

Mohd Maroof vs State (Nct Of Delhi) on 15 January, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh, Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW

MOHD MAROOF

STATE (NCT OF DELHI)

Through:

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

% 15.01.2025

1. This hearing has been done through hybrid mode.

2. This is a criminal appeal filed by the Appellant-Mohd. Maroof under Section 21 of the National Investigation Agency Act, 2008 challenging the order dated 2nd May, 2024 in FIR No. 54/2011 filed by PS Special Cell under Sections 17/18/18A/18B/19/20 of UAPA, 1967; Sections 201/468/471/474/489B/489C/120B of IPC, 1860; Section 14 Foreigner's Act, 1946; Sections 3/4/5 Explosive Substance Act, 1908 and 25 Arms Act 1959. Vide the said order the ld. Additional Session Judge dismissed the application seeking bail.

3. The main ground of the appeal is that there were three FIRs registered and he has been released on bail in the other two cases by the Rajasthan High Court and Supreme Court respectively. The details of the This is a digitally signed order.

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i) FIR No. 03/2014 dated: 23rd March, 2014, U/s 4 & 5 Explosive Substance Act and 3/10/13/16/18/20 UAPA read with Section 120 B was registered at PS- SOG Jaipur. (hereinafter 'Jaipur FIR')

ii) FIR No. 113/2014 dated: 23rd March 2014 U/s. 4/5 Explosive Substances Act, 120B IPC and Section 18/19/20 UAPA P.S. Pratap Nagar District, Jodhpur (hereinafter 'Jodhpur FIR')

4. In the Jaipur FIR, the Appellant was convicted by the Trial Court. However, the High Court of Rajasthan, Jaipur Bench, vide order dated 2nd August, 2023 suspended the sentence and granted him bail. The relevant portion of the said order has been extracted below:

"9. Admittedly, the explosives were not recovered from the conscious possession of the accused-applicants. No information under Section 27 of the Evidence Act was obtained from the applicants. Rent agreement with regard to house from where the recovery was made was also not proved and the landlord was not produced in evidence, thus, it is not established that house from where the explosives were recovered was actually taken on rent by the present applicants and that they were in possession of the same. The applicants have remained in custody for a period of more than nine years & two months. Case of the applicants is akin to that of co-accused, whose application for suspension of sentence has been allowed by this Court and there is no evidence on record that accused has actively participated in any terror attack in the country.

10. Considering the above; as also the fact that the appeal is bound to take time, we deem it proper to allow these applications for suspension of sentence.

11. Accordingly, these applications for suspension of sentence are allowed. It is ordered that the sentence awarded to accused applicants in Sessions Case No.83/2015 shall remain suspended if and two sureties This is a digitally signed order.

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12. A copy of this order be placed in the connected file."

5. In the Jodhpur FIR, the Appellant was granted bail by the Hon'ble Supreme Court on 5th April, 2024 in SLP (Crl.) No. 16671/2023 on the ground of lengthy incarceration. The relevant portion of the order is set out below:

"5. Having considered the circumstances and the lengthy incarceration here, we are of the view that the petitioner deserves to be granted bail. Accordingly, the petitioner (Mohammad Maroof) be released on bail in connection with the case arising out of FIR No.113/2014 registered at Pratap Nagar Police Station, District Jodhpur.

Appropriate bail condition be imposed by the learned Trial Court so that he appears and participates in the Trial proceedings."

6. The submissions made by Mr. Khan, ld. Counsel for the Appellant are:

i. that three chargesheets have been filed based on the same material facts, which is impermissible in law. ii. that the trial in this case is likely to take a long time to decide, considering that there are more than 220 witnesses cited by the prosecution and out of them only 62 witnesses have been examined.

iii. that the Appellant has been in custody for more than ten years.

The contents of the appeal are relied upon where it is submitted that out of the total persons who were accused in the subject This is a digitally signed order.

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iv. that even if the Appellant is found to be guilty, the period of sentence would not be more than the ten years which the latter has already undergone. Thus, considering the period of incarceration, the Appellant is entitled to bail. v. The ld. Counsel further relies upon various recent decisions of the Supreme Court including in:

□ Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v.

State of Uttar Pradesh, 2024 SCC OnLine SC 1755 □ Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC OnLine SC 1693 □ Manish Sisodia v. Directorate of Enforcement [SLP (Criminal) No. 8781/2024] □ Union of India v. K.A. Najeeb, MANU/SC/0046/2021 □ Shaheen Welfare Association v. Union of India & Ors., MANU/SC/0768/1996

7. On the other hand, Mr. Bahri, ld. APP for the State, on the said date, had handed over the copy of charge-sheet in the present case to argue that there is serious charges and substantial material against the Appellant that he was planning a terror attack in Bharatpur, Rajasthan and he had also collected arms, explosives, etc for the said purpose. He also argued that the Appellant was in continuous touch through email, with one Mr. Riaz Bhatkal who is a known terrorist who was involved in the Hyderabad and Delhi blasts.

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8. On the said date i.e., 21st August, 2024, upon hearing the matter in detail, the following directions were issued to the parties.

"7. The Court has heard the ld. Counsels and has perused the charge-sheet. The Court has queried ld. Counsel as to whether these emails etc. were also part of the material relied upon in the Jaipur and Jodhpur matters. On this, Mr. Bahri, ld. APP for the State wishes to seek instructions in the matter.

8. The ld. Counsel for the Appellant may place on record the relevant portions of the judgment in the Jaipur FIR, wherein the Appellant was convicted by the next date of hearing. If the same is in Hindi, the Appellant is permitted to place the Hindi judgment on record along with the relevant portions being translated into English.

9. Let the order on framing of charge in the Jodhpur case be also placed on record by the next date of hearing."

9. Pursuant to the said directions, the relevant documents have been placed on record today. In addition, Mr. Bahri, ld. APP has also taken the instructions and informs the Court that the incriminating material in this matter and the Jaipur FIR case are almost the same.

10. Heard. The relevant circumstances, that are to be considered in the case at hand, are as follows:

- i. the Appellant has already served more than 10 years in incarceration;
- ii, the Appellant has already been given bail in other two FIRs, and;
- iii. the co-accused, who has also been convicted, has been released on the sentence for the period already undergone.

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11. The Supreme Court in a catena of judgements have upheld the essential need to preserve the right to life and liberty of individuals promised under Article 21 of the Constitution of India, especially in cases of bail to under-trial prisoners who have been in incarceration for a prolonged period of time. The Courts in several cases have also contrasted the seriousness of the offense against the life and liberty of the individual while emphasizing the necessity for adoption of a balanced approach that safeguards the interests of both interests.

12. The Supreme Court in *Angela Harish Sontakke v. State of Maharashtra*, Criminal Appeal No. 440/2016 while dealing with an Appellant/accused who was under-trial prisoner charged with provisions of UAPA, has upheld the need to strike a balance between the seriousness of the charge and other factors such as prolonged incarceration of the prisoner. The relevant paragraphs of the judgement are read as under:

"2. We have heard the learned counsels for the parties. Charges have been framed against the accused appellant under Sections 10, 13, 17, 18, 18A, 18B, 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 Indian 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 accused appellant 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 the 9th of May, 2016 is the first date fixed for the trial. There are over 200 witnesses proposed to be examined. The accused appellant is a This is a digitally signed order.

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13. A three judge Bench of the Supreme Court in *Union of India v. K.A Najeeb* (2021) 3 SCC 713 while dealing with an appeal against an order rejecting bail of an accused who was inter alia charged with Sections 16, 18, 18-B, 19 and 20 of the UAPA, emphasised the need to balance the said considerations. More importantly, it further observed that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail under UAPA and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time. The relevant paragraphs of the judgement are read as under:

"18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, 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 UAPA being

used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of This is a digitally signed order.

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14. Further, the Supreme Court starting from *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 SCR (3) 532 way back in 1979 to *Sheikh Javen Iqbal v. State of U.P* 2024 SCC Online SC 1755 as recent as 2024, has upheld every individual's right to speedy trial especially when the right to liberty of the individual is at stake. The Supreme Court in *Sheikh Javen Iqbal* (Supra) dealing with an Appellant/accused charged under similar provisions of UAPA, has clearly held that the right to speedy trial is a fundamental right under article 21 and that the State cannot oppose the bail on the grounds of seriousness of the offences alleged. The relevant observations are as follows:

"22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 21:18:45 that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude."

15. Similarly in *Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr.*, 2024 SCC OnLine SC 1693 the Supreme Court observed as under "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."

16. The Rajasthan High Court vide its order dated 2nd August 2023 in D.B. CrI Misc. Suspension of Sentence Application (Appeal) No. 365/2023 has granted bail to the Appellant upon considering the insufficiency of incriminating materials and long incarceration suffered by the Appellant

17. Similarly, the Supreme Court vide order dated 5th April, 2024 in SLP(CrI.)No. 16671/2023, has also granted bail to the Appellant in the Jodhpur FIR on the grounds of long incarceration.

18. The material relied upon in the present case is almost the same as the material in the Jaipur/Jodhpur FIRs. This position is not disputed by the Id. APP. The Appellant has already been released on bai in the other two cases. Considering the above long period of incarceration, the Court is inclined to grant bail to the Appellant, upon furnishing a personal bond This is a digitally signed order.

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i) The Appellant shall not leave the country without prior permission of this Court.;

ii) The Appellant is said to have his residence in Jatwara, Jaipur, Rajasthan. Therefore. the Station House Officer (SHO) PS Jatwara and the concerned Investigating Officer shall be informed of the address where the Appellant would be residing.

The Appellant is directed to file in this Court, through an affidavit, as well as the concerned Investigating Officer and SHO of PS Jatwara, of any change in his residential address.;

iii) The Appellant shall appear before the concerned Trial Court as and when the matter is taken up for hearing;

iv) The Appellant shall supply his contact number to the concerned IO and SHO of PS Jatwara, and keep in touch with them on a regular basis. If there is any change in the mobile number or residential address, the same shall be intimated to the IO as also at PS Jatwara.

v) He shall report to the SHO PS Jatwara on every Monday at 11:00 AM and his presence shall be marked and he shall be released within one hour.

vi) If the Appellant is found being involved in any other illegal and unlawful activity, the present order would be liable to be cancelled.

19. The above conditions directed in this order shall be in addition to the conditions, which may have been imposed in the other two bails, where This is a digitally signed order.

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bail has been granted by the concerned Courts.

20. The present order be uploaded forthwith on the website and communicated to the concerned Jail Superintendent for necessary compliance.

21. The appeal and pending applications (if any) are disposed of in the above terms.

22. Order dasti.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 15, 2025/dk/am This is a digitally signed order.

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