$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 6th October 2021**

\+ **CRL.A. 170/2021**

MOHD HAKIM ..... Appellant

Through: Ms. Nitya Ramakrishnan, Sr. Advocate with Ms. Warisha Farasat, Ms. Vinoothna Vinjam & Mr. Shourya Dasgupta, Advocates.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Amit Chadha, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

Brief Background

The appellant is an accused facing trial in cases arising from FIR Nos. 130/2008, 166/2008, 293/2008, 418/2008, and 419/2008 dated 13.09.2008 all of which now stand transferred to P.S.: Special Cell, New Delhi. The appellant has been in judicial custody/police custody since 04.02.2009 *i.e.*, for a period of more than 12½-years as of date.

2. By way of the present appeal filed under section 21(4) of the National Investigation Agency Act, 2008 ('N.I.A. Act') the appellant impugns order dated 20.03.2021 made by the learned Additional Sessions Judge, Patiala House Courts, New Delhi ('ASJ') rejecting his bail application in the above referred FIRs *inter alia* registered under sections 120B, 121, 121A, 122 and 123 of the Indian Penal Code, 1860 ('IPC'), sections 4 and 5 of the Explosive Substances Act, 1908 and sections 16, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA').

3. The appellant has filed written submissions dated 22.07.2021 as also a short summary of arguments dated 05.08.2021; and the State has filed status report dated 25.05.2021, setting-out their respective contentions in the matter.

Appellant's Submissions

4. Ms. Nitya Ramakrishnan, learned Senior Counsel appearing on behalf of the appellant has made the following principal submissions before this court:

(a) That there are some 16 accused persons in the FIR and in the chargesheet and supplementary chargesheets filed in the cases, but a perusal of the chargesheet filed by the Special Cell, Delhi Police on 27.02.2009 and the charges framed by the learned ASJ on 06.05.2011, only a limited role has been ascribed to the appellant in the offences alleged, namely, that he had carried a certain quantity of cycle ball-bearings from

Lucknow to Delhi, which, according to the allegations, were subsequently used to make Improvised Explosive Devices (IEDs), which were employed in the series of bomb blasts that occurred in Delhi in 2008. It is submitted that though 08 chargesheets/supplementary chargesheets have been filed in the matter, no further specific role has been ascribed to the appellant beyond what is alleged in the original chargesheet;

(b) That the appellant had moved a bail plea before the learned Trial Court in 2016, at which stage he had undergone about 07 years of custody; but the learned Trial Court had rejected that bail application *vidé* order dated 19.09.2016 on the purported reasoning that the nature and gravity of the offences alleged and the severity of punishment in the event of conviction "cannot be countenanced"; that the matter was at the stage of trial and about 213 witnesses had been examined whereas other witnesses were yet to be examined; and that the bail application of a co-accused had already been dismissed. The learned Trial Court had further observed that there was *prima facie* material indicating involvement *inter alia* of the appellant; and that a detailed examination of evidence was to be avoided at the stage of considering bail, for which reason there was no merit in the bail application and the same was dismissed;

(c) That subsequently, the appellant also moved this court *vidé* Bail Appl. No. 2288/2016, which was dismissed as

withdrawn *vidé* order dated 10.01.2017 recorded by the learned single Judge of this court;

(d) That considering that the trial continues to be at the stage of prosecution evidence, with 256 witnesses having been examined, but more than 60 witnesses still left to be examined; and the appellant having already spent more than 12 years in custody, the appellant moved a fresh Bail Application dated 25.02.2021 before the learned ASJ premised on the principles laid down by the Hon'ble Supreme Court in ***Union of India vs K.A. Najeeb***[1], arguing that the appellant's case is on all fours with that of the case in *K.A. Najeeb* (supra), in view of which the rigours of section 43-D(5) of the UAPA would not apply; and the appellant is entitled to be enlarged on bail during the pendency of trial. It is this application which was dismissed by the learned ASJ *vidé* order dated 20.03.2021, rejecting the appellant's bail plea;

(e) That the appellant's right to a speedy trial, as read into Article 21 of the Constitution of India, is being violated; and the appellant deserves to be released on regular bail during the pendency of the trial; and

(f) That at the relevant time the appellant was a university student; that he has no criminal antecedents; he is not

[1] (2021) 3 SCC 713

implicated in any other criminal case; and is not required for any other investigation.

Respondent's Submissions

5. Opposing the grant of regular bail, Mr. Amit Chaddha, learned Additional Public Prosecutor appearing on behalf of the State/N.I.A. has submitted as follows :

(a) That the offences with which the appellant is charged are grave and heinous, concerning the serial bomb blasts that occurred in different places in Delhi on 13.09.2008, in which some 26 people died and 135 were injured, and the responsibility for such serial blasts was taken by a terrorist outfit called 'Indian Mujahideen';

(b) That in connection with the serial bomb blasts, 05 FIRs were registered at various police stations; and in fact, in subsequent raids conducted by the Special Cell of the Delhi Police at certain premises in Batla House, Delhi to apprehend suspected militants, 02 police officers sustained injuries; 01 inspector of the Delhi Police died; and a cache of arms and ammunition was recovered;

(c) That steel ball-bearings were also recovered along with other incriminating material from the Batla House premises during the search;

(d) That the involvement of the appellant, Mohd. Hakim, in the serial blasts was disclosed for the first time by another

arrested accused, Zeeshan Ahmad *alias* Anda in his disclosure statement dated 03.10.2008; as a consequence of which the appellant was arrested some 03 months later by the Anti-Terrorist Squad (ATS)/Lucknow, Uttar Pradesh; whereupon the appellant disclosed his involvement in the serial bomb blasts of 13.09.2008;

(e) That disclosure statement dated 12.01.2009 made by the appellant; and a detailed reading of the allegations contained in the chargesheet; the statement recorded under section 161 Cr.P.C.; as also other disclosure statements and material, clearly disclose the involvement of the appellant in the ghastly terrorist act of serial bomb blasts in Delhi in September 2008; and he is likely to be awarded the death penalty for the offences charged;

(f) That as per the decision of the Hon'ble Supreme Court in ***National Investigation Agency vs Zahoor Ahmad Shah Watali***[2], this court is enjoined *not* to enter upon the merits or demerits of the evidence in a case and to decline bail in view of section 43-D (5) of UAPA.

(g) That the present matter is also on the same lines as was the case decided by a Division Bench of this court in ***Ghulam***

[2] (2019) 5 SCC 1

Mohd. Bhat vs National Investigating Agency[3], where bail was denied to the undertrial;

(h) That regardless of the length of incarceration of the appellant and regardless of whether or not trial is likely to be completed within a reasonable period of time, the decision of the Hon'ble Supreme Court in *K.A. Najeeb* (supra) does not water down the mandate of the verdict in *Watali* (supra);

(i) That the learned APP has also pointed-out that the appellant's jail conduct has been 'unsatisfactory' as reflected in the nominal roll.

(j) That in any case, the High Court cannot exercise its extraordinary powers under Article 226 of the Constitution in proceedings which arise by way of an appeal under section 21(4) of the N.I.A. Act.

Discussion

6. After giving our careful and anxious consideration to the submissions made on behalf of the appellant and the State, in our view, the relevant considerations for disposal of the present appeal are the following :

(a) The specific charge framed against the appellant by the learned ASJ on 06.05.2011, reads as under :

[3] (2019) SCC Online Del 9431

> *"…you accused Mohd. Hakim **(A-8)** brought cycle steel ball-bearings from Lucknow to Delhi in between 8 to 12 September, 2008 for making IEDs,…"*

The appellant has been charged with the above role in the context of the offence of criminal conspiracy under section 120B IPC;

(b) The charge framed against the appellant *vidé* order dated 06.05.2011 aforesaid has not been challenged, either by way of the present appeal or otherwise, neither by the appellant *nor by the State*;

(c) Though stressing that the appellant has been charged with the offence of criminal conspiracy under section 120B IPC in the context of an alleged conspiracy to wage war against the Government of India by causing serial bomb blasts in various cities, including the capital, as envisaged under sections 121 and 121A IPC, the State has not drawn our attention to, nor have we been able to discern any *specific or particularised allegation* against the appellant in the chargesheet or in the order framing charge that could relate to the offences under sections 121 or 121A IPC;

(d) Be that as it may, in our view, once charges have been framed against the appellant by the trial court for offences under UAPA ***and the charges so framed have not been challenged in appropriate proceedings, either by the accused or by the State***, the bar engrafted in the proviso to section 43-

D(5), as expatiated upon by the Hon'ble Supreme Court in *Watali* (supra), would operate. That is to say, once charges have been framed, the question whether in the opinion of this court, there are reasonable grounds for believing that the accusations against the accused are *prima facie* true, does not arise since the trial court has, by framing charges under UAPA, already found *prima facie* material against the accused; which findings of the learned trial court are not challenged before this court; and

(e) Learned senior counsel for the appellant has also referred briefly to section 436A Cr.P.C., which, it is contended, entitles an accused to be enlarged on bail if the accused has undergone more than half of the maximum period of imprisonment specified for that offence. In our opinion, though section 436A Cr.P.C. in its terms does not apply to this case, since 'death' is one of the punishments specified for the offences with which the appellant is charged, in our reading of section 436A Cr.P.C., that provision only creates a right in an accused/undertrial that "*he shall be released by the Court*" on bail if he has undergone detention of at least one-half of the maximum sentence specified for the offence; but *section 436A does not create any bar on releasing an undertrial on bail* if he has undergone imprisonment of one-half or more of the maximum period of sentence, even if one of the punishments specified for the offence is a death sentence. Much less is there

any bar on releasing such an undertrial on bail, to preserve his right to a speedy trial under Article 21 on the principles of *K.A. Najeeb* (supra). We may point-out that section 436A Cr.P.C. in any case suffers from faulty drafting since, curiously, the words used in the provision are " … undergone detention for a period *extending up to one-half of the maximum period* of imprisonment ...", which, if applied literally, would mean that an undertrial should have undergone *any period of detention of less than half of the maximum sentence,* to be entitled to bail; and, as a sequitur, that this provision would not be of aid to an undertrial who has undergone imprisonment of *more than half* of the maximum period of imprisonment, which is completely contrary to the intent and purpose of the provision.

7. In the opinion of this court, there are two separate approaches to considering the grant or denial of bail in cases where the UAPA applies.

8. One approach, is for the court to apply the provisions of section 43-D(5) of the UAPA, as interpreted by the Hon'ble Supreme Court in *Watali* (supra).

9. The second approach is, for the court to draw upon the principles relating to right to a fair trial read into Article 21 of the Constitution, as explained by the Hon'ble Supreme Court in *K.A. Najeeb* (supra) *notwithstanding* the general considerations for bail under the Cr.P.C. and the additional conditions engrafted under the UAPA.

10. In the present case, considering that the charge framed against the appellant has not been challenged, neither by the appellant *nor even by the State*, in our view, the enquiry under Article 21 would come into play notwithstanding the provisions of section 43D(5) of UAPA in light of the dictum in *K.A. Najeeb* (supra), since an opinion has already been formed by the trial court believing that the accusations against the appellant are *prima face* true, which opinion is not assailed before us.

11. In fact, the respondent's contention premised on the decision of a Division Bench of this court in *Ghulam Mohd. Bhat* (supra), to which decision one of us, namely Siddharth Mridul J. was a party, is also answered, since that case was decided looking into its merits; and in that case two of the accused persons had already pleaded guilty after charges had been framed, and the charges framed had not been challenged before the Division Bench. Most importantly, at the time *Ghulam Mohd. Bhat* (supra) was decided, the verdict of the Hon'ble Supreme Court in *K.A. Najeeb* (supra) had not been rendered.

12. As will be seen from what follows, in the present case this court is persuaded to adopt the second approach, namely of enforcing the constitutional rights of an undertrial derived from Article 21 of our Constitution, based on the principles explained by the Hon'ble Supreme Court in *K.A. Najeeb* (supra).

13. Accordingly, in our view, the present appeal has, and can only have been premised on the principles laid down by the Hon'ble Supreme Court in *K.A. Najeeb* (supra), which are founded on the right to a

speedy trial, read into the right to life contained in Article 21 of our Constitution.

14. In *K.A. Najeeb* (supra) a 3-Judge Bench of the Hon'ble Supreme Court has *inter alia* held as follows:

> *"17. ...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...*
>
> * * * * *
>
> *"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 pre-condition under the UAPA. Instead, Section 43-D(5) of 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."*
>
> (emphasis supplied)

15. It is also important to briefly note the factual background and conduct of the accused in *K.A. Najeeb* (supra), which may be gathered from the following observations of the Kerala High Court in its judgment that subsequently came-up before the Hon'ble Supreme Court :

KA Najeeb vs Union of India : Crl MA 34/2019 in Crl A 659/2019 decided on 23.07.2019 by the Kerala High Court :

" .... This appeal is filed by the 5th accused in SC No.1/2015 of the Special Court for the Trial of NIA Cases, Ernakulam challenging order dated 17/4/2019 in Crr.M.P.No.34/2019. Application is filed by the filed by the 5th accused/appellant seeking bail. ***The Special Court found that materials produced by the prosecution clearly reveal that, the petitioner had a major role in the criminal conspiracy.*** *Along with the 3rd accused M.K.Nasar, petitioner was involved in the conspiracy of arranging a vehicle and also had role in other activities like dropping the accused persons at the scene of occurrence, helping them to escape after commission of the crime etc.* ***That apart, he was absconding since the occurrence of the crime and was apprehended only on 12/4/2015. The NIA Court also placed reliance on the bar u/s 43D of the Unlawful Activities (Prevention) Act while denying bail.*** *In fact, it was the third application that the accused was filing seeking bail.* ***Two earlier applications filed by the same accused were dismissed*** *as per order dated 1/6/2016 in Crl. Appeal No.377/2015 and order dated 1/8/2018 in Crl Appeal No.759/2018. ...*

* * * * *

"4. ***The only question to be considered is for lapse of time and delay in conducting trial****, whether the accused should be granted bail or not. Of course* ***this is a case in which the accused was absconding, but he was apprehended as early as on 12/4/2015. Even now, the trial has not started.*** *The reason submitted by the learned counsel on either side is that the case records are before this Court which were called for in appeals filed by NIA as well as the accused with reference to other accused who had faced trial in the case.* ***Though those appeals are listed for hearing for quite some time, the hearing has not taken place.***

"5. ***Confining a person as an under trial prisoner for a substantially long period without there being no chance of the case being taken for trial in the immediate future, will cause substantial prejudice and suffering to the accused.*** *In this case,* ***the allegation is that the accused had arranged vehicle for the accused***

> ***who had committed the overt acts to reach the scene of crime and to escape from there. He is also accused of having being part of a conspiracy along with the other accused.*** *Even the National Investigating Agency Act, 2008 had made provisions for expeditious trial of cases and Special Courts had been formed only for the said purpose. Even the appeals filed before this Court shall as far as possible shall be disposed of within three months.* ***Such being the situation, the accused remaining as an under trial prisoner has become a never ending affair and therefore, we are of the view that the accused should be released on. bail.*** *Learned Special Prosecutor, however would contend that if the accused is released on bail, he will continue his nefarious activities and try to instigate others in carrying out their anti-social schemes and may also influence the witnesses. Most of the witnesses had already been examined when other accused in the case faced trial and even at that stage, several of them had turned hostile to the prosecution."*
>
> (emphasis supplied)

16. Though the appellant has placed reliance essentially on *K.A Najeeb* (supra), judicial decisions on the right to speedy trial and the grant of bail upon considerations of Article 21, date back much earlier, wherein our courts have consistently emphasized on the significance of speedy trial and the consequences of its denial. Reference to some of those decisions would be in order at this point, since they discuss the law on this point in all its facets.

17. One of the earliest expositions of the necessity and concept of speedy trial is found in the seminal judgment of a 3-Judge Bench of the Hon'ble Supreme Court in ***Hussainara Khatoon (I) vs Home Secretary, State of Bihar*** [4], where the Hon'ble Supreme Court

[4] (1980) 1 SCC 81

deprecated the delay in commencement of trials, which would apply equally to long pendency of trials; and observed how "*unnecessarily prolonged detention in prison of undertrials before being brought to trial, is an affront to all civilised norms of human liberty*". Justice P.N. Bhagwati (as he then was) had this to say :

> "*5.* ***There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough : how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.*** *It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that:*
>
> > *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."*
>
> *So also Article 3 of the European Convention on Human Rights provides that:*
>
> > *"Every one arrested or detained . . . shall be entitled to trial within a reasonable time or to release pending trial."*
>
> ***We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India****[(1978) 1 SCC 248 : (1978) 2 SCR 621] . We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with*

the requirement of that article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. ***Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21.*** *There can, therefore, be no doubt that speedy trial, and by speedy trial we mean* ***reasonably expeditious trial****, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21****.*** *The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21. That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date. ...."*

(emphasis supplied)

In the opening paragraph of his concurring opinion in the case Justice R.S. Pathak (as he then was) said :

> *"****It is indisputable that an unnecessarily prolonged detention in prison of undertrials before being brought to trial is an affront to all civilised norms of human liberty. Any meaningful concept of individual liberty which forms the bedrock of a civilised legal system must view with distress patently long periods of imprisonment before persons awaiting trial can receive the attention of the administration of justice. The primary principle of***

criminal law is that imprisonment may follow a judgment of guilt, but should not precede it. *...”*

(emphasis supplied)

18. In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs Union of India***[5], the Hon’ble Supreme Court dealt in considerable detail with the issue of delay in trial and continued incarceration of undertrials pending trial and had this to say:

> ”*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.*** *.....* ***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***

[5] (1994) 6 SCC 731

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.***

.....

(emphasis supplied)

19. In its seminal ruling in ***P. Ramachandra Rao vs State of Karnataka***[6], a 7-Judge Constitutional Bench of the Hon'ble Supreme Court dwelt into the issue of speedy trial and explained its genesis in Article 21 in the following words :

> "*R.C. Lahoti, J. (for Bharucha, C.J., Quadri, J., himself and Hegde, Ruma Pal and Pasayat, JJ.)—* ***No person shall be deprived of his life or his personal liberty except according to procedure established by law — declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully.*** *Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can.* ***The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial — in short everything commencing with an accusation and expiring with the final verdict — the two being respectively the terminus a quo and terminus ad quem — of the journey which an accused must necessarily undertake once faced with an implication.*** *The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right*

---

[6] (2002) 4 SCC 578

to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. ***In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the legislature and the statutes have not chosen to do so — is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength****.*

* * * * *

"8. The width of vision cast on Article 21, so as to perceive its broad sweep and content, by the seven-Judge Bench of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] inspired a declaration of law, made on 12-2-1979 in Hussainara Khatoon (I) v. Home Secy., State of Bihar [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] that ***Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial****. The Court said (SCC p. 89, para 5)—*

> *"****No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."***

Many accused persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled, by Hussainara Khatoon (I) [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] statement of

law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. ... The proponents of right to speedy trial strongly urged before this Court for taking one step forward in the direction and prescribing time-limits beyond which no criminal proceeding should be allowed to go on, advocating that unless this was done, Maneka Gandhi [(1978) 1 SCC 248] and Hussainara Khatoon (I) [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] exposition of Article 21 would remain a mere illusion and a platitude. ***Invoking of the constitutional jurisdiction of this Court so as to judicially forge two termini and lay down periods of limitation applicable like a mathematical formula, beyond which a trial or criminal proceeding shall not proceed, was resisted by the opponents submitting that the right to speedy trial was an amorphous one, something less than other fundamental rights guaranteed by the Constitution.*** *The submissions made by proponents included that the right to speedy trial flowing from Article 21 to be meaningful, enforceable and effective ought to be accompanied by an outer limit beyond which continuance of the proceedings will be violative of Article 21. It was submitted that Section 468 of the Code of Criminal Procedure applied only to minor offences but the court should extend the same principle to major offences as well. It was also urged that a period of 10 years calculated from the date of registration of crime should be placed as an outer limit wherein shall be counted the time taken by the investigation.*

"9. The Constitution Bench, in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , heard elaborate arguments. ***The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) who is responsible for the delay and what factors have contributed***

towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. *Guidelines (8), (9), (10) and (11) are relevant for our purpose and hence are extracted and reproduced hereunder: (SCC pp. 272-73, para 86)*

> *"(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.*
>
> *(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open.* ***The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.***
>
> *(10)* ***It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be a qualified one.*** *Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case*

before pronouncing upon the complaint. ***The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.***

(11) ***An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.****"*

"10. During the course of its judgment also, the Constitution Bench made certain observations which need to be extracted and reproduced:

"83. But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. ***One may ask — speedy means, how speedy? How long a delay is too long? <u>We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings.</u>*** *The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. ... it is <u>neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings.</u> It is not necessary to do so for effectuating the right to speedy trial. We are also <u>not satisfied that without such an outer limit, the right becomes illusory.</u>" (SCC pp. 268-69, para 83)*

"[E]ven apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or

where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders." (SCC p. 260, para 65)

(emphasis supplied)

* * * * *

"*21. Is it at all necessary to have limitation bars terminating trials and proceedings ? Is there no effective mechanism available for achieving the same end ?* ***The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression.*** *Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Explanation 2 to Section 309 confers power on the court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the courts. ... In appropriate cases, inherent power of the High Court, under* ***Section 482*** *can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice.* ***The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings****. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case*

of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

* * * * *

"*28. ... We have in the earlier part of this judgment extracted and reproduced passages from A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] .* ***The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences. Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules.*** *It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested inA.R. Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93].* ***In Kartar Singh case*** *[(1994) 3 SCC 569 : 1994 SCC (Cri) 899]* ***the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state:***

> ”***92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors — (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay.”*** *(SCC pp. 639-40, para 92)*

”*29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] [as modified in Common Cause (II) [(1996) 6 SCC 775 : 1997 SCC (Cri) 42]] and Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:*

> *(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field.*
>
> *(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.*
>
> *(3) The guidelines laid down in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended*

to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) ***It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.*** *The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and Raj Deo Sharma (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] could not have been so prescribed or drawn and are not good law.* ***The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made*** *in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , Raj Deo Sharma case (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] .* ***At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case*** *[(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted.* ***Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.***

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. ***In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions****.*

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms.

* * * * *

"*32. Secondly,* ***though we are deleting the directions made respectively by two-and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy.*** *It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in Hussainara Khatoon (IV) [Hussainara Khatoon*

(IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40]:

> *The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial.* ***The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability.*** *(SCC p. 107, para 10)*"

(emphasis supplied)

20. In ***State of Kerala vs Raneef***[7], the Hon'ble Supreme Court said :

> " *.... The appellant has filed this appeal challenging the impugned order of the Kerala High Court dated 17-9-2010 granting bail to the respondent, Dr. Raneef, who is a medical practitioner (dentist) in Ernakulam District in Kerala, and is accused in Crime No. 704 of 2010 of PS Muvattupuzha for offences under various provisions of IPC, the Explosive Substances Act, and the Unlawful Activities (Prevention) Act.*
>
> * * * * *
>
> *"15.* ***In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course***

[7] (2011) 1 SCC 784

this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. *In the present case the respondent has* ***already spent 66 days in custody*** *(as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.*"

(emphasis supplied)

Then, again in ***Sanjay Chandra vs CBI***[8], the Hon'ble Supreme Court said:

"*39. Coming back to the facts of the present case,* ***both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses.*** *In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document.* ***The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue.Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.***

"*40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.* ***The primary purposes of bail in a criminal case are to relieve the accused of***

[8] (2012) 1 SCC 40

imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, *whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.*

* * * * * *

"*42.* ***When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case.***

"*43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted.* ***It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.***

* * * * *

"*45. In Bihar Fodder Scam (Laloo Prasad case [Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372])* ***this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.***

> "*46.* ***We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation.*** *We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*
>
> (emphasis supplied)

More recently, in ***Umarmia vs State of Gujarat***[9], the Hon'ble Supreme Court granted bail to the undertrial *inter alia* on the ground of his incarceration for about 12 years, and said :

> "*..... This appeal is filed against the judgment dated 16-6-2010 in Criminal Misc. Sr. No. 44 of 2010 by which the Court of Designated Judge (TADA) at Porbandar (hereinafter referred to as "the Designated Court") rejected the bail application filed by the appellant under Section 439 CrPC and Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the Act"). Crime No. I-43 of 1994 was registered under Section 154 CrPC for the* ***offences committed under Sections 121, 121-A, 122, 123, 124-B read with Section 34 of the Penal Code, 1860, Sections 25(1-A), (1-B) and 25(1-AA) of the Arms Act, Section 9-B of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosive Substances Act and Sections 3, 4 and 5 of the Act.***
>
> "*2. The statement of one Suresh recorded under Section 108 of the Customs Act revealed that explosive substances, powder RDX*

[9] (2017) 2 SCC 731

boxes, bags containing firearms, 45 bags of weapons, 15 boxes of RDX and 225 pieces of silver ingots were smuggled into the country and taken to Zaroli and Dhanoli Villages of Valsad District. ***The first charge-sheet was filed on 12-1-1995 in which the name of the appellant is found at Serial No. 1 in Column 2 which refers to persons who were absconding. The 11th supplementary charge-sheet was filed on 6-6-2005 wherein it was mentioned that the appellant was arrested at 1700 hrs on 10-12-2004****.*

* * * * *

"*10. After considering the submissions of both sides, we are of the opinion that the appellant is entitled to be released on bail for the following reasons:*

> *A. The prior approval required under Section 20-A(1) of the TADA Act was not taken from the District Superintendent of Police before the FIR was recorded.*
>
> ***B. Admittedly, the appellant had been suffering incarceration for more than 12 years.***
>
> ***C. Only 25 out of 192 witnesses have been examined so far.***
>
> ***D. There is no likelihood of the completion of trial in the near future.***
>
> *E. Though there is a confessional statement of the appellant recorded under Section 15 of the TADA, the same cannot be looked into by us in view of the violation of Section 20-A(1) of the TADA Act.*

"*11.* ***This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India.*** *(See Supreme Court Legal Aid Committee v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731 : 1995 SCC (Cri) 39] and Shaheen Welfare Assn. v. Union of India [Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC*

616 : 1996 SCC (Cri) 366] .) ***The accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest.*** *[See Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] and Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] .]*

"*12.* ***Though the appellant is involved in serious offences and has absconded for a period of 10 years before he was arrested in 2004, we see no reason to confine him to jail as he has already suffered more than 12 years in custody and the trial may not be completed in the near future.*** *Taking note of the above, we grant relief of bail to the appellant subject to the following conditions: ...*

* * * * * *"

(emphasis supplied)

Again in ***Angela Harish Sontakke vs State of Maharashtra***[10], the Hon'ble Supreme Court said :

"*2. Leave granted. We have heard the learned counsel for the parties. Charges have been framed against the appellant-accused under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the Unlawful Activities (Prevention) Act, 1967, amended 2008 and Sections 387, 419, 465, 467, 468, 471 read with Section 120-B of the Penal Code, 1860.* ***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 likely period within which the trial can be expected to be completed****.*

"*3.* ***The appellant-accused has been in custody since April 2011 i.e. for over five years.*** *The trial is yet to commence inasmuch as the learned State Counsel has submitted that 9-5-2016 is the first date*

[10] (2021) 3 SCC 723

> *fixed for the trial.* ***There are over 200 witnesses proposed to be examined.*** *The appellant-accused is a lady. She has also been acquitted of similar charges levelled against her in other cases.* ***Taking into account all the aforesaid facts we are of the view that the appellant-accused should be admitted to bail.*** *We accordingly direct that the appellant-accused Angela Harish Sontakke be released on bail by the learned trial court in connection with Sessions Case No. 655 of 2011 arising out of CR No. 19/11, PS, ATS Kalachowki, Mumbai."*
>
> (emphasis supplied)

21. While it is not our understanding that the decision of the Hon'ble Supreme Court in *K.A. Najeeb* (supra) overrules its decision in *Watali* (supra), as discussed above, in our reading, these two verdicts lay down two different approaches for considering the matter of bail in cases where offences under the UAPA are alleged. *K.A. Najeeb* (supra) lays-down the constitutional approach arising from Article 21, whereas *Watali* (supra) explains the statutory approach arising from section 43(D)(5) of UAPA.

22. However, the principle in *K.A. Najeeb* (supra) turns upon an aspect that involves the subjective satisfaction of the court applying that principle. This subjectivity arises from the following question : *how long is too long a period of incarceration as an undertrial, for a court to conclude the right to speedy trial is defeated ?*

23. To answer the above question, this court took a conspectus of certain other decisions of the Hon'ble Supreme Court and other High Courts, in which the Courts have considered the period of undertrial

incarceration as being inordinately long, so as to warrant enlargement on bail. The result of this conspectus is summarised below :

S.No.	Cause Title	Offences alleged	Period of incarceration	Maximum punishment for offences alleged
1	**Union of India vs K.A. Najeeb** (2021) 3 SCC 713	Indian Penal Code : Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326 and 506 Pt.II, 201, 202, 153-A, 212, 307, 149 Unlawful Activities (Prevention) Act : Sections 16, 18, 18-B, 19 & 20 Explosive Substances Act, 1908: Section. 3	5 years Absconding for about 5 years	Death/Life Imprisonment
2	**Iqbal Ahmed Kabir Ahmed vs The State of Maharashtra** (2021) SCC OnLine Bom 1805	Indian Penal Code : Sections 120B & 471 Unlawful Activities (Prevention) Act : Sections 13, 16, 18, 18B, 20, 38 & 39 Explosive Substances Act : Sections 4, 5, 6	Over 4.5 years (Aug 2016-March 2021)	Life Imprisonment
3	**Sagar Tatyaram Gorkhe vs State of Maharashtra** (2021) 3 SCC 725	Indian Penal Code : Sections 387, 465, 467, 468, 471 r/w 120-B Unlawful Activities (Prevention) Act : Sections 18, 18(A), 18(B), 20, 38 and 39	About 4 years	Life Imprisonment

4	**Lt. Col Prasad Shrikant Purohit vs State of Maharashtra** (2018) 11 SCC 458	Unlawful Activities (Prevention) Act : Sections 15, 16, 17, 18, 20 & 23 Indian Penal Code : Sections 302, 307, 326, 324, 427, 153-A and 120-B Explosive Substances Act : Sections 3, 4, 6	8 years 8 months	Death
5	**Urmarmia vs State of Gujarat** (2017) 2 SCC 752	TADA: Sections 3, 4, 5 Explosive Substances Act: Sections 3, 4, 5, 6, 9B Indian Penal Code: Sections 121, 121A, 122, 123, 124B r/w 34 Arms Act : Sections 25(1A), (1B) and 25(1AA)	Incarcerated for 12 years, Absconded for 10 years	Death/Life Imprisonment
6	**Angela Harish Sontakke vs State of Maharashtra** 2016 SCC Online SC 1910	Unlawful Activities (Prevention) Act : Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39, 40(2) Indian Penal Code : Sections 387, 419, 465, 467, 468, 471	Over 5 years Taken into custody on April 2011,	Life Imprisonment
7	**State of Kerala vs Raneef** (2011) 1 SCC 784	Indian Penal Code : Sections 143, 147, 148, 120 B, 323, 324, 326. 341, 427, 506 (ii), 307, 153 (A), 201, 202 and 212 read with 149 Unlawful Activities (Prevention) Act: Sections 16, 18, 18(b) 19 & 20 Explosive Substances Act : Sections 3 and 15	66 days Arrested on 13.07.2010	Life Imprisonment

8	**Chenna Boyanna Krishna Yadav vs State of Maharashtra and Anr.** (2007) 1 SCC 242	Indian Penal Code: Sections 120B, 255, 256, 257, 258, 259, 263A, 420, 467, 468, 471, 472, 473, 474, 475, 476 and 34 IPC Bombay Stamps Act : Sections 63(a) and 63(b) Maharashtra Control of Organized Crimes Act :Sections 3 and 24 Prevention of Corruption Act: Sections 7 and 13(i)(d)	Over 3 years	3 years u/s 24 of MCOCA
9	**Babba vs State of Maharashtra** (2005) 11 SCC 569	Offences under TADA (not mentioned in the judgment)	Around 13 years Arrested on 01.07.1992	Information not available
10	**Paramjit Singh vs State (NCT of Delhi)** (1999) 9 SCC 252	Offences under TADA (not mentioned in the judgment)	About 7 years (From May 1992 to January 1999	Information not available

24. From the aforesaid, though no particular correlation as between undertrial incarceration and the right to speedy trial being defeated emerges, what we see clearly is, *one*, that undertrials have been enlarged on bail even in cases where the offences alleged were punishable with death; and, *two*, that even when the period of incarceration undergone as undertrial was as little as 66 days, the Hon'ble Supreme Court enlarged the undertrial on bail.

25. Courts *must not play coroner* and attend to legal or constitutional rights only after they are 'dead'. Instead *we must play doctor*, and save such rights from demise before they are extinguished. Courts

should pro-actively step-in to protect such rights from being stifled and buried. If equity calls upon affected persons to be vigilant to protect their rights, then surely the courts must also be vigilant, and, to quote the Hon'ble Supreme Court, act *as sentinels on the qui vive* when it comes to protecting constitutional and legal rights.

26. In the present case, the appellant has spent more than 12 years in custody as an undertrial; 256 witnesses have been examined over the last about 12 years, but 60 prosecution witnesses still remain to be examined. Regardless of how much longer the trial may take hereafter, the incarceration of more than 12 years suffered by the appellant in custody as an undertrial would certainly qualify as a long enough period for the system to acknowledge that the appellant's right to speedy trial continues to be defeated.

27. A reminder of the foundational principles of bail, in the masterful words of the apotheosis of jurisprudence, Justice V.R. Krishna Iyer, is never out of place. In ***Gudikanti Narasimhulu and Ors. vs Public Prosecutor, High Court of Andhra Pradesh***[11] as upheld in a subsequent decision in ***Babu Singh & Ors vs State of UP***[12], the Hon'ble Supreme Court said in the opening para :

> *"**"Bail or jail?" — at the pre-trial or post-conviction stage — belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court***

[11] (1978) 1 SCC 240

[12] (1978) 1 SCC 579

> ***prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.*** *As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion.* ***Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.***
>
> "*2. The doctrine of police power, constitutionally validates punitive processes for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution."*
>
> (emphasis supplied)

28. Furthermore, we observe that, even assuming that the specific role attributed to the appellant in the charge framed *vidé* order dated 06.05.2011 against him, warrants a life sentence, section 57 of the IPC provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned to be equivalent to imprisonment for 20 years; whereby, it would be reasonable to say, that the appellant has already undergone more than half the sentence

he may eventually face. To be sure, while observing so, it is not the purport of this court to pre-judge the decision of the learned Trial Court to award to the appellant whatever sentence it deems appropriate, in accordance with law, if the appellant is eventually convicted.

29. In urging us to assume that if one of the offences with which the appellant is charged is punishable with death, the State is, in effect, asking us to not only infer that the appellant would certainly be convicted, but also that he would be awarded the harshest possible sentence, namely the capital sentence.

30. This, we are *specifically enjoined not to do* while deciding a bail application. In fact, on the well-worn principle that the death sentence is to be awarded only in the 'rarest of rare' cases, capital punishment can never be treated as the *default punishment*, and even for the most heinous offences it can never be assumed that an accused is most likely to be awarded the death sentence. It would be completely illogical to *presume* that what is mandated to be done in the '*rarest of rare*' cases would '*most likely*' be done in a given case.

31. It is also necessary to enunciate another important aspect of the matter, which is that where a person is charged with an offence which potentially carries a death sentence, it is all the more important to ensure a speedy trial so as to bring the offender, who is charged with a heinous crime, to justice, at the earliest.

32. There is another way to address the State's submission that since the appellant is charged with an offence under section 16 of UAPA, the court must proceed on the assumption that he may be meted-out the death penalty. For one, this submission is purely an *assumption*. Besides, if it wishes to canvass this one assumption, the State must address at least two *contrary assumptions* to test if the State's assumption deserves to form the basis of a decision, at this stage. The two contrary assumptions are : *first*, what if the appellant is acquitted. In the event of acquittal, how would the State compensate the appellant for having been robbed of what may have been the most productive and defining decade of his life, at the State's instance? *Second*, even assuming the appellant is ultimately convicted but sentenced to life imprisonment, how would the State compensate him for having negated his entitlement to bail under section 436A Cr.P.C. read with section 57 IPC? We are sure the State has not delved into these contrary assumptions.

33. In the present case, if the State plans to seek the capital sentence for the appellant, it is therefore all the more necessary that the appellant be afforded a speedy trial; failing which, the appellant deserves at least to be given back his liberty after more than 12 long years of imprisonment as an undertrial, since it cannot be ignored that as of now, the appellant has undergone punishment for more than a decade of his life, for an alleged offence for which he has not yet been found guilty.

34. We may also observe that the record of this appeal shows that the appellant was enrolled in a B.Tech. (Biotechnology) degree course at the Integral University, Lucknow, Uttar Pradesh (an institution established under U.P. State legislation and approved by the University Grants Commission) in the 2008-2009 sessions, *i.e.*, about the time that the offence is alleged to have been committed.

Conclusions

35. Upon a conspectus of the foregoing facts and circumstances, in the opinion of this court, on the touchstone of the principles upheld by the Hon'ble Supreme Court in *K.A. Najeeb* (supra), in our opinion, the appellant has made-out a case that his right to speedy trial is being defeated and would continue to be violated if he is not enlarged on bail, having already spent more than 12 years in custody as an undertrial.

36. Accordingly, we are disposed to allowing the present appeal, which we hereby do.

37. In view of the above, it is directed that the appellant be released on regular bail, pending trial, subject to the following conditions:

(a) The applicant shall furnish a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with 02 local surety in the like amount from family members, to the satisfaction of the learned Trial Court;

(b) The applicant shall furnish to the Investigating Officer a cellphone number on which the applicant may be contacted at

any time; and shall ensure that the number is kept active and switched-on at all times;

(c) If the applicant has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;

(d) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

38. Nothing in this judgment shall be construed as an expression on the merits of the matter or the pending trial.

39. A copy of this judgment be sent to the concerned Jail Superintendent and the learned Trial Court.

40. The appeal stands disposed of in the above terms.

41. Pending applications, if any, also stand disposed of.

SIDDHARTH MRIDUL, J.

ANUP JAIRAM BHAMBHANI, J.

October 06, 2021
uj/ds/Ne