2024 INSC 534

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2790 OF 2024

SHEIKH JAVED IQBAL
@ ASHFAQ ANSARI @ JAVED ANSARI APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. Heard learned counsel for the parties.

3. This appeal is directed against the order dated 03.04.2023 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Miscellaneous Bail Application No. 2282 of 2021 (Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of U.P.).

3.1. By the aforesaid order, the High Court of Judicature at Allahabad, Lucknow Bench ('High Court' hereinafter) has rejected the bail application of the petitioner filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) in Crime No. 01 of 2015 registered under Sections 489B and 489C of the Indian Penal Code, 1860 ('IPC' for short) and under Section 16 of the Unlawful Activities (Prevention) Act, 1967 ('UAP Act' for short) before Police Station ATS, Uttar Pradesh, District Lucknow.

4. This Court by order dated 10.04.2024 condoned the delay in filing the related Special Leave Petition (Criminal) Diary No. 11387 of 2024 and issued notice. On delay being condoned, the case came to be registered as Special Leave Petition (Criminal) No. 5260 of 2024. The matter was heard by the Vacation Bench on 03.07.2024.

5. First Information Report (FIR) was lodged against the appellant by the informant Inspector Tej Bahadur Singh under Sections 121A, 489B and 489C of IPC. It came to be registered as Crime No. 01 of 2015. Informant stated that fake Indian currency notes of the denomination of Rs. 1,000 and Rs. 500, totalling a sum of Rs. 26,03,500.00, were recovered from the possession of the appellant on 22.02.2015 at about 09:10 PM from the Indo-

Nepal border. He was apprehended by a constable of the ATS team and brought to the ATS Headquarter. In the course of investigation, the appellant disclosed his name as Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari, resident of Narayani Parsa, Belwa, Nepal. In addition to the fake Indian currency notes, one Nepalese driving licence of the appellant and one Nepalese citizenship certificate also of the appellant were recovered besides two mobile phones. According to the police, appellant had confessed that he was engaged in the illegal trade of supplying counterfeit Indian currency notes in Nepal. The appellant was arrested on 23.02.2015.

6. Appellant had moved a bail application before the Additional Sessions Judge, Special Judge, Lucknow ('trial court' hereinafter) but the same was rejected on 24.08.2016. It was thereafter that the related bail application was filed by the appellant before the High Court which came to be dismissed by the impugned order.

7. At this stage, it may be stated that chargesheet against the appellant under Section 489B and 489C IPC was filed by the prosecution on 19.08.2015. Supplementary chargesheet under Section 16 of the UAP Act was filed on 26.08.2015. It was

mentioned therein that the Hon'ble Governor had granted sanction on 25.08.2015 to prosecute the appellant under Sections 489B and 489C IPC read with Section 16 of the UAP Act, as amended. Before the trial court, the case came to be registered as Case No. 940 of 2015.

8. The trial court considered the chargesheet as well as the discharge application filed by the appellant and by the common order dated 27.05.2016, the discharge application was dismissed, while directing that charges be framed against the appellant under aforesaid provisions of law.

9. By order dated 16.07.2016, the trial court framed the charge against the appellant under the aforesaid provisions who pleaded not guilty. Thereafter, the trial court issued summons to the prosecution witnesses.

10. It may also be mentioned that the Home Department, Government of U.P. passed an order on 13.01.2017, stating that the earlier sanction granted by the Hon'ble Governor on 25.08.2015 was modified whereafter the Hon'ble Governor granted full sanction for prosecution of the appellant in the aforesaid case for commission of the offence under Section 16 of the UAP Act which is punishable under Section 45(2) of the aforesaid Act.

11. Appellant filed an application before the High Court under Section 482 of Cr.P.C. for quashing of the order dated 27.05.2016 passed by the trial court whereby the application for discharge moved by the appellant was rejected. He also sought for quashing of the order dated 16.07.2016 passed by the trial court framing charge against the appellant.

11.1. The High Court by the order dated 08.10.2021 took the view that no cognizance could have been taken by the trial court against the appellant in the absence of any valid sanction of prosecution for the offence under Section 16 of the UAP Act. The High Court held that although sanction for prosecution had been obtained, yet the same was not based upon recommendation after an independent review of the evidence collected during the course of investigation by the appropriate authority as required under Section 45(2) of the UAP Act. According to the High Court, it was a clear case of non-application of mind as the State failed to comply with the mandatory statutory provision under Section 45 of the UAP Act. Thus, the sanction orders dated 25.08.2015 and 13.01.2017 were held to be invalid. Therefore, the trial court was barred from taking cognizance under Section 16 of the UAP Act. Consequently, the order of cognizance dated 27.05.2016 passed by

the trial court in Case No. 940 of 2015 in so far the offence under Section 16 of the UAP Act was concerned as well as the charge to the extent of Section 16 of the UAP Act were quashed. The trial court was directed to proceed with the trial only with respect to the rest of the offences under Sections 489B and 489C IPC against the appellant.

12. State of U.P. assailed the order of the High Court dated 08.10.2021 before this Court by filing Special Leave to Appeal (Criminal) No. 861 of 2022. This Court by order dated 11.02.2022 issued notice and in the meanwhile directed stay of the order of the High Court dated 08.10.2021.

13. On 20.02.2024, this Court on perusal of the materials placed before the Court, noted that subsequent development had taken place whereby sanction was granted *vide* order dated 15.12.2021 after the order of the High Court. In view of the subsequent development, this Court declined to examine the issue on merit leaving it open to the State Government to apply before the High Court seeking permission to proceed in the matter for the offence under the UAP Act on the basis of the subsequent development. It was clarified that on filing of such proceedings, the High Court would be at liberty to consider the issue and decide the

same affording due opportunity to all concerned without being influenced by the observations made in the order of the High Court dated 08.10.2021. Consequently, the Special Leave to Appeal (Criminal) No. 861 of 2022 was disposed of.

14. In the meanwhile, appellant moved the High Court for regular bail under Section 439 Cr.P.C. which came to be registered as Criminal Miscellaneous Bail Application No. 2282 of 2021. By the impugned order dated 03.04.2023, the High Court observed that the charges levelled against the appellant are grave. Though the appellant is in jail since the last eight years and evidence of only two witnesses had been recorded, appellant could not be released on bail since he belongs to Nepal and that there is a strong probability of the appellant evading trial by absconding. Accordingly, the bail application has been rejected.

15. Mr. M.S. Khan, learned counsel for the appellant submits that appellant is in custody for more than nine years now. There is no possibility of the criminal trial being concluded in the near future. Therefore, the appellant should be enlarged on bail.

16. On the other hand, Ms. Garima Prasad, learned Additional Advocate General for the State of U.P. submits that the charges against the appellant are very serious in nature. Besides,

he being a foreign national, there is an attendant flight risk. Therefore, appellant may not be released on bail; instead the trial court may be directed to expedite the trial. Referring to the counter affidavit filed on behalf of the State of U.P., she submits that appellant is an accused under the UAP Act and is, therefore, not entitled to bail. In this connection, she has referred to a recent decision of this Court in *Gurwinder Singh Vs. State of Punjab*[1].

17. Submissions made by learned counsel for the parties have been duly considered.

18. We have already noticed that the appellant is in jail since 23.02.2015. Now we are in July 2024. Nine years have gone by in the meanwhile. As per the impugned order, evidence of only two witnesses have been recorded. In the course of hearing, the Bench had queried learned counsel for the parties as to the stage of the trial; how many witnesses the prosecution seeks to examine and evidence of the number of witnesses recorded so far. Unfortunately, counsel for either side could not apprise the Court about the aforesaid. On the contrary, learned state counsel sought for time to obtain instructions. Having regard to the fact that

[1] (2024) SCC Online SC 109

appellant is in custody for more than nine years now, we declined the prayer of the learned state counsel seeking further time. Learned counsel for the parties were also unable to tell us as to whether the State has moved the High Court after the order of this Court dated 20.02.2024 and whether any order has been passed by the High Court on the same.

19. As already noted above, appellant is in custody for more than nine years now. The impugned order says that evidence of only two witnesses have been recorded. In such circumstances, a reasonable view can be taken that the trial is likely to take considerable time.

20. Before proceeding further, let us briefly look at the sections invoked against the appellant. Section 489B IPC deals with the offence of using forged or counterfeit currency notes or bank notes as genuine despite knowing the same to be forged or counterfeit. Conviction for such an offence would result in punishment of imprisonment for life or with punishment of either description for a term which may extend to ten years and shall also be liable to fine. Offence under Section 489C IPC is committed when one is found in possession of any forged or counterfeit currency notes or bank notes despite knowing the same to be

forged or counterfeit and intending to use the same as genuine. Punishment for such an offence is imprisonment of either description for a term which may extend to seven years or with fine or with both.

20.1. Section 16 of the UAP Act provides for punishment for committing a 'terrorist act'. 'Terrorist act' is defined in Section 15. For the present case, the definition which would be relevant is that a person commits a 'terrorist act' if he does any act with the intention to threaten or likely to threaten the economic security of India i.e. damage to the monetary stability of India by way of production or smuggling or circulation of 'high quality counterfeit Indian paper currency', coin or of any other material. Explanation (b) explains 'high quality counterfeit Indian currency'. In such a case, the punishment under Section 16 would be imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

20.2. Section 43D of the UAP Act says that there shall be modified application of certain provisions of the Cr.P.C. As per sub-Section (5) of Section 43D, which starts with a *non-obstante* clause, notwithstanding anything contained in the Cr.P.C, no person accused of an offence punishable under Chapters IV (which

includes Section 16) and VI of the UAP Act shall, if in custody, be released on bail or on his own bond unless the public prosecutor has been given an opportunity of being heard on the bail application. The proviso says that such accused person shall not be released on bail or on his own bond if the court on a perusal of the case diary or the report made under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima-facie* true. Sub-Section (6) clarifies that the restrictions on granting of bail specified in sub-Section (5) would be in addition to the restrictions under the Cr.P.C. or any other law for the time being in force on granting of bail.

21. It is true that the appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.

22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra,* Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The

trial court had not even framed the charges. It was in that context, this Court observed as under:

> 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.

23.1. After referring to various other decisions, this Court further observed as follows:

> 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.
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> 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.

24. Earlier, in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India*[2], this Court had issued a slue of directions relating to undertrials in jail facing charges under the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly, the 'NDPS Act' hereinafter) for a period exceeding two years on account of the delay in disposal of the cases lodged against them. In respect of undertrials who were foreigners, this Court directed that the Special Judge should impound their passports besides insisting on a certificate of assurance from the concerned Embassy/High Commission of the country to which the foreigner accused belonged and that such accused should not leave the country and should appear before the Special Court as required.

25. Similarly, in *Shaheen Welfare Association Vs. Union of India*[3], this Court was considering a public interest litigation

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[2] (1994) 6 SCC 731
3 (1996) 2 SCC 616

wherein certain reliefs were sought for undertrial prisoners charged with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) languishing in jail for considerable periods of time. This Court observed that while liberty of a citizen must be zealously safeguarded by the courts but, at the same time, in the context of stringent laws like the TADA Act, the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an undertrial can only be on account of the accused-undertrial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.

26. *Angela Harish Sontakke Vs. State of Maharashtra*[4] is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the

[4] (2021) 3 SCC 723

likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

27. More recently, a three Judge Bench of this Court in *Union of India Vs. K.A. Najeeb*[5], considered an appeal filed by the Union of India through the National Investigation Agency (NIA) against an order passed by the High Court of Kerala granting bail to an accused-undertrial facing trial for allegedly committing offences, amongst others, under Sections 16, 18, 18B, 19 and 20 of the UAP Act.

27.1. This Court noted that the appellant in *K.A. Najeeb* (supra) was in jail for more than five years. Charges were framed only on 27.11.2020 and there were 276 witnesses still left to be examined. This Court emphasized that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. No undertrial can be detained indefinitely pending trial. Once

[5] (2021) SCC Online SC 50

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.

27.2. Referring to the decision of this Court in *NIA Vs. Zahoor Ahmad Shah Watali*[6], this Court opined that the High Court in that case had virtually conducted a mini trial and determined admissibility of certain evidence which clearly exceeded the limited scope of a bail proceeding. Not only was it beyond the statutory mandate of *prima-facie* assessment under Section 43D(5) of the UAP Act, it was premature and possibly would have prejudiced the trial as well. It was in these circumstances that this Court in *Zahoor Ahmad Shah Watali* (supra) had to intervene leading to cancellation of the bail granted.

28. We are in respectful agreement with the reasoning given in *K.A. Najeeb* (supra) regarding the decision in *Zahoor Ahmad Shah Watali* (supra). This decision i.e. *Zahoor Ahmad Shah Watali* (supra) has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

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[6] (2019) 5 SCC 1

29. Going back to *K.A. Najeeb* (supra), this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail. This Court also distinguished Section 43D(5) of the UAP Act from Section 37 of the NDPS Act. It has been held as follows:

> **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.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that *prima-facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead,

> Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.

29.1. Declining to interfering with the order of the High Court, this Court in *K.A. Najeeb* (supra) dismissed the appeal of the Union of India.

30. Recently, this Court dealt with a matter where the appellant, a foreign national, is being prosecuted for offences punishable under Sections 8, 22, 23 and 29 of the NDPS Act. The appellant was arrested on 21.05.2014. The High Court had granted bail to the appellant *vide* the order dated 31.05.2022 but had incorporated certain conditions in the bail order because of which the appellant remained in custody despite having a bail order in his favour. One of the conditions was that the appellant, a Nigerian national, should obtain a certificate of assurance from the High Commission of Nigeria to the effect that the appellant would not leave the country and would appear before the trial court on the dates fixed. Another condition imposed was that the accused should drop a pin on the google map to ensure that his

location is available to the investigation officer at all times. This Court as an interim measure had granted bail to the accused-appellant and thereafter passed a detailed judgment in *Frank Vitus Vs. Narcotics Control Bureau,* Criminal Appeal No. 2814-15 of 2024, decided on 08.07.2024. This Court after referring to earlier decisions of this Court held that conditions of bail cannot be arbitrary and fanciful. The expression 'interest of justice' finding place in Section 437(3) Cr.P.C. means only good administration of justice or advancing the trial process. It cannot be given any further broader meaning to curtail the liberty of an accused granted bail. Courts cannot impose freakish conditions while granting bail. Bail conditions must be consistent with the object of granting bail. While imposing bail conditions, the constitutional rights of an accused who is ordered to be released on bail can be curtailed only to the minimum extent required. Even when an accused is in jail, he cannot be deprived of his right to life which is a basic human right of every individual. This Court held that bail conditions cannot be so onerous so as to frustrate the order of bail itself.

30.1. Thereafter, this Court held as follows:

> **7.1**. We are dealing with a case of the accused whose guilt is yet to be established. So long as he

is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21. The Courts must show restraint while imposing bail conditions. Therefore, while granting bail, the Courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Bail conditions cannot be so onerous as to frustrate the order of bail itself. For example, the Court may impose a condition of periodically reporting to the police station/Court or not travelling abroad without prior permission. Where circumstances require, the Court may impose a condition restraining an accused from entering a particular area to protect the prosecution witnesses or the victims. But the Court cannot impose a condition on the accused to keep the Police constantly informed about his movement from one place to another. The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the

> rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail.
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> **9**. A condition cannot be imposed while granting bail which is impossible for the accused to comply with. If such a condition is imposed, it will deprive an accused of bail, though he is otherwise entitled to it.

30.2. In so far the condition that the accused should drop a pin on the google map, this Court referred to the affidavit filed Google LLC wherein it was stated that the user has full control over sharing of pin with other users; pin location does not enable real time tracking of the user or a user's device. Therefore, this Court found that such a condition was completely redundant. Thereafter, this Court held that imposing any bail condition which enables the police/investigating agency to track every movement of the accused released on bail by use of technology or otherwise would undoubtedly violate the right to privacy of the accused guaranteed under Article 21.

30.3. Distinguishing the decision of this Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* (supra), this Court observed that an accused-undertrial has no control over the Embassy or High Commission of his country. On failure of the Embassy or High Commission to issue a certificate that the accused-undertrial would not flee from the country and would attend the trial proceedings regularly, he cannot be continued to be kept in detention despite a bail order. Instead of the same, other practical and pragmatic conditions may be imposed. This Court clarified that it is not necessary that in every case where bail is granted to the accused in an NDPS case who is a foreign national, the condition of obtaining a certificate of assurance from the Embassy or the High Commission should be incorporated. Consequently, in *Frank Vitus* (supra), this Court while confirming the bail granted to the appellant, set aside the two impugned conditions.

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

of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in *Gurwinder Singh,* the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in *Gurwinder Singh* observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run

counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeeb* (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

33. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant.

34. Consequently, we pass the following order: -

(i) The impugned order dated 03.04.2023 of the High Court is set aside and quashed;

(ii) Appellant is directed to be released on bail subject to fulfilment of the following conditions: -

(a) Trial court shall impound the passport and/or citizenship document(s) of the appellant. If those are in the custody of the prosecution, those shall be handed over to the trial court.

(b) Appellant shall not leave the territorial jurisdiction of the trial court; he shall furnish his address to the trial court.

(c) He shall appear before the trial court on each and every date of the trial.

(d) In addition to the above, the appellant shall mark his attendance before the police station which the trial court may indicate once in every fortnight till conclusion of the trial.

(e) He shall not tamper with the evidence and shall not threaten the witnesses.

(iii) If there is any violation of the bail conditions as above, it would be open to the prosecution to move the trial court for cancellation of bail.

35. The appeal is, accordingly, disposed of.

.....J
[J.B. PARDIWALA]

.....J
[UJJAL BHUYAN]

NEW DELHI;
JULY 18, 2024.