



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPEAL NO.1249 OF 2023***

Kailash S/o Premchand Ramchandani,  
Aged about:38 years, Occ: Business,  
R/o Gurunanak Niwas, Ram Nagar,  
Kurkheda, Gadchiroli – 441209.  
(At Present at Arthur Road Jail since:2019)

...Appellant  
Accused No.8

Versus

1. State of Maharashtra  
Through the National Investigation Agency

2. National Investigation Agency,  
Through Superintendent of Police c/o  
PS: NIA, Mumbai.

...Respondents

Mr. Shyam Dewani a/w Mr. Sachet Makhija, Ms. Samiksha Parekh  
i/b Dewani Associates, for the Appellant.

Ms. P. P. Shinde, for the Respondent No.1– State.

Mrs. Aruna S. Pai, Special P.P. a/w Mr. Shrikant Sonkawade, P.P. for  
the Respondent No.2–NIA.

***CORAM : REVATI MOHITE DERE &  
MANJUSHA DESHPANDE, JJ.***

***DATE : 5<sup>th</sup> MARCH 2024***

***ORAL JUDGMENT (Per Revati Mohite Dere, J.) :***

1. Heard learned counsel for the parties.

2. By this appeal, preferred under Section 21 of the National Investigation Agency Act, the appellant seeks his enlargement on bail in connection with C.R. No.19 of 2019 registered with the Purada Police Station, Gadchiroli, for the alleged offences punishable under Sections 302, 353, 143, 147, 148, 149, 120B, 427 of the Indian Penal Code ('IPC'); under Section 5 r/w 28 of the Arms Act; Sections 4 and 5 of the Indian Explosives Act, Section 135 of the Maharashtra Police Act and Sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act ('UAPA'). Subsequently the investigation in the said case was transferred to NIA and the C.R. was re-registered as NIA RC-02/2019/NIA/MUM. The NIA subsequently added few more provisions of the UAPA as well as provisions of the Maharashtra Control of Organized Crime Act (MCOC Act).

3. Learned counsel for the appellant seeks bail not only on merits but even on the ground of delay in the commencement of the trial. He also seeks parity with co-accused – Satyanarayana Rani, who was enlarged on bail by this Court (Coram: Revati Mohite Dere & V.

G. Bisht, JJ.) vide order dated 15<sup>th</sup> July 2022 passed in Criminal Appeal No.11 of 2022. Learned counsel for the appellant submits that the first Criminal Appeal preferred by the appellant was dismissed as withdrawn as the Court was not inclined to enlarge the appellant on bail, however, the trial of the appellant was expedited and the learned trial Judge was directed to dispose of the case as expeditiously as possible and in any event, within two years from the date of receipt of the said order. He submits that till date, charge has not been framed in the said case, in view of the statement made by the learned Special P.P. to this Court in an appeal filed by co-accused–Satyanarayana Rani seeking his discharge from the said case, that they will not proceed with the trial, since the order enlarging the appellant therein i.e. Satyanarayana Rani, was challenged before the Apex Court.

4. Learned counsel for the appellant submits that there is no material to connect the appellant with the alleged offences, except a phone call allegedly made by the appellant to Parasram Tulavi (A4). He submits that only CDR cannot be the basis for connecting the

appellant with the alleged offences in the absence of any material to connect the appellant with the alleged offences. He submits that in this view of the matter, there being no *prima facie* material *qua* the appellant, the appellant be enlarged on bail.

5. Learned counsel for the appellant submits that the appellant is in custody since his arrest in 2019 for more than 4 years, with no prospect of the trial commencing in the immediate near future. In support of his submission, that delay in commencement of the trial *per se* will also be a ground for enlarging the appellant on bail, learned counsel for the appellant relied on following judgments:-  
***(1) Bal Krishna Pandey Alias Vidur v/s State of U.P.<sup>1</sup>, (2) Sanjay Chandra v/s Central Bureau of Investigation<sup>2</sup>; (3) Manoranjana Sinh Alias Gupta v/s Central Bureau of Investigation<sup>3</sup>, (4) Umarmia Alias Mamumia v/s State of Gujarat<sup>4</sup>, (5) Virender Kumar Yadav v/s Central Bureau of Investigation<sup>5</sup>; (6) Union of India v/s K.A. Najeeb<sup>6</sup>;***

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1 (2003) 12 SCC 186  
2 (2012) 1 SCC 40  
3 (2017) 5 SCC 218  
4 (2017) 2 SCC 731  
5 (2016) 14 SCC 99  
6 (2021) 3 SCC 713

*(7) Vijay Agrawal through Parokar v/s Directorate of Enforcement*<sup>7</sup>;  
*(8) Mohammad Nawab Mohammad Islam Malik @ Nawab Malik v/s  
The Directorate of Enforcement & Anr*<sup>8</sup>; *(9) Satyendar Kumar Jain v/s  
Directorate of Enforcement*<sup>9</sup>; *(10) Yedala Subba Rao & Anr. v/s Union  
of India*<sup>10</sup>; *(11) Nanha S/o. Nabhan Kha v/s State of U.P*<sup>11</sup>; *(12) Jaya  
Simha v/s State of Karnataka*<sup>12</sup>; *(13) Izharul Haq Abdul Hamid Shaikh  
and Anr. v/s State of Gujarat*<sup>13</sup>; and *(14) Mohd Muslim @ Hussain  
v/s State (NCT of Delhi)*<sup>14</sup>.

6. Mrs. Pai, learned Special P.P. appearing for the Respondent No.2 – NIA vehemently opposed the appeal. She submits that there is sufficient evidence/material on record which points to the complicity of the appellant in the crime in question. Mrs. Pai, tendered a compilation of statements/documents to show that the statements of witnesses as well as the confessional statement of co-accused–Salim @

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7 2023 SCC OnLine Del 3176

8 SPL (CRL) No. 8836/2023 decided on 11.08.2023

9 2023 SCC OnLine SC 686

10 (2023) 6 SCC 65

11 1993 Cri LJ 938

12 (2007) 8 SCC 145

13 (2009) 5 SCC 283

14 SPL (CRL) No.915/2023 decided on 28.03.2023

Shivram @ Dinkar Gota (A9), coupled with the CDR, clearly show the complicity of the appellant in the crime in question. She submits that there is ample *prima facie* evidence to connect the appellant with the crime and as such the bar under Section 43(D)(5) of the UAPA and Section 21(4) of the MCOC Act, will squarely apply. Mrs. Pai, relied on the decision of the Apex Court in the case of ***Gurwinder Singh v/s State of Punjab and Another***<sup>15</sup>. She submits that the Apex Court in the said decision has observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

7. Perused the papers with the assistance of the learned counsel for the respective parties. On 1<sup>st</sup> May 2019 i.e. Maharashtra Day, 15 police personnel of QRT (Quick Response Team) lost their lives in a blast at Kurkheda-Purada Road, Gadchiroli, whilst travelling in a vehicle. Pursuant thereto on 2<sup>nd</sup> May 2019, C.R. No.19 of 2019 was registered with the Purada Police Station, Gadchiroli, for the alleged offences punishable under 302, 353, 143, etc of the IPC; provisions of the Arms Act, Indian Explosives Act, Maharashtra Police

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15 SPL (CRIMINAL) No. 10047/2023 decided on 07.02.2024

Act and UAPA. On 24<sup>th</sup> June 2019, NIA took over the investigation, pursuant to which the aforesaid C.R. was renumbered as NIA RC-02/2019/NIA/MUM. The first charge-sheet in the said case was filed by the NIA on 4<sup>th</sup> December 2019. After NIA took over the investigation, a few more provisions of UAPA and MCOC Act were also invoked. Confessional statement of co-accused–Salim @ Shivram @ Dinkar Gota (A9), was also recorded under Section 18 of the MCOC Act. On 24<sup>th</sup> September 2020 NIA filed Supplementary charge-sheet in the said case.

8. It is not in dispute that the appellant had preferred an appeal being Criminal Appeal No.599 of 2021 seeking his enlargement on bail. The said Criminal Appeal being Criminal Appeal No.599 of 2021, was heard by the Division Bench of this Court (Coram: Revati Mohite Dere & V. G. Bisht, JJ.) on 6<sup>th</sup> July 2022. After hearing the learned counsel for the parties, the following order was passed;

*“1 After arguing for some time, when the Court was not inclined to consider the relief sought for by the appellant i.e. seeking his enlargement on bail, learned senior counsel for the appellant, on the instructions of*

*Mr. Durgesh Ramchandani, appellant's nephew, who is present in Court, sought leave to withdraw the appeal.*

*2 The appeal is accordingly dismissed as withdrawn. However, the trial of the appellant is expedited. The learned Judge to dispose of the case as expeditiously as possible and in any event, within two years from the date of receipt of this order.*

*3 Prosecution to ensure that they keep their witnesses present on the dates given by the Court. The appellant to also co-operate in the expeditious disposal of his trial.*

*4 Appeal is disposed of accordingly.*

*5 All concerned to act on the authenticated copy of this order.”*

9. Since, Justice V. G. Bisht, has retired since then, the aforesaid appeal is heard by us.

10. Bail is sought not only on merits but even on parity, as well as, delay in the commencement of the trial. As far as merits are concerned, we have perused the evidence *qua* the appellant. The evidence *qua* the appellant consists of statements of KW2 and KW8, both employees of the appellant. The statement of KW2 reveals that



he was working with the appellant in his shop Gurunanak Electronics and that one Parasram Tulavi (A4), a resident of Lavari village would come to meet the appellant at his shop and purchase articles and that there would be long conversations between Parasram Tulavi (A4) and the appellant. He has further stated in his statement that in the first week of March, the appellant took him on his motorcycle from Kurkheda to Lavari at around 6 p.m; that the appellant met Parasram Tulavi (A4) and thereafter the appellant and Parasram Tulavi (A4) went on Parasram's motorcycle to a jungle; that he and three others followed them on foot; that when they reached the spot in the jungle at around 6:30 p.m, he saw the appellant talking to one naxal, who was wearing a green and black outfit with a weapon in his hand and that there were about 10 to 15 other persons in similar black and green outfits holding weapons. He has stated that the said persons were naxals. He has further stated that he had seen the faces of some of the naxals and that the appellant and one naxal armed with a weapon were talking for about half an hour; that he was standing at a distance of about 25 to 30 feet from them. He has further stated

that 3 persons accompanying him had carried some food alongwith them; that on witnessing the same, he was afraid and subsequently, after having some conversation with the said naxal, the appellant returned with Parasram Tulavi (A4) on A4's motorcycle to village Lavari and that he too returned alongwith the villagers to Lavari village. He has further in his statement stated that he thereafter, returned with the appellant on his motorcycle to Kurkheda and that on that day, the appellant told him not to disclose what he had seen and threatened him with dire consequences, if he disclosed the same. He had stated that as he was threatened and scared, he did not disclose the same to any person nor did he accompany the appellant to any place, again.

11. On similar lines is the statement of KW8, another employee of the appellant. KW8 has stated that the appellant had two mobile number i.e. XXXXXX3864 and XXXXXX8723 and that he used to call the appellant on these two numbers, if required in connection with the shop work. KW8 has further stated that Parasram

Tulavi (A4) was a resident of Lavari village and that he used to come to the appellant's shop to purchase wire bundles from Gurunanak Electronics shop intermittently and that he would come 2- 3 times in a month on his motorcycle and would sit with the appellant for about 10-15 minutes. He has further stated that he accompanied the appellant to Lavari village 4-5 times on his motorcycle and during the said visits the appellant would meet Parasram Tulavi (A4) in Lavari village and that during the said visits the appellant used to ask him to wait at the village and that the appellant alongwith Parasram Tulavi (A4) used to go to the jungle on the motorcycle and would return after 20-25 minutes. He has stated that since he was an employee of the appellant, he never had the courage to ask the appellant, whom he would meet at the jungle and neither did the appellant disclose anything to him.

12. KW4 a farmer, has stated that he would go to Kurkheda and that he had visited village Kurkheda on 1<sup>st</sup> May 2019, since he was in need of a tractor at around 10:00 a.m. He has stated that around

11:00 a.m., he saw Parasram Tulavi (A4) of Lavari village on his motorcycle going towards Kurkheda, Fawara Chowk. He has stated that he asked A4 as to where he was going, to which he replied that he was in a great hurry and accordingly, left towards Fawara Chowk.

13. KW14, a shop owner has stated that when he was shown the photograph of the person, he identified the person as being the appellant, the owner of Gurunanak Electronics, Kurkheda, Gadchiroli and his customer. He had stated that he had saved two mobile numbers of the appellant i.e. XXXXXX3864 and XXXXXX2524 in his mobile as Gurunanak Kurkheda. He has stated that in November 2018, he sold a set of two walkie-talkies of China make, with a charger to the appellant for Rs.3,000/- and that the appellant would visit his shop once a month. He has further stated that the appellant visited his shop again in January/February 2019 and again purchased a set of China make walkie-talkies with a charger for Rs.3,000/- and one voice recorder for Rs.700-800/-, after which he never visited the shop.

14. KW15 has identified the appellant on the basis of his photograph. KW15 is also a shop owner. He has stated that the appellant, the owner of Gurunanak Electrical of Kurkheda was his customer and that the appellant would purchase different types of wires, switches, switch boards, zero copper wires etc. from his shop at wholesale rates.

15. KW10 is a resident of Lavari village. He has stated that his village is a naxal prone area and CPI (M) Naxals used to come to their village Lavari and used to conduct meetings with the villagers; that he knew Dinkar Gota (A9) since 4-5 years since he used to conduct meetings with the villagers; that the said person would seek support from the villagers in the naxal movement and tender of bamboo and Tendu leaf. KW10 identified naxal-Dinkar Gota (A9) and Satish (wanted accused) on the basis of their photographs. He has further stated that in the first week of March 2019, Dinkar Gota had given one pen drive containing information on Mahatma Jyotiba Phule and pamphlet of martyred CPI (M) Naxals, for printing the same,

pursuant to which, he printed 600 pages and handed over the same to Dinkar Gota, after a week. He has further stated that he knew Somsay Madavi (A5), Sukharu Gota @ Sakru Gota (A7), Dilip Hidami (A3), Kisan Hidami (A6) and Parasram Tulavi (A4) as they were all residents of village Lavari. He has further stated that in the first week of April 2019, Somsay Madavi (A5) had given him Rs.2,000/- and asked him to purchase 2 bundles of wires from the appellant's shop at Kurkheda, pursuant to which he purchased 2 bundles of red and white coloured wire from the shop of the appellant for Rs.360/- and handed over the same to Somsay Madavi (A5) of Lavari Village. It appears from the statement of KW10 that 6 walkie-talkie chargers were seized from his house in the search conducted by the police. He has stated that when naxal Dinkar Gota (A9) had come to his house in March 2019 to hand over the pen drive, he had also given one bag containing walkie-talkie chargers for safe custody and that Dinkar Gota (A9) had told him that he would collect the same after a few days.

16. The statement of KW6, a juvenile also *prima facie* incriminates the appellant. He has stated that in the month of March 2019, when he was in their farm with his father, he saw naxals talking to his father and that his father introduced them to him and as such he knew them since 2016. He has identified one of the naxals i.e. Salim @ Dinkar Gota and another Satish (absconding). He has stated that Satish (wanted accused) had given Rs.5,000/- to him and asked him to purchase one mobile phone and sim cards, pursuant to which, he went to Kurkheda on 17<sup>th</sup> and 18<sup>th</sup> March 2019 and purchased one touch screen phone of Micromax Company. KW6 has given a detailed statement of the activities of the accused, however, we are concerned in the present appeal only vis-a-vis KW6's statement pertaining to the appellant. As far as the appellant is concerned, KW6 has stated that he knew the appellant, who was having a shop of Electrical items at Kurkheda; that the appellant knew his father Parasram Tulavi (A4) and Gulab Hidami since 2016; that the appellant knew Satish and Dilip (naxal), as he used to come and meet them at Lavari village since 2016. KW6 has stated that his father Parasram Tulavi (A4) and Gulab

Hidami would bring wire and walkie-talkie from the appellant's shop and that Parasram Tulavi (A4) had also bought wire from the appellant's shop, on learning from the appellant that he had brought some special wires.

17. In addition to the aforesaid material, there is a statement of the co-accused Salim @ Shivram @ Dinkar Gota (A9). The said confessional statement of the co-accused was recorded under Section 18 of the MCOC Act. In the said statement A9 has set out the details of how the incident of 1<sup>st</sup> May 2019 was planned and the role played by each of the accused. As far as the appellant is concerned, A9 has stated that the appellant, who used to bring walkie-talkie, recorder etc. for them, had come to the jungle alongwith Parasram Tulavi (A4). He has further stated that he had also asked the appellant to get a Motorola battery for them.

18. The statement of the appellant's brother i.e. Dharmdas Premchand Ramchandani has also been recorded during the course of



investigation. In his statement, the appellant's brother has stated that the appellant would look after Gurunanak Electronics and that what was sold in the shop was T.V, Fridge, light, bulb, wire and other electronic goods, in addition to the furniture cupboard, tables etc. He has further stated that his brother was using mobile number XXXXXX3864 for about 8 to 10 years and that the said sim card was purchased in his name, however, it was being used by the appellant. The prosecution has obtained the mobile information from the Bharat Sanchar Nigam Limited as well as the SDR forms.

19. The prosecution has also relied on the CDR, in particular, one call made on 1<sup>st</sup> May 2019 at 11:33:12 of 8 seconds, by the appellant to Parasram Tulavi (A4). It is the prosecution case that the said call was made by the appellant to inform Parasram Tulavi (A4) of the passing of a police vehicle from the spot, so that the plan could be executed as decided. According to the prosecution, the statements as stated aforesaid clearly show the involvement of the appellant in aiding and abetting the offence in question.

20. *Prima facie*, having regard to the statements as stated aforesaid, we cannot say that there are no reasonable grounds to connect the appellant with the alleged offences both under the UAPA and MCOC Act, as required under Section 43(D)(5) of the UAPA and Section 21(4) of the MCOC Act. The evidence *prima facie* points to the complicity of the appellant in the alleged crime.

21. As far as the parity with co-accused–Satyanarayana Rani is concerned, we do not find any parity with the said co-accused–Satyanarayana Rani and as such reject the said submission of the learned counsel for the appellant seeking bail on the ground of parity with co-accused – Satyanarayana Rani.

22. As far as the delay in the commencement of the trial is concerned, we may note that vide order dated 6<sup>th</sup> July 2022, we had directed the learned trial Judge to dispose of the case as expeditiously as possible and in any event, within two years from the date of receipt of the said order.

23. No doubt, charge has not been framed till date, primarily because of the statement made by the learned Special P.P. before this Court, in a Criminal Appeal filed by co-accused–Satyanarayana Rani seeking his discharge from the said case, that the prosecution will not proceed with the case till the next date. We are informed by the learned Special P.P. that even the bail granted to Satyanarayana Rani, by this Court has been challenged by the prosecution before the Apex Court and that the same is listed for hearing, this week.

24. Learned counsel for the appellant relied on several judgments as noted hereinabove, to show that delay in the commencement of the trial, would entitle an accused to grant of bail as an under-trial. It is pertinent to note, that the Apex Court in its latest decision in the case of ***Gurwinder Singh (Supra)***, has in para 32 held as under:-

*“32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's case this court was confronted*

*with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.”*

25. Thus, it is evident that mere delay in the trial pertaining to grave offences, by itself cannot be a ground to enlarge an accused on bail, de hors the facts. We cannot be oblivious of the fact that 15 police personnel were killed in a mine blast, which took place on 1<sup>st</sup> May 2019. We have already noted above and recorded a finding that the material on record as pointed out by the prosecution *prima facie* indicates the complicity of the appellant as part of the conspiracy. The statements on record show that the appellant was in touch with the naxals; that he would visit the jungle and had informed the co-accused of the passing of the police vehicle on the fateful day. Thus, we find that the appellant had knowingly facilitated the commission of, a terrorist act.

26. Considering the aforesaid, mere delay in the peculiar facts of this case, de hors merit, cannot be a ground for enlarging the appellant on bail. Accordingly, Appeal is dismissed and accordingly disposed of.

27. We make it clear that it is open for the learned Judge to proceed with the case *qua* the appellant and the other accused. Accordingly, the learned Judge to proceed to frame charge against the accused and thereafter, conclude the trial, as expeditiously as possible.

28. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

All concerned to act on the authenticated copy of this judgment.

***MANJUSHA DESHPANDE, J.***

***REVATI MOHITE DERE, J.***