) 1 SCC 98 : 1980 SCC (Cri) 40] , *Raghubir Singh v. State of Bihar* [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and *Kadra Pahadiya v. State of Bihar* [(1983) 2 SCC 104 : 1983 SCC (Cri) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. **On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution.** We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] . **Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , release on bail, which**

can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. **Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.** What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:..”

(emphasis supplied)

28. In the present case, apart from an assertion made in the status report with regard to the likelihood of the applicant affecting the security of the country and the chance of his absconding, no material has been placed on record to substantiate the aforesaid apprehension. As per the nominal roll dated 03.02.2023, the applicant has been in judicial custody for 07 years, 01 months and 24 days. This Court is of the considered opinion that the case of

the applicant is covered by the provision of Section 436A of the CrPC and therefore, the present application stands allowed.

29. In view of the facts and circumstances of the present case, the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of the like amount, one of which should be a relative of the applicant, to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant resides at Village Fatehpur City, District, Rajouri, Jammu & Kashmir. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer and the concerned learned Trial Court.
- ii. The applicant shall report at the office of Superintendent of Police, Rajouri twice in a week, i.e., on every Tuesday and Friday at 10:30 AM and the concerned officer is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities. If the applicant chooses to stay in Delhi or is present in Delhi on account of his Court hearing, he shall report at PS Crime Branch twice in a week, i.e., on every Tuesday and Friday, at 10:30 AM or on whichever of the aforesaid days are coinciding with his Court hearing in Delhi. The concerned officer is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. He shall drop a pin on the Google map to ensure that his location is available to the Investigating Officer.

- v. The applicant shall not leave India without prior permission of the Trial Court.
 - vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - vii. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
- 30.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
- 31.** The application stands disposed of along with all the pending application(s), if any.
- 32.** Let a copy of this judgment be communicated to the concerned Jail Superintendent.
- 33.** Order be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA
JUDGE**

APRIL 25, 2023/bsr