

Vikram Vinay Bhave S/O Vinay Bhave vs The State Of Maharashtra And Anr on 6 May, 2021

Equivalent citations: AIRONLINE 2021 BOM 1053

Bench: S.S. Shinde, Manish Pitale

1/33

CRAPPEAL-187.20+1.doc-Judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.187 OF 2020
WITH
INTERIM APPLICATION NO. 661 OF 2020

Vikram Vinay Bhave S/o Vinay Bhave,
Indian Inhabitant, aged 37 years,
presently lodged in Yerawada
Central Prison & having residence
at : House No.101, Shigvan Lane,
Post Varsai, Taluka- Pen,
Dist.-Raigad.

.... Appellant

Vs.

1. State of Maharashtra,
Through Public Prosecutor.
2. Central Bureau of Investigation,
Special Crime Branch,
A-2 Wing, 8th Floor, CGO Complex,
CBD, Belapur, Navi Mumbai-400 614

.... Respondents

AND
CRIMINAL APPEAL NO. 472 OF 2020

Vikram Vinay Bhave,
Indian Inhabitant, aged 37 years,
presently lodged in Yerawada
Central Prison & having
residence at : 497, Flat No.24,
Gurudatta- Maya Appt.,
Shivanagar, Devad, New Panvel,

Dist. Raigad - 410206

At and post Morde, Tal-Devrukh,

Dist.-Ratnagiri-415804.

.... APPELLANT

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2/33

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Vs.

1. State of Maharashtra,
Through Public Prosecutor.
2. Central Bureau of Investigation,
Special Crime Branch, A-2 Wing,
8th Floor, CGO Complex, CBD, Belapur,
Navi Mumbai-400 614.

..... RESPONDENTS

.....

Mr. Ghanshyam Upadhyay, Advocate a/w Mr.Virendra
Ichalkaranjekar, Advocate a/w Mr. Vishal Shukla, Advocate for the
appellant in Appeal No.187 of 2020.

Mr. Subhash Jha, Advocate a/w Mr. Vasant Bansode, Mr.Ranjit Nair
and Mr.Harekrishna Mishra, Advocates for the appellant in Appeal
No.472 of 2020.

Mrs. S.D.Shinde, APP for respondent No.1-State.

Mr. Sandesh Patil, Advocate i/b Mr. D.P. Singh, Advocate for
respondent No.2-CBI.

.....

CORAM : S.S. SHINDE & MANISH PITALE, JJ.

RESERVED ON : 24.03.2021.

PRONOUNCED ON : 06.05.2021.

J U D G M E N T (Per : Manish Pitale, J.)

Heard.

2. Admit. Both the appeals are heard finally with the DUSANE 3/33
CRAPPEAL-187.20+1.doc-Judgment consent of the learned counsel for the rival parties.

3. These two appeals are filed by the same person under section 21 of the National Investigation Agency Act, 2008 (NIA Act), challenging the orders dated 21/01/2020 and 15/09/2020, whereby the Court of Additional Sessions Judge, Pune has rejected bail applications filed by the appellant.

4. The facts leading up to filing of these two appeals are that on 20/08/2013, Dr.Narendra Dabholkar, an activist seeking to spread awareness against superstitions, was shot-dead in Pune. A First Information Report was registered at the Deccan Police Station, Pune for the offence punishable under section 302 read with section 34 of the Indian Penal Code (IPC) and section 3 and 25 of the Arms Act, against two unknown persons. It is the case of the prosecution that Dr. Dabholkar was shot-dead when he was taking his morning walk on the said date. On 09/05/2014, the investigation was transferred to the Central Bureau of Investigation (CBI). The investigation continued without much success till 2016, when the CBI found material against one Virendrasingh Tavade of Sanatan Hindu Sanstha. The said person DUSANE 4/33 CRAPPEAL-187.20+1.doc-Judgment was arrested in June 2016 and further investigation led to Sharad Kalaskar and Sachin Andure, the two persons who allegedly shot the bullets, which led to the death of Dr.Dabholkar. Accordingly, charge-sheet was filed against the aforesaid three persons and offence under the Unlawful Activities Prevention Act, 1967 (UAPA) was also added. The charge-sheet was filed for the offence punishable under section 302 read with section 34 of the Indian Penal Code as also section 16 of the UAPA.

5 Further investigation was undertaken and according to respondent No.2-CBI, material was unearthed which connected the appellant with the said offence. It was alleged that when reconstruction of the crime scene was undertaken at the behest of the said accused Sharad Kalaskar, in the proceeding recorded in the presence of independent witnesses, the said accused named the appellant herein as the person, who had helped them to conduct a recce of the spot where Dr.Dabholkar was shot-dead, about 15 days prior to the date of the incident. It was also stated that the appellant allegedly showed them the way to escape on motorcycle after committing the crime. The said accused also allegedly identified the photograph of the appellant. On the basis DUSANE 5/33 CRAPPEAL-187.20+1.doc-Judgment of such material, on 25/05/2019, the appellant came to be arrested and a supplementary charge-sheet was filed on 20/11/2019, against the appellant and another accused person, in connection with the said crime.

6 The appellant had moved a bail application prior to filing of charge-sheet against him, which was rejected on 17/08/2019. After filing of the aforesaid supplementary charge- sheet on 20/11/2019, the appellant filed bail application, which stood rejected by order dated 21/01/2020, which is subject matter of challenge in Criminal Appeal No.187 of 2020. The appellant had moved another bail application before the Sessions Court on the ground that the said appeal pending before this Court was not being heard as this Court was taking up only urgent matters due to the COVID-19 pandemic. The said bail application was also rejected by the Sessions Court on 15/09/2020, which is the subject matter of challenge in Criminal Appeal No.472 of 2020.

7 Mr. Subhash Jha, learned counsel for the appellant, appearing in Criminal Appeal No.472 of 2020 and Mr. Ghanshaym DUSANE 6/33 CRAPPEAL-187.20+1.doc-Judgment Upadhyay, learned counsel for the appellant appearing in Criminal Appeal No.187 of 2020, submitted that the

impugned orders passed by the Sessions Court rejecting the bail applications of the appellant were erroneous and that the material brought on record by respondent No.2-CBI seeking to connect the appellant with the aforesaid incident was far-fetched, even if such material was to be accepted. It was submitted that the sheet anchor of the material relied upon by the CBI was an alleged confession dated 12/10/2018 given by the co-accused Sharad Kalaskar under the provisions of the Karnataka Control of Organized Crimes Act, 2000 (KCOC Act), in a case registered against him in the State of Karnataka. It was submitted that such a confession given by the said accused person in a totally unrelated case in the State of Karnataka could not be used against the appellant. By referring to section 19 of the KCOC Act, particularly proviso to sub-section (1) thereof, the learned counsel for the appellant submitted that since the appellant was not accused along with said co-accused Sharad Kalaskar in the case pending before the Court in Karnataka, such confession could not be utilized against the appellant.

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It was further submitted that the proceedings

DUSANE

7/33

CRAPPEAL - 187.20+1.doc - Judgment

pertaining to reconstruction of the crime scene prepared at the behest of the said accused Sharad Kalaskar, when compared with such proceeding prepared at the behest of accused Sachin Andure would show that there was obvious contradiction. It was further emphasized that even identification of the appellant by the said co-accused Sharad Kalaskar on the basis of photograph was rendered doubtful if the statement of the independent witness was properly appreciated. It was further submitted that when material placed along with the supplementary charge-sheet, even if accepted as it is, presented a contradictory and improbable connection of the appellant with the said incident, the test contemplated under section 43-D(5) of the UAPA for grant of bail was clearly satisfied by the appellant, as the material against the appellant could not be said to be even prima facie true. By inviting attention to the reasons given by the Sessions Court in the two impugned orders, the learned counsel for the appellant submitted that the said Court erred in rejecting the bail applications by relying upon the aforesaid confession and also on the fact that the appellant was convicted in another case, appeal against which was pending before this Court wherein he was granted bail. The Sessions Court had opined that when the DUSANE 8/33 CRAPPEAL-187.20+1.doc-Judgment appellant was released on bail by this Court, his involvement in the aforesaid incident indicated that he did not deserve to be enlarged on bail in the present case. Both these reasons were said to be unsustainable. The learned counsel for the appellant relied upon

judgments of the Hon'ble Supreme Court in the case of Sundarlal Kanaiyalal Bhatija v. State of Maharashtra , reported in (2010) 4 SCC 414, NIA v. Zahoor Ahmad Shah Watali, reported in (2019) 5 SCC 1 and judgment of the Division Bench of this Court in the case of Dhan Singh v. Union of India , reported in 2019 SCC On-line Bom. 5721.

9 Per contra, Mr. Sandesh Patil, learned counsel appearing for the contesting respondent No.2-CBI, submitted that the appeals deserved to be dismissed because the appellant had filed successive bail applications without demonstrating as to why the said bail applications could be favourably considered. The learned counsel further submitted that while considering the question of grant of bail, particularly in the context of section 43- D (5) of the UAPA, the Court was not supposed to appreciate the material and evidence on record in detail and it was only to be analyzed whether such material demonstrated that the DUSANE 9/33 CRAPPEAL-187.20+1.doc-Judgment accusations made against the appellant were prima facie true. It was submitted that the alleged discrepancies pointed out on behalf of the appellant could not lead to a conclusion that there was no connection between the appellant and the aforesaid incident. The learned counsel further submitted that co-accused Sharad Kalaskar had specifically stated in his confessional statement recorded under the KCOC Act that the appellant had helped to conduct recce of the spot of the incident and he had assisted the accused persons in identifying the escape route. The same accused person while reconstructing the crime scene had specifically named the appellant as the person, who had helped to conduct the recce and that therefore, it was evident that there was sufficient prima facie material against the appellant, indicating that he did not deserve to be enlarged on bail. It was submitted that the Sessions Court correctly relied upon such material denying relief of bail to the appellant. It was emphasized that the appellant was admittedly convicted in another case and that he was out on bail during pendency of his appeal before this Court where he got involved in the said incident. This was a relevant factor, which the Sessions Court had taken into consideration and therefore, no error could be attributed to the Sessions Court in DUSANE 10/33 CRAPPEAL-187.20+1.doc-Judgment rejecting the bail applications of the appellant. The learned counsel for respondent No.2-CBI relied upon judgments of the Hon'ble Supreme Court in the case of NIA v. Zahoor Ahmad Shah Watali (supra), Kalyan Chandra Sarkar v. Rajesh Ranjan, reported in (2004) 7 SCC 528 and Anil Kumar Tulsiani v. State of U.P. , reported (2006) 9 SCC 425.

10 We have heard the learned counsel for the rival parties and perused the material on record. These two appeals have come up for consideration together before us, for the reason that the appellant filed subsequent bail application before the Sessions Court after rejection of his earlier bail application and during pendency of appeal filed there against bearing Criminal Appeal No.187 of 2020. The appellant has stated in his subsequent bail application filed before the Sessions Court that he was constrained to file the same in view of the fact that the said appeal pending before this Court could not be taken up for consideration in view of this Court taking up only urgent matters due to COVID-19 pandemic. The subsequent bail application was rejected by the impugned order dated 15/09/2020 and the appellant filed Criminal Appeal No.472 of 2020 challenging the DUSANE 11/33 CRAPPEAL-187.20+1.doc-Judgment same.

11 Since the reasons given by the Sessions Court in both the impugned orders are almost similar and the appellant before this Court is the same person, both the appeals were taken up for consideration

together. A perusal of both the impugned orders would show that there are two main reasons why the Sessions Court has rejected the bail applications preferred by the appellant. The first reason is the confessional statement made by co-accused Sharad Kalaskar under the KCOC Act, in a case pending before a Court in Karnataka, pertaining to a similar incident where an individual was shot dead. The Sessions Court has placed much emphasis on the said confessional statement while holding against the appellant. The second reason given by the Sessions Court in both the impugned orders is that when the incident in the present case took place, the appellant was out on bail granted by this Court in an appeal against his conviction. The Sessions Court found that when the appellant was involved in the incident that took place in the present case, while he was on bail, he certainly did not deserve to be enlarged on bail in the present case.

DUSANE

12/33

CRAPPEAL - 187.20+1.doc - Judgment

12

Before analyzing as to whether the reasons given by

the Sessions Court while rejecting the bail applications of the appellant, were justified or not, it would be appropriate to first refer to the relevant provision of UAPA, since offence punishable under section 16 of UAPA is also said to have been committed by the appellant along with other accused persons. The provision relevant for considering an application for bail concerning offences under UAPA, shows that the accused has to pass a stringent test in order to be considered eligible for grant of bail. In this regard, section 43-D(5) of the UAPA is relevant which reads as follows:

"43-D. Modified application of certain provisions of the Code.-

(1).....

(2).....

(3).....

(4).....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity

of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a DUSANE 13/33 CRAPPEAL-187.20+1.doc-Judgment perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true." 13 The aforesaid provision states that an accused under the UAPA shall not be released on bail if on a perusal of the case diary or report submitted under section 173 of the Code of Crimi-

nal Procedure, the Court is of the opinion that there are reason- able grounds for believing that the accusation made against the accused persons is prima facie true. Thus, if the Court believes that the material placed on record reasonably shows that the accu- sation made against the accused persons is prima facie true, bail cannot be granted to the accused persons. This provision was specifically dealt with by the Hon'ble Supreme Court in the case of NIA v. Zahoor Ahmad Shah Watali (supra). The Hon'ble Supreme Court referred to the above quoted section 43-D(5) of the UAPA and found that even though under the said provision, the accused is required to pass a stringent test for grant of bail, it was found that the said test was lesser in degree when compared to provi- sions in other Special Acts like the Maharashtra Control of Orga- nized Crimes Act, 2000 and other such similar enactments. In such other special enactments, the Court is required to come to DUSANE 14/33 CRAPPEAL-187.20+1.doc-Judgment prima facie finding that the accused is not guilty and only then can bail be granted to the accused. After appreciating this distinc- tion, the Hon'ble Supreme Court in the said judgment, found that while granting bail under section 43-D(5) of the UAPA, the Court must be satisfied that there were no reasonable grounds to believe that the accusation made against the accused persons is prima fa- cie true. In other words, the Court would have to look at the ma- terial brought on record by the investigating agency and to con- clude that even prima facie the accusation levelled against the ac- cused on the basis of such material did not appear to be true. 14 A Division Bench of this Court in the case of Dhan Singh v. Union of India (supra) considered the question of grant of bail to accused persons under the provisions of the UAPA and after referring to the aforesaid judgment of the Hon'ble Supreme Court in the case of NIA v. Zahoor Ahmad Shah Watali (supra), held that when the words "prima facie" are coupled with the word "true", it implies that the Court has to undertake an exercise of crosscheck- ing the truthfulness of the allegations made in the complaint on the basis of the material on record. It was also held that if the Court found on such analysis that the accusations were inherently DUSANE 15/33 CRAPPEAL-187.20+1.doc-Judgment improbable or wholly unbelievable, it would be difficult to hold that a prima facie true case was made out against the accused. A note of caution was appended in the said judgment to the effect that while carrying out such exercise, the Court does not have lib- erty to come to a conclusion, which may virtually amount to an acquittal of the accused. Therefore, it becomes evident that the Court has to proceed on the basis of the material placed before it by the investigating agency and accepting the same, to analyze the question as to whether the accusations made against the accused could be said to be prima facie true.

15 Applying the said principles applicable to considera- tion of bail applications under the UAPA, we will have to consider the material placed on record in the present case. Since respon- dent No.2-CBI

has placed much emphasis on the confessional statement dated 12/10/2018, given by the co-accused Sharad Kalaskar while opposing the present appeals, it would be relevant to consider as to what could be the significance attached to such a confessional statement.

16 It is undisputed that the said confessional statement

DUSANE

16/33

CRAPPEAL - 187.20+1.doc - Judgment

of co-accused Sharad Kalaskar dated 12/10/2018, was recorded in a case pending against him in the State of Karnataka and that such confessional statement was recorded under section 19 of the KCOC Act. The said provision is pari materia with section 20 of the MCOC Act and even section 19 of the Terrorist and Destructive Activities (Prevention) Act, 1987 (TADA). The relevant portion of the said provision of KCOC Act reads as follows:

19. Certain confessions made to police officers to be taken into consideration.- (1)
Notwithstanding any-

thing in the Code or in the Indian Evidence Act, 1872 but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from which sound or images can be reproduced shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

17 The proviso to section 19 quoted above shows that such confession shall be admissible against co-accused person provided that the co-accused is charged and tried in the same case together with the accused person. In the context of pari materia provision i.e. section 15 of the TADA, in the case of Sunderlal DUSANE 17/33 CRAPPEAL-187.20+1.doc-Judgment Kanaivalal Bhatija v. State of Maharashtra (supra), the Hon'ble Supreme Court held as follows:

"18. Finally in paragraph 40 this Court an-

swered the issues framed by them in the following manner: (Prakash Kumar case, SCC p. 430) "40. For the reasons aforesaid, we are of the view that the decision in Nalini case has laid down correct law and we hold that the confes-

sional statement duly recorded under Section 15 of TADA and the Rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Section 12 of the Act, notwithstanding that the accused was acquitted of offences under TADA in the same trial."

19. That being the position, it is now a settled law that a confessional statement duly recorded by a police officer in a case related to TADA Act and the rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Sections 12 read with Section 15 of the Act notwithstanding that the accused was acquitted of offences under the TADA Act in the same trial. But, here is a case where the allegation was mainly for the offences under IPC and some offences under the TADA Act were also incorporated initially but later on the same were dropped. Consequently, charges in the said case were framed only for offences under IPC and not under the TADA Act and the trial is also only for offences under IPC and not under the TADA Act. Therefore, such confessional statement as made by the Respondent 4 DUSANE 18/33 CRAPPEAL-187.20+1.doc-Judgment under the TADA Act, in a different case, cannot be used or utilized by the prosecution in the present case as the charges were framed only for the offences under the Indian Penal Code."

18 Thus, applying the position of law that emerges from the said judgment to the facts of the present case, it becomes clear that even at this stage that respondent No.2-CBI may not be justified in wholly relying upon the said confessional statement of co-accused Sharad Kalaskar. The said confessional statement is admittedly made under the KCOC Act in a case pending against the said co-accused Sharad Kalaskar in the State of Karnataka wherein the appellant is not charged or being tried together with the said co-accused Sharad Kalaskar. The said confessional statement, as per the said position of law recognized by the Hon'ble Supreme Court, cannot be of significance in the present case, as it is admittedly a case different from the one being tried in the case of State of Karnataka and in any case, the appellant is not charged or being tried together with the said co-accused Sharad Kalaskar in the State of Karnataka. Therefore, the emphasis placed by respondent No.2-CBI solely on the said confessional statement of co-accused Sharad Kalaskar under the KCOC Act, is prima facie misplaced and it is also clear that the Sessions Court could not have placed em-

DUSANE

phasis on the said confessional statement to conclude that the accusation made against the appellant concerning the incident in question could be said to be prima facie true. Therefore, the first reason stated in the impugned orders passed by the Sessions Court in the present case while rejecting the bail applications, appears to be based on weak material i.e. the said confessional statement. 19 Apart from the said confessional statement, according to the learned counsel appearing for respondent No.2-CBI, the identification of the appellant by co-accused Sharad Kalaskar based on a photograph provided by the appellant himself as also the reference to the role of the appellant in the proceeding pertaining to reconstruction of crime scene at the behest of the said co-accused Sharad Kalaskar in the presence of independent witnesses, was sufficient incriminating material to directly connect the appellant with the incident in question. It was submitted that such material was enough to show that the accusation made against the appellant was prima facie true and that therefore, no interference was warranted in the impugned orders.

20

A perusal of the said material shows that on

DUSANE

20/33

CRAPPEAL - 187.20+1.doc - Judgment

18/08/2018 a proceeding was prepared by the investigating agency i.e. respondent No.2-CBI as per the statement given by another co-accused person Sachin Andure pertaining to reconstruction of the crime scene. This was recorded in the presence of independent witnesses. The said proceeding shows that the incident that occurred on 20/08/2013 in which Dr.Dabholkar was killed, was described in detail and the role of the said accused Sachin Andure and that of co-accused Sharad Kalaskar was stated. It was also stated as to the manner in which both the accused persons escaped after the incident. It is significant that in this proceeding pertaining to reconstruction of the scene of crime, there is no mention of the name of the appellant herein or the manner in which he or any unknown person had helped the said accused persons by conducting a recce about 15 days prior to the date of the incident.

21. But, in a similar proceeding pertaining to reconstruction of crime scene prepared on 08/09/2018, at the behest of co-accused Sharad Kalaskar, in the presence of independent wit-

nesses, not only was the incident described in the manner in which co-accused Sachin Andure had described in the proceeding DUSANE 21/33 CRAPPEAL-187.20+1.doc-Judgment dated 18/08/2018, but the name of the appellant was also stated and it was specifically claimed that the appellant had assisted the accused persons by helping them conduct recce of the spot of the incident, about 15 days prior to the incident. 22 There is obvious discrepancy in the two proceedings. Apart from this, statement of one of the independent witnesses to the proceeding pertaining to reconstruction of crime scene prepared at the behest of the co-accused Sharad Kalaskar dated 08/09/2018, shows that the said independent witness stated details of the said proceeding. It is also recorded in the statement of the said independent witness as to how the said co-accused Sharad Kalaskar described the actual incident. Yet there is no reference in the statement of this independent witness about co-accused Sharad Kalaskar having taken the name of the appellant and the role attributed to him. Although, it is recorded in the statement of the independent witness that the proceeding dated 08/09/2018 and the contents thereof are true, the absence of reference to the name of the appellant is of some significance.

23

The other aspect on which the learned counsel for

DUSANE

22/33

CRAPPEAL - 187.20+1.doc - Judgment

respondent No.2-CBI emphasized was the fact that co-accused Sharad Kalaskar recognized the appellant on the basis of photograph supplied by the appellant himself. The material on record in the context of the same shows that according to the seizure memo pertaining to the photograph, the same was produced by the appellant himself and it was seized on 12/09/2018. The seizure memo specifically records that the photograph was seized from the appellant on 12/09/2018 at 2.30 pm. In this context, the memorandum prepared in the presence of witnesses in connection with identification of photograph of the appellant by co-accused Sharad Kalaskar, shows that the proceeding pertaining to identification of the photograph of the appellant started at 2.00 pm and concluded at around 2.30 pm on 12/09/2018. The timing mentioned in the seizure memo of the photograph and the aforesaid memorandum does create some doubt regarding the same. Therefore, the material on which much emphasis has been placed by respondent No.2-CBI to link the appellant with the incident in question, does not appear to indicate that the accusation levelled against the appellant can be said to be prima facie true. These aspects were not appreciated in the correct perspective by the Sessions Court while passing the impugned orders.

DUSANE

23/33

CRAPPEAL - 187.20+1.doc - Judgment

24

We are aware that while considering the material

placed on record along with the charge-sheet, the Court cannot enter into the realm of appreciation of evidence, but we have proceeded on the basis of the material on which respondent No.2-CBI has placed emphasis and as noted above, we find that the same does not appear to show reasonable grounds to conclude that the accusations levelled against the appellant can be said to be prima facie true. This leaves us with the only other reason on which the Sessions Court has rejected the bail applications of the appellant i.e. the fact that the appellant was on bail pending appeal against a conviction when he got allegedly involved in the incident in the present case. A perusal of the impugned orders would show that the Sessions Court has proceeded on the basis that the earlier conviction of the appellant was also for a terrorist offence. But, as a matter of fact, the conviction of the appellant in the other case in which he was released on bail pending appeal before this Court, was not for a terrorist offence. Therefore, the emphasis placed on this aspect by the Sessions Court was misplaced and only for this reason the bail applications of the appellant could have been rejected.

DUSANE

24/33

CRAPPEAL - 187.20+1.doc - Judgment

25

Insofar as the reliance on judgments by the learned

counsel appearing for respondent No.2-CBI is concerned, the judgment of the Hon'ble Supreme Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan (supra) pertains to the duty of the Court while dealing with subsequent bail application to consider the reasons and grounds on which earlier bail applications were rejected and to record the fresh grounds which persuaded it to take a

different view. In the present case, admittedly, this Court had not rejected the earlier appeal i.e. Criminal Appeal No.187 of 2020 filed by the appellant, when the appeal arising from the rejection of the subsequent bail application i.e. Criminal Appeal No.472 of 2020 came up for consideration. It is for this reason that both the appeals are clubbed together and taken for consideration by this Court. In fact, a perusal of the impugned order in both the appeals would show that the reasons given by the Sessions Court were more or less similar and therefore, both the appeals were heard together and they are being disposed of by this common judgment. Hence, reliance on the said judgment of the Hon'ble Supreme Court cannot be of assistance to respondent No.2-CBI.

26

Insofar as judgment of the Hon'ble Supreme Court in

DUSANE

25/33

CRAPPEAL-187.20+1.doc-Judgment

the case of Anil Kumar Tulsiyani v. State of UP (supra) is concerned, the same pertains to the factors to be taken into consideration while granting bail in non-bailable offences. The seriousness of the offence is one such consideration emphasized upon. In this regard, suffice it to say that while considering the contentions raised on behalf of the appellant in these appeals, we have not only considered the relevant factors concerning prayer for grant of bail, but the specific requirement of section 43-D(5) of the UAPA has also been considered and applied to the facts of the present case.

27 Insofar as judgment in the case of NIA v. Zahoor Ahmad Shah Watali (supra) is concerned, reference to the same has been made herein above and applying the principles laid down therein, we are of the opinion that the appeals filed by the appellant deserve to be allowed.

28. Additionally, in a recent judgment in the case of Union of India Vs. K.A. Najeeb (judgment and order dated 1st February 2021 passed in Criminal Appeal No. 98 of 2021), the Hon'ble Supreme Court held that even if stringent requirements DUSANE 26/33 CRAPPEAL-187.20+1.doc-Judgment for granting bail in special statutes like U.A.P.A. may result in a situation where the accused finds it difficult to get a favourable order of bail, the Constitutional Courts could certainly grant bail, even in such cases if it is found that rights guaranteed under Part III of the Constitution are violated. It has been held that long delay in initiation and completion of trial violates the constitutional right to speedy trial and that in such situation, the Constitutional Court can grant bail when there is no likelihood of the trial being completed in a reasonable time. The relevant portion of the said judgment reads as follows :

"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 Statute 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 sub-

DUSANE

27/33

CRAPPEAL - 187 . 20+1 . doc - Judgment

stantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

29. In the present case, according to the submissions made on behalf of the Respondent No. 2- CBI, it is clear that further investigation is being undertaken for examining the larger conspiracy in the matter. It has been stated in a note in the charge-sheet that further list of witnesses will be submitted as investigation under Section 173(8) of the Cr.P.C. is continuing. Thus, there is hardly any likelihood of charges being framed and the trial commencing in the near future. Consequently, there is very little chance of the trial being completed in the foreseeable future. Considering the nature of allegations and extent to which the Respondent No. 2, CBI would be examining witnesses in the matter, it can be reasonably concluded that the beginning of the trial and its completion would take a long time. Therefore, we are of the opinion that this is an additional reason why the prayer for grant of bail of the Appellant deserves to be allowed by imposing appropriate conditions.

DUSANE

28/33

CRAPPEAL - 187 . 20+1 . doc - Judgment

30

In view of the above, the appeals are allowed. The

impugned orders dated 21/01/2020 and 15/09/2020 are quashed and set aside. The bail applications of the appellant are allowed in the following terms:

- i. The appellant shall be released on bail on furnishing PR bond of Rs.1,00,000/- and two solvent sureties in the like amount.
- ii. The appellant shall report to the Deccan Police Station, Pune every day between 8.00 am and 10.00 am, for first one month. Thereafter he shall report to the said Police Station twice a week i.e. on Monday and Thurs- day between 10.00 am. and 12.00 noon for the next two months. Thereafter the appellant shall report to the said Police Station every Monday between 10.00 am and 12.00 noon, till conclusion of the trial.
- iii. The appellant shall attend each and every date of the proceedings before the Trial Court.

DUSANE

29/33

CRAPPEAL - 187.20+1.doc - Judgment

- iv. The appellant shall remain within the jurisdiction of the trial Court/Special Court till the trial is concluded.
- v. The appellant shall extend full co-operation during further investigation by the concerned investigation agencies.
- vi. The appellant shall not in any manner himself or through any person try to influence or pressurize the prosecution witnesses.
- vii. The appellant shall not himself or through any person tamper with the evidence and witnesses
- viii. The appellant shall surrender his passport, if any, before the Special Court, where the trial is being conducted, if not already surrendered.
- ix. The appellant shall not indulge in any activity similar to the activities on the basis

of which the said F.I.R. stood DUSANE 30/33 CRAPPEAL-187.20+1.doc-Judgment registered.

x. The appellant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities, through any mode of communication.

xi. The appellant shall co-operate for expeditious disposal of the trial and in case delay is caused due to him, then his bail would be liable to be cancelled. xii. In the event, the appellant violates any of the aforesaid conditions, the relief of bail granted by this Court will be liable to be cancelled.

xiii. After release of appellant on bail, he shall file underta-

king within two weeks before the concerned trial Court stating therein that, he will strictly abide by the conditions No. (i) to (xii) mentioned herein above.

31. It is also made clear that the observations made in this judgment and order are limited to the question of grant of DUSANE 31/33 CRAPPEAL-187.20+1.doc-Judgment bail to the appellant and that the trial shall proceed against the appellant and the co-accused persons without being influenced by the observations made herein above.

32. The appeals stand disposed of accordingly. 33 In view of disposal of the Criminal Appeals, Interim Application No. 661 of 2020 does not survive, the same is accord-

ingly disposed of.

34 Mr.Jha, appearing for the appellant, prays that keeping in view the present pandemic situation, the appellant may be initially released on furnishing only cash surety and secondly, that the appellant is a resident of Ratnagiri District and it will be inconvenient for him to attend the police station at Pune as ordered by this Court. This prayer of the learned Counsel is vehemently opposed by Mr.Sandesh Patil, appearing for the CBI.

35 In absence of any specific application by the appellant, we are not inclined to entertain prayer made by DUSANE 32/33 CRAPPEAL-187.20+1.doc-Judgment Mr.Jha to release the appellant initially on furnishing cash surety for six weeks with undertaking that he will furnish solvent surety within six weeks. However, as regards his oral prayer for furnishing cash surety, the appellant is granted liberty to file an appropriate application and may move the same before the Vacation Court. Insofar as the second oral prayer of the appellant to stay clause (iv) of the operative order i.e., "The appellant shall remain within the jurisdiction of the trial Court/Special Court till the trial is concluded.", and his attendance to the police station at Pune as ordered by this Court is concerned, the said oral prayer is rejected. 36 Mr.Sandesh Patil, appearing for the Respondent - CBI, prays for stay to the effect and implementation of this judgment and order.

37 Mr.Jha, learned Counsel appearing for the appellant, vehemently opposed the prayer made by Mr.Patil and submitted that the appellant is in jail for a considerable period and there are no valid grounds raised to stay the effect DUSANE 33/33 CRAPPEAL-187.20+1.doc-Judgment and implementation of the judgment and order pronounced today directing release of the appellant.

38 On considering the rival submissions, we do not think any valid reasons to accede to the prayer of Mr.Sandesh Patil, appearing for the CBI, so as to stay the effect and implementation of this order. Hence, the said oral prayer stands rejected.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)

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