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

Date of decision: 15th January, 2025

\+ BAIL APPLN. 1203/2024

NEERAJ SEHRAWAT @ NEERAJ BAWANIYA .....Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with Mr. Siddharth S. Yadav, Mr. Gagan Bhatnagar, Mr. Rahul Yadav, Mr. Ayush Kumar Singh, Ms. Kashish Ahuja, Ms. Sneha Bakshi Ram, Mr. Arjan Singh Mandla, Ms. Sana Singh, Ms. Punya Rekha Angagar, Mr. Rahul and Mr. Tushar, Advocates.

versus

STATE NCT OF DELHI .....Respondent

Through: Ms. Rupali Bandhopadhya, ASC for the State with Mr. Abhijeet Kumar, Advocate with Insp. Suneel Siddhu, P.S. Mangolpuri and Insp. Brahm Prakash, P.S. Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Does the period of custody undergone *by itself* entitle an undertrial to be released on regular bail premised on the right to speedy trial arising from Article 21 of the Constitution of India ? This is the question that arises for consideration in the present case.

2. The present petition was filed by the petitioner under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.') seeking regular bail in case FIR No.1683/2015 dated 25.08.2015 registered under sections 302/120-B/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Mangol Puri, Delhi ('subject FIR').

3. Notice having been issued on the petition, the State filed its Status Reports dated 15.05.2024 and 29.05.2024 in the matter, vociferously opposing the grant of bail.

4. Since the petitioner has *several* other criminal involvements, an updated Nominal Roll dated 06.08.2024, a State Crime Record Bureau ('SCRB') report dated 26.04.2024, and an updated list dated 29.08.2024 of his previous involvements have also been placed on record by the State.

BRIEF FACTS

5. Briefly, the subject FIR was lodged arising from an incident where a violent quarrel erupted between undertrial prisoners while they were being ferried in a jail van from the Rohini Court lock-up to Tihar Jail, New Delhi, which led to 02 of the prisoners in the jail van – Vikram @ Paras @ Goldy and Pradeep @ Bhola – being done to death by some of the other prisoners who were housed in the same compartment of the jail van as the two victims. At the relevant time, there were 09 prisoners in the jail van. The petitioner – Neeraj Sehrawat @ Neeraj Bawania son of Prem Singh – was one of them.

6. As per the allegations, one Head Constable Hem Prakash of the 03rd Battalion of the Delhi Armed Police, who was on duty in the jail van,

witnessed a heated altercation between the petitioner on the one side and Vikram and Pradeep on the other.

7. It is alleged that arising from that altercation, while travelling in the jail van, the petitioner attacked Vikram and Pradeep, who were brought down on the floor of the van; and subsequently, the petitioner along with other prisoners who were in the jail van, wrapped *gamchas* around the necks of the two victims, hauled them across the floor, and snuffed the life out of them. The details of what followed are not relevant for purposes of the present petition, except to say that the jail van was escorted straight to a hospital, where both Vikram and Pradeep were declared 'brought dead'.

8. Upon completion of investigation, a charge-sheet was filed against the accused persons, including against the petitioner.

9. Needless to add, that the petitioner refutes and denies all allegations made against him in the subject FIR and in the charge-sheet, *inter-alia* contending that the case against him is inconceivable since prisoners are not allowed to carry towels, *gamchas*, belts, or ropes, etc. in a jail van; and therefore the allegation that the two victims were killed by strangulation using *gamchas* is wholly untenable.

10. Since the merits of the allegations in the subject FIR are subject matter of the pending trial, this court would steer clear of making any comments thereon.

PETITIONER'S SUBMISSIONS

11. To substantiate his case for grant of bail, the principal contention raised by Mr. N. Hariharan, learned senior counsel appearing for the petitioner, is that the petitioner has been in judicial custody in the

subject FIR for *more than 09 years*; that the prosecution has cited 79 witnesses in the charge-sheet and the supplementary charge-sheet filed in the case, of whom *only 32 witnesses have been examined so far*; that the petitioner is a married man, about 35 years of age, is a permanent resident of Delhi and there is no chance of him fleeing from trial; and that therefore, the petitioner deserves to be enlarged on regular bail.

12. Learned senior counsel has dilated upon his case for bail, making the following submissions :

12.1. Aside from all other grounds, it is submitted that the petitioner has been in the judicial custody in the subject FIR for about 09 years, while only 32 out of 79 prosecution witnesses have been examined so far. It is therefore clear that trial in the matter would take a long time to complete; and the petitioner is accordingly entitled to be released on regular bail to preserve his constitutional right under Article 21 of the Constitution of India, as enunciated by the Supreme Court *inter-alia* in ***Sheikh Javed Iqbal alias Ashfaq Ansari alias Javed Ansari vs. State of Uttar Pradesh***.[1] It is submitted that in the said case the Supreme Court has ruled that the right to life and personal liberty enshrined in Article 21 is over-arching and sacrosanct and that no undertrial can be detained in custody indefinitely, pending trial.

[1] (2024)8 SCC 293

12.2. It is submitted that since in the present case it is obvious that timely completion of trial would not be possible and the accused has suffered incarceration for a significantly long period of time, the court would ordinarily be *obligated* to enlarge the accused on bail. In support of this submission, the petitioner has also placed reliance on the recent decisions of the Supreme Court in ***Union of India vs. K.A. Najeeb***,[2] ***Kalvakuntla Kavitha vs. Directorate of Enforcement***,[3] ***Jalaluddin Khan vs. Union of India***,[4] and ***Manish Sisodia vs. Directorate of Enforcement***[5] and the decision of a Co-ordinate Bench of this court in ***Mohd. Tahir vs. State***.[6]

12.3. It has also been argued that the main ground on which the State is opposing grant of bail is that the offence allegedly committed by the petitioner is serious in nature and that the petitioner has several other criminal cases pending against him. It is submitted however, that the legal position is that only because an offence alleged is grave and serious and there are several criminal cases pending against a person, that by itself is not a factor for refusing bail in a given case, if there are other circumstances justifying grant of bail. In support of this submission, learned senior counsel for the petitioner has placed reliance on the decision of the Supreme Court in ***Prabhakar***

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[2] (2021) 3 SCC 713
[3] 2024 SCC OnLine SC 2269
[4] (2024) 10 SCC 574
[5] 2024 SCC OnLine SC 1920
[6] 2022 SCC OnLine Del 154

Tewari vs. State of Uttar Pradesh &Anr.,[7] and ***Seema Singh vs. Central Bureau of Investigation & Anr.***[8] and the decision of a Co-ordinate Bench of this court in ***Vasu Sharma vs. State NCT of Delhi***.[9]

12.4. It is also the petitioner's submission that a perusal of the SCRB report pertaining to the petitioner would show that in many of the cases in which he was implicated, the petitioner has already been acquitted or discharged or he has been admitted to bail. It is pointed-out that in other cases in which he was convicted, the petitioner has already served-out the sentence awarded, and has therefore atoned for the offences and has reformed in that sense. In compliance of a previous direction issued by this court, the petitioner has also placed on record copies of some of the orders made by the concerned courts in matters in which he stands acquitted or discharged or has been admitted to bail.

12.5. It is also argued, that the State's contention that the long list of cases against him as disclosed in the SCRB report show the petitioner's *propensity to commit crime*, is baseless and speculative, especially since in most of the cases he was charged with, the petitioner has either been acquitted or discharged or he has served-out his sentence or has been admitted to bail. It is pointed-out that the *only exception* is the case that is subject-matter of the present proceedings. It is

[7] (2020) 11 SCC 648
[8] (2018) 16 SCC 10
[9] 2024 SCC OnLine Del 2431

further submitted that there has been consistent effort on the part of the investigating agencies to foist false cases on the petitioner whenever he is about to be released from custody, in an effort to ensure his continued custody even if on false charges.

12.6. Learned senior counsel has also urged this court to consider the *reformative aspect* of the petitioner's custody in other cases, to submit that having served sentence in those cases, the criminal justice system must acknowledge that the petitioner would have undergone reformation; and therefore the argument that the petitioner has the tendency to commit offences carries no weight.

12.7. It is also argued, that considering the place where the offence is alleged to have been committed, namely inside a jail van; and the manner in which the two victims are stated to have been killed, nearly all prosecution witnesses are police officials or other governmental officials; and there is no chance that the petitioner would be able to influence or suborn any of those witnesses.

12.8. Needless to add that the petitioner has also undertaken to be bound by any condition that the court may impose while granting him bail, submitting that he would be ready and willing to abide by any such condition.

12.9. For the record, it is also pointed-out that the bail application filed by the petitioner before the learned Sessions Court was

dismissed as far back as on 26.02.2024, and the petitioner has undergone another year of custody thereafter.

STATE'S SUBMISSIONS

13. Ms. Rupali Bandhopadhya, learned ASC (Criminal) appearing on behalf of the State has very strongly opposed the grant of bail to the petitioner. Her principal contentions are the following :

13.1. The petitioner is a history-sheeter and heads a 'gang' in his own name which indulges in heinous criminal activity. The long list of criminal cases in which he is implicated, as evidenced by the SCRB report, show his past conduct, which must be borne in mind while considering his bail plea in the subject FIR.

13.2. The heinousness of the offence in the subject FIR is self-evident; and the State cannot but reiterate the brazen brutality with which the petitioner along with other inmates murdered two prisoners within the confines of a jail van, in which they were being brought back from Rohini Court to Tihar Jail; and as a result the petitioner is now produced in court *via* video-conferencing instead of taking him there physically.

13.3. The temerity with which the offence was committed and the fact that it was provoked merely by an argument during the short course of travel in the jail van, shows the vicious tendency of the petitioner to commit violence, which disentitles him to be set at liberty even as an undertrial.

13.4. Though the State does not dispute that arising from the constitutional mandate of Article 21 of the Constitution, speedy trial is the right of every accused person, it is argued that the

causes for delay in conducting trial must also be considered by the court. In the present case, the State submits, that three co-accused persons had absconded while on bail, which was a major cause for the delay.

13.5. It is pointed-out, that even the beneficent provision of section 436-A of the Cr.P.C., which entitles an undertrial prisoner to be released on bail if the prisoner has undergone one-half or more of the maximum imprisonment specified for the offences charged, contains an exception which says that the said benefit is not available to an undertrial who is detained and is facing trial for an offence which attracts the death sentence as one of the punishments. In the present case, the petitioner is facing trial for a double murder under section 302 of the IPC, and considering his antecedents, and the fact that the offence was committed while the petitioner was in custody and was being transported in a jail van, the State may well succeed in persuading the trial court that this is a 'rarest of the rare' case, and should invite the capital sentence.

13.6. It is argued that the petitioner's SCRB record demonstrates his propensity to commit serious criminal offences, since his long history-sheet of *28 serious criminal offences* cannot merely be a matter of chance. In particular, it is pointed-out that the petitioner was *convicted* in case FIR No.69/2010 registered under sections 186/353/332/34 of the IPC at P.S.: Hari Nagar, Delhi, *which offences were committed while he was on bail* in the offences registered *vide* FIR No. 623/2007 under sections

307/34 of the IPC at P.S.: Bawana, Delhi. Furthermore, the State submits that the petitioner was also *convicted* in case FIR No. 30/2015 registered under sections 186/353/307 of the IPC and sections 25/27 of the Arms Act, 1959 at P.S.: Special Cell, Delhi, which FIR again, was registered *while he was on bail* for the offences registered *vide* FIR No. 180/2012 under sections 387/506 of the IPC at P.S.: Samaipur Badli, Delhi. In addition to that, the petitioner was also *convicted* in case FIR No. 617/2015 registered under sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 ('Gangsters Act') at P.S.: Baghpat, Uttar Pradesh, which he committed *while he was on bail* in FIR No. 180/2012 registered at P.S.: Samaipur Badli, Delhi under sections 387/506 of the IPC, referred to above. It is argued that the petitioner's conduct demonstrates his proclivity to commit offences even while he is on bail in other cases, which must dissuade this court to grant any further indulgence to the petitioner.

13.7. The State has articulated, in so many words, that if bail is the rule and jail the exception, the present petitioner is exactly the person who is covered by the exception.

14. In support of her submissions, learned ASC has placed reliance on the decisions of the Supreme Court in ***Ranjan Dwivedi vs. Central Bureau of Investigation***,[10] ***Chandrakeshwar Prasad alias Chandu***

[10] (2012) 8 SCC 495

Babu vs. State of Bihar & Anr.,[11] ***Neeru Yadav vs. State of Uttar Pradesh & Anr.***,[12] ***State of Bihar vs. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballav Yadav***,[13] ***Brijmani Devi vs. Pappu Kumar & Anr.***,[14] ***Gobarbhai Naranbhai Singala vs. State of Gujarat & Ors.***,[15] and ***Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu & Anr.***[16]

JUDICIAL PRECEDENTS CITED

15. Of the several judicial precedents cited on behalf of the petitioner, the following are the most relevant :

On entitlement to bail by reason of inordinate delay in trial

15.1. **K.A. Najeeb** (supra)

> "*11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. [Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366], laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622, para 10)*
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> > *"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899], on the presumption that the trial of the accused will take place without undue delay.* ***No one can justify gross delay in disposal of cases***

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[11] (2016) 9 SCC 443
[12] (2016) 15 SCC 422
[13] (2017) 2 SCC 178
[14] (2022) 4 SCC 497
[15] (2008) 3 SCC 775
[16] (2012) 9 SCC 446

***when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21**."*

* * * * *

"*18. Adverting to the case at hand, **we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony**. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. **However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail**. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.*"

(emphasis supplied)

15.2. **Sheikh Javed Iqbal** (supra)

"*31. This Court noted that the appellant in K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] 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 emphasised 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 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.*

* * * * *

"*42. This Court has, time and again, emphasised 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 [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us.*"

(emphasis supplied)

15.3. **Manish Sisodia** (supra)

"*49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.*

"*50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.*

"51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra [2024 SCC OnLine SC 1693] wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh [(1978) 1 SCC 240 : 1977 INSC 232], Shri Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565 : 1980 INSC 68], Hussainara Khatoon (I) v. Home Secretary, State of Bihar [(1980) 1 SCC 81 : 1979 INSC 34], Union of India v. K.A. Najeeb [(2021) 3 SCC 713 : 2021 INSC 50] and Satender Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51 : 2022 INSC 690]. The Court observed thus:

"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*."*

"*52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:*

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

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

*"I observe that in this case bail was refused for the prisoner. **It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial**.""*

"*53. **The Court further observed that, 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**. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. **It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception**".*

"*54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited*

period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. ***As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial****.*"

(emphasis supplied)

15.4. **Kalvakuntla Kavitha** (supra)

"*11. The appellant has been behind the bars for the last five months. As observed by us in the case of Manish Sisodia (supra), taking into consideration that there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages, the likelihood of the trial being concluded in near future is impossible.*

"*12. Relying on the various pronouncements of this Court, we had observed in the case of Manish Sisodia (supra) that the* ***prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial****.*

"*13. We had also reiterated the well-established principle that "bail is the rule and refusal is an exception". We had further observed that the fundamental right of liberty provided under Article 21 of the Constitution is superior to the statutory restrictions.*"

(emphasis supplied)

15.5. **Vasu Sharma** (supra)

"*40.* ***No doubt the petitioner has a criminal record but it is also not in dispute that the petitioner has already been either discharged/acquitted or is on bail in other cases****. The petitioner is stated to be facing trial only in two cases including the present one. Having regard to the facts and circumstances of the present case,* ***as well as, long incarceration, petitioner's involvement in other cases cannot be pressed into service to deny bail to him****.*"

(emphasis supplied)

16. Of the case-law relied upon by the State, the following are the most relevant :

Mere delay in trial is no ground for bail :

16.1. **Ranjan Dwivedi** (supra)

> "*23.* ***The length of the delay is not sufficient in itself to warrant a finding that the accused was deprived of the right to a speedy trial. Rather, it is only one of the factors to be considered, and must be weighed against other factors****. Moreover, among factors to be considered in determining whether the right to speedy trial of the accused is violated, the length of delay is least conclusive. While there is authority that even very lengthy delays do not give rise to a per se conclusion of violation of constitutional rights, there is also authority that long enough delay could constitute per se violation of the right to speedy trial.* ***In our considered view, the delay tolerated varies with the complexity of the case, the manner of proof as well as the gravity of the alleged crime****. This, again,* ***depends on case-to-case basis****. There cannot be universal rule in this regard.* ***It is a balancing process*** *while determining as to whether the accused's right to speedy trial has been violated or not.* ***The length of delay in and itself, is not a weighty factor****.*
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> "*24.* ***In the present case, the delay is occasioned by exceptional circumstances****. It may not be due to failure of the prosecution or by the systemic failure but we can only say that there is a good cause for the failure to complete the trial and in our view, such delay is not violative of the right of the accused for speedy trial.*
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> * * * * *
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> "*31. Mr T.R. Andhyarujina, Senior Advocate appears in support of the writ petitions. He submits that* ***delay of 37 years in conclusion of the trial****, for whatever reason, is atrocious and a civilised society cannot permit continuance of the trial for such a long period. He appeals to us to rise to the occasion and make history by holding that the system which allows trial for such a long period is barbaric, oppressive and atrocious and, therefore, in the teeth of right to speedy trial guaranteed under Article 21 of the Constitution. Systemic delay cannot be a defence to deny the right to speedy trial, emphasizes MrAndhyarujina.*

"*32. I have given my most anxious consideration to the submission advanced and, at one point of time, in deference to his passionate appeal I was inclined to consider this issue in detail and give a fresh look but, having been confronted with the five-Judge Constitution Bench decision in Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93 sub nom Ranjan Dwivedi v. State, paras 95 to 99] and seven-Judge Constitution Bench judgment of this Court in P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830], this course does not seem to be open to me. Judicial discipline expects us to follow the ratio and prohibits laying down any principle in derogation of the ratio laid down by the earlier decisions of the Constitution Benches of this Court.*

"*33. In Abdul Rehman Antulay [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93 sub nom Ranjan Dwivedi v. State, paras 95 to 99] this Court in para 86(5) has observed as follows: (SCC p. 271)*

> *"86. (5)* ***While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on—what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and the State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one****."*

"*34. The aforesaid decision came up for consideration before a seven-Judge Constitution Bench of this Court in P. Ramachandra Rao [(2002) 4 SCC 578 : 2002 SCC (Cri) 830] and while approving the ratio, the Court in paras 29(1) and (2) observed as follows: (SCC p. 603)*

> *"(1)* ***The dictum in Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93 sub nom Ranjan Dwivedi v. State, paras 95 to 99] is correct and still holds the field****.*
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> *(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down*

as guidelines in Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93 sub nom Ranjan Dwivedi v. State, paras 95 to 99] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions."

(emphasis supplied)

16.2. **Chandrakeshwar Prasad** (supra)

"*9. Although it has to be accepted that the respondent-accused has already been granted bail by the courts concerned in other cases,* ***a duty is cast upon the Court in addressing such a prayer in a case on its own merit, and while applying its discretion, it must be applied in a judicious manner and not as a matter of course****. In support of this proposition, Mr Bhushan has relied upon a decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , wherein it was held in para 11 as follows : (SCC pp. 535-36)*

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, ***there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted*** *particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind

Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

"*10. This Court in Rajesh Ranjan Yadav v. CBI [Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70 : (2007) 1 SCC (Cri) 254]* ***balanced the fundamental right to individual liberty with the interest of the society*** *in the following terms in para 16 thereof : (SCC p. 79)*

"16. ***We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them****. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is* ***whether he has been in jail for a long time****, the court has also to take into consideration other facts and circumstances, such as the* ***interest of the society****."*

"*11. In Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], this Court in the same vein had observed that* ***though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents****. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.*

* * * * *

"*13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the cases concerned, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.*"

(emphasis supplied)

16.3. **Neeru Yadav** (supra)

"*8. ..... It is submitted by Mr Yadav, learned counsel for the appellant that despite the factum of criminal history pointed out before the High Court, it has given it a glorious ignore which the law does not countenance. ..... In the additional affidavit, an independent chart has been filed by the State and we find that apart from the present case, there are seven cases pending against Respondent 2. The chart of the said cases is reproduced below:*

…….

"*9. On a perusal of the aforesaid list, it is quite vivid that Respondent 2 is a history-sheeter and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.*

* * * * *

"*15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind.* ***The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner***."

(emphasis supplied)

16.4. **Rajballav Prasad** (supra)

"*26. We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the*

society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer. This is so beautifully captured by this Court in Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] in the following words : (SCC p. 290, para 15)

> *"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation.* ***The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned****. In this context, the following observations of this Court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan [Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684 : 1987 SCC (Cri) 415] are quite apposite : (SCC p. 691, para 6)*
>
> > *'6. ...* ***Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so***

***that parties do not lose faith in the institution and indulge in private retribution**.'"*

(emphasis supplied)

16.5. **Brijmani Devi** (supra)

"*21. In Gudikanti Narasimhulu [Gudikanti Narasimhulu v. Public Prosecutor, A.P. High Court, (1978) 1 SCC 240 : 1978 SCC (Cri) 115], Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to be considered while granting bail which are extracted as under : (SCC p. 244, paras 7-9)*

"7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin : The Criminal Prosecution in England, (London) 1960, p. 75 — Mod. Law Rev. ibid., p. 54]

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. ***It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record — particularly a record which suggests that he is likely to commit serious offences while on bail**. **In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society**. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.*"

(emphasis supplied)

16.6. **Gobarbhai Naranbhai Singala** (supra)

"*20. That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. It may be mentioned here that apart from the present two cases of murder, the respondent has been*

named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. ***We are informed at the Bar that the respondent has been acquitted in most of the cases for want of sufficient evidence. This speaks volumes***. *We refrain from saying anything further, lest it may prejudice the trial in these two cases.*

"*21. The other reason given in the impugned order is that the trial of the case has not progressed/begun. We find from the record that between 2-6-2004 and 19-12-2005 the case was listed before the trial court 31 times and on each date, it had to be adjourned on the ground that one or the other accused was not present. There are 16 accused in the case. It is not clear from the record whether the accused were not brought by the police from the jail or that they were on bail and had not appeared of their own, but the fact remains that the complainants were not in any way instrumental in delaying the trial between 2-6-2004 and 19-12-2005. It was brought to our notice that the only witness who has been examined so far has turned hostile. Trial was stayed by the High Court on 15-2-2007 at the instance of the appellant as Shri R.R. Trivedi, APP, to whom the case had been assigned for conducting the trial and was allegedly the counsel for the respondent in some other case earlier, continued to appear in the case in spite of the fact that he was replaced by another APP. It just shows that the trial was not progressing smoothly. In any case, the complainant party was in no way responsible for any delay in trial.*

"*22. The third reason given by the High Court for grant of bail, that the respondent had been in jail for the last more than 2 years, is equally untenable in view of the observations made by this Court in State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] : (SCC p. 32, para 19)*

> *"19. … '14. …* ***the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands***

***charged of offences punishable with life imprisonment or even death penalty**. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.' "[Ed.: As observed in Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 at pp. 536-37, para 14 : 2004 SCC (Cri) 1977.]*

(emphasis supplied)

16.7. **Ash Mohammad** (supra)

"*29. Be it noted, a stage has come that in certain States abduction and kidnapping have been regarded as heroism. A particular crime changes its colour with efflux of time. The concept of crime in the contextual sense of kidnapping has really undergone a sea change and has really shattered the spine of the orderly society. It is almost nauseating to read almost every day about the criminal activities relating to kidnapping and particularly by people who call themselves experts in the said nature of crime.*

"*30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. **There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail**. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. **We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social***

concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.

"*31. In the present context the period of custody of seven months, in our considered opinion, melts into insignificance. We repeat at the cost of repetition that granting of bail is a matter of discretion for the High Court and this Court is slow to interfere with such orders. But regard being had to the antecedents of the accused which is also a factor to be taken into consideration as per the pronouncements of this Court and* ***the nature of the crime committed and the confinement of the victim for eight days, we are disposed to interfere with the order impugned*** *[Criminal Misc. Bail Application No. 28461 of 2011, order dated 26-4-2012 (All)]."*

(emphasis supplied)

ANALYSIS & CONCLUSIONS

17. Although on first glance the present petition is a simple bail plea, which could have been disposed of by this court, one way or the other, by a brief order; however, it turns-out that this is not a garden-variety bail petition. The court says so for *three* reasons :

17.1. *One*, the case that is subject of FIR No.1683/2015 is no ordinary crime. It is one that shows exceptional brazenness, audacity and depravity on the part of the perpetrators, inasmuch as it was committed within the small and closely guarded and monitored confines of a jail van. At the risk of repetition, the allegation against the petitioner is that he, alongwith with other prisoners who were being ferried in a jail van, murdered 02 other prisoners inside that van by strangulating them with *gamchas*; and the murders were committed under the very nose and in the full view of armed guards of the 03rd battalion of the Delhi Armed Police. For reasons which are very hard to

fathom, the armed guards in the jail van were unable to prevent the murders. What these circumstances betray is not just the horror of a double murder committed under the watch of armed police guards, but also unashamed brazenness and menacing brutality on the part of the perpetrators of the crime. The circumstances show that the perpetrators of the crime were utterly uninhibited and intractable despite the presence of armed guards. As per the allegations in the subject FIR, the petitioner was one of the perpetrators. Such perverse fearlessness of the perpetrators makes this court wonder whether it would be safe to release the petitioner from custody and set him at-large in society, trusting that he would not commit any other grievous offence;

17.2. *Two,* the petitioner is stated to be the leader of a notorious criminal gang, which he runs under his own name. According to the prosecution, the '*Neeraj Bawania Gang*' engages *inter-alia* in kidnapping, extortion, and contract-killing; and commands fear and dread in society; and

17.3. *Three,* the petitioner has a long list of involvements in serious criminal offences, including offences punishable with imprisonment for life, or with death. *The list runs into some 28 serious criminal cases, in various jurisdictions, across States*. However, as per the record, the petitioner has been acquitted in several of those cases and has been discharged in others; and has faced conviction only in 03 cases, as detailed above, including one conviction under the Gangsters Act. There is

some discrepancy between the stand of the petitioner and the State as to whether he is presently in judicial custody only in the present case or also in some other case. The State says that the petitioner is still serving sentence for his conviction under the Gangsters Act, and is also in custody in another FIR. Be that as it may, the present bail plea relates only to case FIR No.1683/2015 dated 25.08.2015 registered under sections 302/120-B/34 IPC at P.S.: Mangol Puri, Delhi, in which the petitioner has been in continuous custody ever since the time of his arrest on 26.08.2015 till date.

18. In view of the aforesaid three exceptional circumstances, this court has considered the present bail petition very carefully.

19. Upon applying its mind to the submissions made by the parties, as well as what is borne-out from the record, in the opinion of this court the following inferences clearly arise :

19.1. The petitioner's contention that his history-sheet or criminal antecedents cannot be the prevailing criterion to deny him regular bail, is hard to accept. As pointed-out by the State despite the petitioner having been acquitted or discharged in several other cases, the chronology of events shows that *the 03 cases in which he was convicted relate to offences which the petitioner committed while he was on bail in other cases*. This is proof-positive that the petitioner has serious proclivity to commit offences and the apprehension of the State in that regard is not merely speculative or hypothetical but the petitioner has shown it to be so by his own conduct.

19.2. The petitioner's argument that the Supreme Court has set-down the judicial trend that prolonged incarceration cannot be permitted to become punishment without trial; and that 'bail is the rule and jail is the exception' regardless of the seriousness of the crime alleged, is also facetious, since in applying those principles the court must bear in mind the fate of the family of the victims and the faith of the community in the process of justice. Though it is true that a court must lean towards constitutionalism, and the right of an accused to a speedy trial as derived from Article 21 of the Constitution, is an overarching and sacrosanct consideration, *mere delay* in trial is not sufficient to warrant a finding that the petitioner has been *deprived of his right to speedy trial*; and delay is only one of the factors to be considered before deciding to enlarge the petitioner on bail, and that factor is to be weighed against several other factors.[17] In the present case, the delay in conducting trial has been occasioned *inter-alia* by the fact that 03 of the co-accused persons had absconded while on bail; which is certainly a factor to be considered by this court.

19.3. Though in the present case the petitioner has suffered judicial custody of over 09 years as an undertrial, and it is not clear as to how long the trial would take to conclude, as contended by the State, the petitioner is stated to be the head of the dreaded '*Neeraj Bawania Gang*', and therefore, regardless of how long

[17] *Ranjan Dwivedi* (supra)

he may have been in jail in the present case, this court is not persuaded to accept that if enlarged on bail, the petitioner would not indulge in criminality again and would not be a threat to the society at large. Moreover, by his past conduct the petitioner has demonstrated that even conditions imposed while granting him bail would not dissuade him from indulging in criminality.

19.4. There is also no doubt that the well-worn principles for grant of bail are not to be applied blindly or mindlessly, and the court must use its discretion to grant or deny bail in a *judicious manner* and not as a matter of course; and the petitioner's fundamental right to liberty must be balanced against the interests of the society,[18] since even constitutional rights are not absolute.

19.5. When viewed through this prism, it would be naïve of this court to take a unidimensional view of the matter – focusing only on the petitioner's right to a speedy trial, while ignoring other extremely germane factors and considerations as discussed above – and to grant to the petitioner regular bail based only on the period of custody undergone as an undertrial in case FIR No.1683/2015.

19.6. The court cannot ignore that though there has been delay in conducting trial in the subject FIR, that notwithstanding, the

[18] *Chandrakeshwar Prasad* (supra)

length of delay is *only one of the factors* to be considered and that factor must be weighed against other factors.[19]

19.7. Insofar as the argument that the interests of the society can be balanced with the petitioner's right to liberty by imposing requisite conditions while enlarging the petitioner on regular bail, it must be appreciated, that as aptly observed by the Supreme Court in *Ash Mohammad* (supra), there needs to be a proper analysis of the criminal antecedents of an accused and the question of imposing conditions is a matter that is *subsequent* to the decision to grant bail.

20. In the present case the record shows that *the petitioner has committed heinous offences while he was on bail in other cases; and he has been convicted in the offences committed while on bail. When there is a long list of serious criminal involvements, including convictions for offences committed while on bail in other cases, the apprehension that the petitioner suffers from recidivism cannot be dismissed as imaginary*. In that view of the matter, the petitioner's submission that he has served sentence for those crimes offers scant comfort to the court that no one else will be harmed by the petitioner if he is enlarged on bail this time.

21. It is also settled law, that bail can justifiably be denied when there is real risk of repeat offences being committed. Sections 437 and 439 of the Cr.P.C. contemplate that contingency.

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19 *Ranjan Dwivedi* (supra)

22. As a sequitur to the foregoing, regrettably this court finds itself unable to allow the present bail petition, which is accordingly dismissed.

23. To reiterate, in the present case, bail is not being denied so as to inflict pre-trial punishment upon the petitioner, but in view of the petitioner's grave criminal antecedents and demonstrable recidivistic tendencies, as discussed above. It may be said that the right to speedy trial derived from Article 21 of the Constitution of India is *not* a 'free-pass' for *every* undertrial, demanding that he be enlarged on bail *regardless* of his criminal antecedents and the nature of the offence. In matters such as this, the larger interests of society must prevail over the individual rights of an undertrial.

24. However, this court cannot help but express its consternation about the delay in conducting trial in the subject FIR, which has given to the petitioner a ground to seek release on regular bail. The completion of trial in the present case brooks no further delay. In the circumstances, without setting-out any timelines, this court urges the learned trial court to conclude the trial in the present case without any further undue delay.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 15, 2025
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