

ASHIM @ ASIM KUMAR HARANATH
BHATTACHARYA @ ASIM HARINATH
BHATTACHARYA @ ASEEM KUMAR BHATTACHARYA

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v.

NATIONAL INVESTIGATION AGENCY

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(Criminal Appeal No. 1525 of 2021)

DECEMBER 01, 2021

[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Bail: Post-arrest bail – Trial for offence under National Investigation Agency Act, 2008 – Charge sheet filed against the accused in 2012 while charges framed after seven years in 2019 – Statement of de facto complainant still not completed – Large number of prosecution witnesses yet to be examined – Appellant-accused in custody since 2012 and completed nine and a half years of incarceration as undertrial prisoner – Appellant seeking bail – Held: Deprivation of personal liberty without ensuring speedy trial is not consistent with Art.21 of the Constitution of India – While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long – At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice – Appellant-accused made out a case for grant of post-arrest bail pending trial – Constitution of India – Art.21 – National Investigation Agency Act, 2008.

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Judicial notice: Under the scheme of the National Investigation Agency Act, 2008, the power is vested with the Central Government in consultation with the Chief Justice of the High Court, for the trial of scheduled offences, to designate one or more Courts of Session as Special Courts – s.19 of the Act 2008 envisages that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance – It seems that only one such Special Court has been designated by the State of West Bengal to try such cases under the Act 2008 – In the instant case, the order sheets indicated that hearing was taking place only

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- A *one day in a month and if this procedure is followed in conducting the trial under Act 2008, it would frustrate the very purpose with which the Special Courts are designated – State of West Bengal to take up the issue and designate more dedicated courts of Sessions as Special Courts for the trial of offences specified in the schedule appended to the Act 2008 – At the same time, the Central Government*
- B *may also, in consultation with the Chief Justice of the High Court, Calcutta may exercise its power and take up the issue at the earliest so that such trials which are pending under the Act 2008 may go ahead speedily and the mandate, as intended by the legislature in its wisdom, reflected from s.19 of the Act, is being complied with in*
- C *its letter and spirit – National Investigation Agency Act, 2008.*

Allowing the appeal, the Court

- HELD: 1.1 The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 mandates that the trial under the Act of any offence by a Special**
- D **Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the Act 2008 but the**
- E **ground realities are totally different as in the instant case, after the charge-sheets came to be filed way back in 2012, the charges have been framed after 7 years of filing of the charge-sheet on 20th June, 2019. [Para 10][612-A-C]**

- 1.2 The statement of PW-1/de-facto complainant has still**
- F **not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6th July, 2012 and has completed nine and half years of**
- G **incarceration as an undertrial prisoner. [Para 11][612-D-E]**

1.3 Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be

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avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice. The appellant accused has made out a case for grant of post-arrest bail pending trial. [Paras 13, 15][612-G-H; 613-D-E]

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2.1 Under the scheme of the Act 2008, the power is vested with the Central Government in consultation with the Chief Justice of the High Court, for the trial of scheduled offences, designate one or more Courts of Session as Special Courts, by notification in the Official Gazette, with the place of jurisdiction of special Courts and its jurisdictional power has been defined under Sections 13 and 14 of the Act 2008. At the same time, it has been mandated under Section 19 of the Act 2008 that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance. [Para 16][613-E-G]

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2.2 Only one such Special Court has been designated by the State of West Bengal to try such cases under the Act 2008. The order sheets have been placed for perusal of the instant case and it indicates that hearing is taking place only one day in a month and if this procedure is being followed in conducting the trial under Act 2008, it frustrates the very purpose with which the special Courts are designated. It is clearly demonstrated from the instant case that after the charge-sheet came to be filed in the year 2012, charges have been framed in June 2019 and looking to the voluminous record and number of the prosecution witnesses which are to be examined, it may take its own time to conclude and indeed the undertrial prisoner cannot be detained for such a long period of incarceration. In the given circumstances, it is appropriate to direct that the State of West Bengal shall take up the issue and designate more dedicated courts of Sessions as Special Courts for the trial of offences specified in the schedule appended to the Act 2008. At the same time, the Central Government may also, in consultation with the Chief Justice of

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A the High Court, Calcutta may exercise its power and take up the issue at the earliest so that such trials which are pending under the Act 2008 may go ahead speedily and the mandate, as intended by the legislature in its wisdom, reflected from Section 19 of the Act, is being complied with in its letter and spirit. [Paras 17, 18, 19][614-A-F]

B *Union of India vs. K.A. Najeeb* (2021) 3 SCC 713
– referred to.

Case Law Reference

C (2021) 3 SCC 713 referred to Para 14
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1525 of 2021.

From the Judgment and Order dated 15.03.2021 of the High Court of Calcutta in CRA No.209 of 2020.

D Colin Gonsalves, Sr. Adv., Sadiq Noor, Satya Mitra, Advs. for the Appellant.

K. M. Nataraj, ASG, Akshay Amritanshu, Ms. Swati Ghildiyal, Mohd. Akhil, Shailesh Madiyal, Ms. Aakanksha Kaul, Arvind Kumar Sharma, Aman Sahani, Advs. for the Respondent.

E The Judgment of the Court was delivered by
RASTOGI, J.

1. Leave granted.

2. We have heard learned counsel for the parties.

F 3. The instant appeal has been filed on behalf of accused no. 6 (Ashim @ Asim Kumar Haranath Bhattacharya) out of the total number of 14 accused persons seeking post arrest bail which came to be rejected by the learned trial Court by Order dated 25th February, 2020 and also by the High Court by Order dated 15th March, 2021.

G 4. The FIR No. 138/2012 dated 1st March, 2012 was initially lodged under Sections 120B, 121, 121A, 122 of the IPC, Section 25(1A) of the Arms Act, 1959 and Section 5 of the Explosive Substances Act, 1908 against five accused persons by a de-facto complainant who is an

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Inspector, Special Task Force. Later, the National Investigation Agency took over the investigation. The said case was re-registered as RC No. 01/2012/NIA/DLI at PS NIA Headquarters, New Delhi for offences under Sections 120B, 121, 121A, 122 IPC, Section 25(1A) of the Arms Act 1959, Section 5 of the Explosive Substances Act, 1908 and Sections 18, 20, 40(1)(b)(c) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter being referred to as “UAP Act”) on 12th April, 2012. A B

5. After investigation, the charge sheet was initially filed against A-1 to A-5 on 23rd August, 2012 and thereafter the first supplementary charge sheet was filed on 27th December, 2012 against A-6 to A-9 in which the appellant was named as A-6 and the second supplementary charge sheet was filed on 3rd July, 2017 against another 5 accused persons. The said accused persons are presently absconding. The charges later came to be framed on 20th June, 2019 for offences under Sections 121, 121A, 122, 120B IPC and under Sections 25(1)(a), 25(1A), 25(1-AA) of Arms Act, 1959 and under Sections 18 and 20 of the UAP Act. At this stage, PW 1 who is the de-facto complainant, his cross-examination has been going on for quite a long time and still it has not been completed. C D

6. The appellant was arrested on 6th July, 2012 on the basis of a production warrant sent to Nagpur Central Jail, Maharashtra. The appellant was in jail earlier in connection with another case (FIR No. 28/2007 dated 11th May, 2007) in which he was acquitted by the competent Court of jurisdiction by a judgment dated 15th February, 2014. E

7. It has come on record that there are 298 prosecution witnesses in the calendar of witnesses as referred to in the charge sheet but it has been stated in the counter affidavit filed by the respondent that the prosecution in all likelihood may examine only 100 to 105 prosecution witnesses. F

8. The charges against the accused appellant are undoubtedly serious but the charges will have to be balanced with certain other factors like the period of incarceration which the appellant has undergone and the likelihood period within which the trial can be expected to be finally concluded. That apart, the appellant is 74 years of age. G

9. Learned counsel for the respondent vehemently opposed the appeal filed by the accused appellant seeking post arrest bail and submits that the delay is in no manner be attributable to the prosecution and this H

- A Court may direct the trial Court to take up the case on day-to-day basis and conclude the trial at the earliest.

10. That the requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as “Act 2008”) mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the Act 2008 but the ground realities are totally different as in the instant case, after the charge-sheets came to be filed way back in 2012, the charges have been framed after 7 years of filing of the charge-sheet on 20th June, 2019.

11. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW-1/de-facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6th July, 2012 and has completed nine and half years of incarceration as an undertrial prisoner.

12. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained 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 him on bail.

13. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.

14. The three-Judge Bench of this Court in *Union of India Vs. K.A. Najeer* 2021(3) SCC 713 had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under:-

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

15. In the above circumstances, we are of the view that the appellant accused has made out a case for grant of post-arrest bail pending trial.

16. Before parting with the order, we would like to observe that under the scheme of the Act 2008, the power is vested with the Central Government in consultation with the Chief Justice of the High Court, for the trial of scheduled offences, designate one or more Courts of Session as Special Courts, by notification in the Official Gazette, with the place of jurisdiction of special Courts and its jurisdictional power has been defined under Sections 13 and 14 of the Act 2008. At the same time, it has been mandated under Section 19 of the Act 2008 that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance. The power of State Government to designate one or more Courts as Special Courts for the trial of offences under any or all the enactments specified in the Schedule is provided under Section 22 of the Act, 2008.

A 17. It has been informed to this Court that only one such Special Court has been designated by the State of West Bengal to try such cases under the Act 2008. Before us, the order sheets have been placed for perusal of the instant case and it indicates that hearing is taking place only one day in a month and if this procedure is being followed in conducting the trial under Act 2008, it frustrates the very purpose with which the special Courts are designated.

B 18. It is clearly demonstrated from the instant case that after the charge-sheet came to be filed in the year 2012, charges have been framed in June 2019 and looking to the voluminous record and number of the prosecution witnesses which are to be examined, it may take its own time to conclude and indeed the undertrial prisoner cannot be detained for such a long period of incarceration noticed by us in the instant case. The correspondence which has taken place between the Central Government and the State of West Bengal from time to time is placed for our perusal but nothing elicits from the record.

C 19. In the given circumstances, we consider it appropriate to direct that the State of West Bengal shall take up the issue and designate more dedicated courts of Sessions as Special Courts for the trial of offences specified in the schedule appended to the Act 2008. At the same time, the Central Government may also, in consultation with the Chief Justice of the High Court, Calcutta may exercise its power and take up the issue at the earliest so that such trials which are pending under the Act 2008 may go ahead speedily and the mandate, as intended by the legislature in its wisdom, reflected from Section 19 of the Act, is being complied with in its letter and spirit.

D 20. We accordingly direct that the accused appellant be produced before the trial Court within three days and shall be released on post-arrest bail by the learned trial Court. We also make it clear that the learned trial Court will be at liberty to consider and impose appropriate conditions subject to which the appellant accused will be released on bail so as to ensure that the appellant accused is available for trial in terms of the present order.

E 21. Consequently, in light of the above, the appeal is allowed and the judgment and order of the High Court is set aside.

F 22. Pending application(s), if any, stand disposed of.

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615

23. Copy of this order be sent to Chief Secretary, State of West Bengal and Registrar of the High Court of Calcutta for necessary compliance. A

Devika Gujral

Appeal allowed .