

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.161 OF 2023

(Nishant s/o Pradeep Aggrawal Vs. State of Uttar Pradesh, through Anti-Terrorist Squad, Sadar,
Lucknow and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.V. Manohar, Senior Advocate a/b Shri D.V. Chauhan, Advocate for applicant
Shri V.A. Thakare, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.
DATED : 03.04.2023.

1. This is a successive bail application filed by the applicant, after rejection of the earlier application on 17.06.2022. The reason cited is that there is no progress in the trial and as the liberty was granted by this Court to move fresh application, in case, there is no progress in trial in six months from the date of rejection of the application.

2. In the above referred backdrop, I have heard the learned Senior Advocate for the applicant and the learned APP for the state.

3. The learned Senior Advocate for the applicant submits that in view of the findings recorded by this Court while rejecting the application for grant of bail and the liberty to move fresh application was granted, it was expected that the prosecution would take necessary steps to conclude the trial, within six months from the date of rejection of earlier application. However, the trial is going on with a slow pace and there is no possibility to conclude the

same in near future. It is pointed out that even the record was haphazard and no proper pagination was made. Thus, to help and cooperate the prosecution, the said work was done by the applicant.

4. It is pointed out that most of the witnesses are not turning up for evidence. It is submitted that only six witnesses have been examined, so far. As per the prosecution, further eleven witnesses are left to be examined.

5. It is pointed out that in the trial, every adjournment is of one month because the witnesses are from other State i.e. from Uttar Pradesh (UP).

6. The learned Senior Advocate has submitted that even if the allegations made in the First Information Report (FIR) are considered on its face value, Section 3 of the Official Secrets Act, 1923 (for short “the Act of 1923”) will not apply, but at the most, Section 5 of the Act of 1923 will apply to the case of the applicant. He has further argued that, in absence of allegation that the applicant has done it with purpose prejudicial to the safety and interest of the State, which is the per-requisite for application of Section 3, the offence under Section 3 of the Act of 1923, will not apply.

7. The learned Senior Advocate argued that the applicant is in jail from last four years and six months and if the applicant is convicted under Section 5 of the Act of 1923 and not under Section 3, the maximum punishment would be three years. He, therefore,

submits that as the applicant is in jail for a substantive period of incarceration, considering the maximum punishment even under Section 3, he is entitled for grant of bail.

8. He therefore, submits that as the applicant has already undergone the substantive period of incarceration and further considering the fact that the trial is not going to conclude in near future, he prays for release of the applicant on bail. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India, in the case of *Union of India vs K.A. Najeeb*¹.

9. On the other hand, the learned APP strongly opposed the application and submits that the offence is very serious and the maximum punishment is fourteen years under Section 3 of the Act of 1923. He therefore, submits that this Court may not grant bail to the applicant. It is submitted that whether Section 3 of the Act of 1923 would attract in this case, is a matter of trial and at this stage, it cannot be considered.

10. He submits that sufficient incriminating material available on record to show the involvement of the applicant in the alleged offence and as the offence relates to safety of the State, he prays for dismissal of the application. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India, in the case of *the State Vs. Captain Jagjit Singh*².

¹ (2021) 3 SCC 713

² AIR 1962 SCC 253

11. In light of the rival submissions of both the parties, I have perused the charge sheet and the reply filed by the State.

12. While rejecting the earlier application, this Court after considering the charge sheet and other material, including the allegations made against the applicant, has observed thus:

“xv. ... From the chargesheet, it can be seen that during the course of investigation and examination of the personal hard disk and laptop of the applicant, it was found that the secret and restricted record and files were on the laptop of the applicant. There were 19 such files in the laptop of the applicant. It was also found that the applicant installed a software because of which the important secret and sensitive classified information which was available with the applicant's electronic device, was transferred to the foreign countries and antisocial elements. Prima facie, it appears that 4,47,734 cache files have been leaked from the laptop and hard disk of the present applicant. Thus, the allegations against the applicant are that he has leaked the secret and sensitive documents. Accordingly, the offence came to be registered against the applicant.

xvi. In reply of the prosecution, at some places it is mentioned that it was a sort of honey trap and Cyber activities by giving allurements to the officers to trap them in illegal espionage activity. However, at this stage, merely on the basis of such statement, it cannot be concluded that there was or there was no intention of the applicant, prejudicial to the safety and interest of the State, since it is a matter of trial. Hence, this Court at this stage refrain from making any comment on the applicability of Section 3 of the Act of 1923. In the circumstances, I am not inclined to grant bail to the applicant.”

13. Admittedly, the applicant is in jail from more than four years and six months and the maximum punishment in this case would be fourteen years under Section 3 of the Act of 1923.

14. According to the prosecution, it is the case of a sort of honey trap and Cyber activities by giving allurements to the officers to trap them in illegal espionage activity. It is not a case of the prosecution that there is a danger to the security and safety of the State, if the applicant is released on bail. It is also not a case of the prosecution that the commission of the alleged act was with specific intention.

15. In the above referred backdrop, if the pace of the trial is considered, it will be revealed that despite the period of about nine months is lapsed, only six witnesses were examined during this period. It is further evident that most of the witnesses have not turned up for giving evidence. As per the prosecution, eleven more witnesses are left to be examined. It is also evident that every adjournment is of minimum one month, for the reason that the witnesses are from UP. It is therefore, clear that the trial would not conclude in near future.

16. In the case of ***Union of India vs. K.A. Najeeb*** (supra), the Hon'ble Supreme Court of India, has observed thus:

"11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn., 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:

"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, 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 when under trials perform remain in jail, giving rise to possible situations that may justify invocation of Article 21." (emphasis supplied)

12. *Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psycho tropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra, and Umarmia v. State of Gujarat, enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.*

13. to 16. ...

17. *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 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 UAPA being used as the sole metric for denial of bail*

or for wholesale breach of constitutional right to speedy trial.”

16. In the light of the above referred observations made by the Hon’ble Supreme Court of India, I am of the opinion that as the applicant is in jail for a substantive period and as there is no likelihood that the trial will commence in near future, on this count the applicant is entitled for grant of bail.

17. As far as the judgment cited by the learned APP in the case of *State v. Captain Jagjit Singh* (supra), the said judgment is distinguishable on facts, as the Hon’ble Supreme Court of India held therein that the High Court did not consider the relevant factors namely, nature of seriousness, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reason, able apprehension of witnesses being tampered with, the larger interests of the public or, the State, which arise when court is asked for bail in a non-bailable offence.

18. In this case, as I have already observed that it is case of the prosecution that it is a sort of honey trap. Moreover, *prima facie*, there is no material to suggest that the alleged act was committed by the applicant with intention. Furthermore, to secure the presence of the applicant at the trial, certain stringent conditions can be imposed.

19. In the circumstances, I am inclined to grant bail. Hence, I pass the following order:

- i) The application is **allowed**.
- ii) It is directed that applicant shall be released on bail in Crime No.07 of 2018 dated 04.10.2018, registered with Police Station ATS, Sadar Lucknow, for the offences punishable under Sections 419, 420, 467, 468, 120B and 121A of the Indian Penal Code, Section 66(D) of the Information Technology Act and Sections 3, 4, 5 and 9 of the Official Secrets Act, 1923 on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety of like amount.
- iii) The applicant shall attend Police Station, Sonegaon, Nagpur/ respondent No.2 on every Monday, Wednesday and Saturday between 12.00 noon to 1.00 p.m., till the culmination of trial, except on the date of trial.
- iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.

The application is accordingly **disposed of**.

JUDGE