SHAGUFTA Q PATHAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 393 OF 2019

Mohammad Raisuddin
S/o. Mohammad Siddique,
Age : Adult, R/o. Azam Colony,
Near Badi Masjid, Hangoli,
Permanent Address : Amin Colony,
Dhar Road, Near Masjid-E-Johara,
Parbhani. ...Appellant
(Presently in Judicial Custody) (Org.Accused No.4)

Versus

1. The National Investigating Agency,
Ministry of Home Affairs, Government of India,
Cumballa Hill Telephone Exchange, 7th Floor,
Pedder Road, Mumbai – 26

2. The State of Maharashtra, ...Respondents
Mumbai (Org. Complainants)

Mr. Mubin Solkar a/w Mr. Aamir Sopariwala i/b Mr. Abdul Raheem Bukhari for the Appellant

Mrs. Aruna Kamath Pai, Spl. P.P for the Respondent No.1–NIA

Mr. A. R. Kapadnis, A.P.P for the Respondent No. 2-State

CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.
RESERVED ON : 10th JUNE 2022
PRONOUNCED ON : 27th JUNE 2022

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned Special Public Prosecutor waives notice for the respondent No. 1-National Investigating Agency (`NIA'). Learned Additional Public Prosecutor waives notice for the respondent No. 2–State.

3 By this appeal preferred under Section 21 of the National Investigation Agency Act, 2008 (`NIA Act'), the appellant seeks quashing and setting aside of the impugned order dated 31st January 2019 passed by the learned Special Court in Bail Application (Exhibit 124) in NIA Special Case No. 3/2018, by which, the appellant's application for bail came to be rejected and as such, seeks his enlargement on bail.

4 Mr. Solkar, learned counsel for the appellant seeks bail on merits, on the ground of parity as well as on the ground of delay in commencement of the trial.

5 As far as merits are concerned, learned counsel for the appellant submitted that there is absolutely no cogent, legitimate, admissible evidence *qua* the appellant to connect him with the alleged offence. He submitted that a perusal of the statements of four witnesses on which the prosecution places reliance, would only indicate that the accused persons including the appellant and the said witnesses would have discussions over threats to Islam and that actions of the ISIS and other issues like beef ban, communal riots, injustice to Muslims in Palestine, etc. would be discussed. He submitted that from a perusal of the said statements, it appears that there were only discussions between the accused and the witnesses and nothing more.

6 Learned counsel for the appellant further submitted that the other allegation as against the appellant is that the appellant showed the place where the said discussions took place. He submitted that the said circumstance cannot be said to be incriminating. He further submitted that the third circumstance relied upon by the prosecution is an Oath (Baith) allegedly written and signed by the appellant. He submitted that the said Oath (Baith) is easily available on the internet. Learned counsel denies that the appellant has either written or signed the said Oath (Baith). He further submitted that the prosecution had initially sent the said Oath (Baith) alongwith sample writings of the appellant and other accused to the State Examiner of Documents, Aurangabad, however, the same were returned, due to non-availability of the handwriting expert in Urdu and Arabic Language, as the said Oath (Baith) was written in Arabic/Urdu. He submitted that hence the said Oath (Baith) alongwith specimen handwriting/signatures of the appellant and other accused was sent to Chief Examiner of Documents (`CFSL'), Hyderabad in 2016 and that the CFSL, Hyderabad had opined that for want of adequate specimen

signatures/handwriting, opinion could not be given and as such gave its report to the investigating agency on 25th January 2017. He submitted that the investigating agency misled this Court and suppressed the said report despite being repeatedly asked by this Court to produce the same. Learned counsel relied on the orders passed by this Court in the aforesaid appeal. He further submitted that when the matter was pending before this Court and after this Court passed its order dated 17th June 2019, immediately on the next day i.e. on 18th June 2019, the NIA sent the Oath (Baith) alongwith very same specimen signatures/handwriting which was sent to the CFSL, Hyderabad, to the CFSL, Pune and within two weeks, obtained a report and tendered the same before this Court. He submitted that according to the CFSL, Pune, the handwriting/signature on the Oath (Baith) was that of the appellant.

7 Be that as it may, he submitted that even a perusal of the contents of the Oath (Baith) would show that there is nothing incriminating in the Oath (Baith). He submitted that the appellant has

no antecedents and that the appellant is languishing in custody since his arrest on 14th July 2016. Learned counsel also submitted that similarly placed co-accused- Iqbal Ahmed Kabir Ahmed was released on bail by this court (Coram : S.S. Shinde & N. J. Jamadar, JJ.) vide order dated 13th August 2021, after considering the statements of the witnesses and other material against the said accused. According to Mr. Solkar, the appellant is in custody since 14th July 2016, since his arrest and that till date, not a single witness has been examined. He submits that the prosecution intends to examine about 550 witnesses and as such, it is unlikely that the case would conclude soon.

8 Mrs. Pai, learned Special Public Prosecutor ('Spl. P.P.') vehemently opposed the appeal. She submitted that no interference is warranted in the impugned order rejecting the appellant's bail application and that there are *prima facie* serious allegations against the appellant. Learned Spl. P.P. relied on 4-5 statements of the witnesses in support of her submission to show that the appellant would have discussions pertaining to Islam and on various crisis all

over the world including discussion on ISIS. She submitted that the prosecution had not suppressed the handwriting report of the CFSL, Hyderabad and that, the report given by CFSL, Pune shows that the Oath (Baith) was written and signed by the appellant. She further submitted that there is no parity with accused No. 3 i.e. Iqbal Ahmed Kabir Ahmed. She further submitted that the delay in commencement of the trial is not a ground for enlarging the appellant on bail. According to the learned Spl. P.P., the bar of section 43-D(5) would come into play, having regard to the material on record as against the appellant.

9 Learned Spl. P.P. relied on the affidavit dated 6th June 2019, and additional affidavit dated 15th July 2019, both filed by Vikram Mukundrao Khalate, Superintendent of Police, NIA, Ministry of Home Affairs, Mumbai Branch, an additional affidavit dated 2nd August 2019, filed by Inderjit Singh Bisht, Deputy Superintendent of Police, NIA, Ministry of Home Affairs, Mumbai Branch, as well as, an additional affidavit dated 23rd May 2022, filed by Pravin Ingawale,

Superintendent of Police, NIA, Ministry of Home Affairs, Mumbai Branch, Mumbai, to oppose the bail of the appellant. She also relied on the judgment of the Apex Court in the case of ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr.***[1] to oppose the grant of bail to the appellant.

10 Perused the papers. The appellant is original accused No. 4 in a case registered by the NIA i.e. Case No. 03/2016/NIA/MUM for the alleged offence punishable under Section 120B and 471 of the Indian Penal Code as well as Sections 13, 16, 18, 18B, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 (`UAPA') and Sections 4, 5 and 6 of the Explosive Substances Act, 1908. It appears that initially, the appellant was arrested by the ATS, Kalachowki Police Station in C.R. No. 8/2016 and on investigation, charge-sheet was filed by the ATS as against the appellant and others. Thereafter, the C.R registered with the Kalachowki Police Station was transferred to the NIA and was

1 (2021) 6 SCC 230

renumbered as are 03/2016/NIA/MUM and after further investigation, NIA filed supplementary charge-sheet in the said case.

11 It is the prosecution case that the accused No. 1-Naser Bin Abubaker Yafai @ Chaus was in contact with the members of the Islamic States/Islamic States of Iraq and Levant (ISIL)/ Islamic State of Iraq and Syria/Daish, a terrorist organization banned by the Government of India vide Notification K.A. 534(A) on 16th February 2015. According to the prosecution, accused No. 1-Naser and accused No.2 - Mohammed Shahed Khan procured material to prepare an IED and accused No. 3-Iqbal Ahmed and the appellant are alleged to have conspired with the co-accused. It is the prosecution case that an electric switch board on which the IED was soldered, was discovered in the house of the accused No. 3 Iqbal Ahmed. It is also alleged that the Oath (Baith) owing allegiance to a banned terrorist organization was recovered from the house of accused No.3-Iqbal Ahmed. The said Oath (Baith) is alleged to have been written and signed by the appellant.

12 Before we proceed to decide the appeal of the appellant, it is pertinent to note that pending the trial, the co-accused i.e. accused No. 1-Naser and accused No. 2-Mohd. Shahed pleaded guilty to the charges, pursuant to which, they were convicted for the said offences and sentenced to suffer rigorous imprisonment for 7 years. As far as accused No. 3-Iqbal Ahmed is concerned, he has been enlarged on bail by this Court vide order dated 13th August 2021, after considering the evidence *qua* him.

13 Before we proceed to consider the aforesaid appeal on merits, we may note, that we are mindful of the provisions of Section 43-D of the UAPA relating to bail. Needless to state, that while deciding the appeal, we are bound to consider the following:

(i) whether there is any prima *facie* or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the charge;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail. *[(State of U.P. v. Amarmani Tripathi - (2005) 8 SCC 21, para 18 : 2005 SCC (Cri) 1960 (2)].*

14 Thus, whilst considering the appeal on merits by virtue of the proviso to sub-section (5) of Section 43-D, it is the duty of the Court to be satisfied that there are no reasonable grounds for believing that the accusations against the accused are *prima facie* true or otherwise. Keeping the aforesaid settled position in mind, we now proceed to consider the evidence placed on record by the prosecution, as against the appellant.

15 The allegation as against the appellant is of perpetrating unlawful activities, terrorist acts, recruiting persons for terrorist acts and/or being member of a terrorist gang or organization, and association with, and/or support to, terrorist organization. According to the prosecution, there are statements of witnesses who were allegedly members of the group which assembled opposite Mohammadiya Masjid, Parbhani, to have regular discussions on Islam. In the compilation tendered by the learned Spl. P.P. today, which is taken on record, five statements were relied upon by the prosecution, which, according to her, point towards the complicity of the appellant.

16 A perusal of the statement of the first witness i.e. W-1 which is at page 49 of the said compilation tendered by the learned Spl. P.P. shows, that the said witness was a friend of accused No. 1-Naser and other accused and that they all would meet after dinner at Mumtaz Nagar, Parbhani on the ground opposite Mohammadiya Masjid, for discussion. The said witness has stated that they would

discuss the atrocities on Islam in the world and in the country and on Hindu organizations. He has stated that the appellant, by giving reference of various incidents, would inspire them to work for Islam. He has further stated that their discussion included even discussions on ISIS organization. He has further stated that all of them would also remain present for the programmes organized by AIAMS.

17 A perusal of the statement of the second witness i.e. W-2, which is at page 50 of the compilation, shows that the said witness was a friend of the accused, including the appellant and that they would gather in the night on the ground at Mumtaz Nagar. He has stated that they would discuss several topics, and in particular, on injustice to the Muslims, beef ban, communal riots, injustice to Muslims in Palestine, secondary treatment to Muslims in India, and on actions of ISIS and whether the said actions were in accordance with Islam. The said witness has further stated that the accused No.1-Naser @ Chaus and the appellant used to tell them that they need to obtain detailed knowledge of ISIS and would support the actions of ISIS. He has

further stated that co-accused-Mohd. Shahed Khan (accused No.2) used to speak about the atrocities on Muslims in Syria and the acceptance of the Khilafat of one Abi Bakar Al Baghdadi Al Hussaini Al Quraishi, which view was seconded by accused No.3-Iqbal Ahmed. The said witness has further stated that he would participate in the discussion with the said accused (including the appellant) and that from the said discussion, he felt that the said accused (including the appellant) were fundamentalists and had jihadi leanings and that the accused were of the view that there were atrocities on Islam and that they should do something to avenge the said atrocities.

18 The statement of the next witness i.e. W-3 is at page 52 of the compilation. The said statement was recorded on 10th August 2016. A perusal of the same shows that the said witness would meet all the accused after dinner at Mumtaz Nagar, Parbhani, on the ground opposite Mohammadiya Masjid, for discussion. The said witness has stated that they would discuss about the atrocities on Islam in the world and in the country and on Hindu organizations. He has stated

that the appellant, by giving reference of various incidents, would inspire them to work for Islam. He has further stated that their discussion included various issues like the beef ban, Dadri incident, Muzaffarpur incident, Gujarat riots, etc. and that possible solutions were also discussed. He has further stated that some members discussed about ISIS and that, they had attended the programme of AIAMS Organization in December 2014 at Akola and would also remain present for their other programmes. He has further stated that the appellant had formed a Whats App Group `Bunianam Marsoos' and that he was also a member of the said Whats App group. According to the said witness, from the discussions that took place, he felt that the said persons i.e. the accused Nos. 1 to 4 were fundamentalists, having jihadi thoughts and that they felt that they should do something to avenge the incidents of atrocities on Islam.

19 The statement of another witness, W-4 was recorded on 17th August 2016. The said statement is on page No. 54 of the compilation. A perusal of the same shows that he alongwith other

witnesses and accused would meet on the ground at Mumtaz Nagar, opposite Mohammdiya Masjid, after dinner and would discuss the happenings that took place all over the world and in India; that the discussion would be on religion, beef ban, attacks of ISIS on France. He has further stated that the appellant, a resident of Hingoli, would attend the discussions on Saturday, Sunday and other holidays, as he was a teacher.

20 A perusal of statement of another witness, W-5 dated 18th July 2016, which is at page 56 of the compilation, shows that the said witness has stated that accused No. 3-Iqbal Ahmed had in 2014 created a Whats App group by the name `Ittehad' and that he was an Admin of the same and that the appellant was also a member of the said group. He has stated that the appellant, a teacher in Hingoli, would put posts on Islam on the said Whats App group and on Qur'an and that there was interaction on the said groups on religion and on Qur'an. He has further stated that from the chats, he felt that accused No. 1-Naser was attracted to ISIS.

It is pertinent to note, that admittedly, no Whats App chats have been produced by the prosecution in their charge-sheet, as a result of which, no light is thrown on the nature of discussion/chats/posts allegedly put up by any of the accused. Therefore, in the facts, mere statements of witnesses stating that there was a Whats App group formed, without any material to support the same, the same cannot be relied upon. Infact, none of the witnesses have stated anything incriminating in the said chats.

21 A perusal of the statements of the aforesaid witnesses even if taken at its face value, would only indicate that the accused persons and the said witnesses would have regular discussions over threats to Islam; real, perceived or imaginary. It is the perception of the witnesses that the said accused had jihadi leanings or were fundamentalists. All the statements, if perused, indicate that the statements are in the realm of discussions and deliberations that took place between the accused and the witnesses. *Prima-facie,* there is no material to indicate

that the appellant instigated the commission of any offence or insurgency, nor that the appellant advocated violent reactions. From the statements of all the witnesses, it also appears that the appellant would visit the ground to have discussions only on the weekends and on holidays, as the appellant was teaching at a school at Parbhani. From a perusal of the said statements, one can reasonably conclude that, at the highest, what took place were mere discussions as to what was transpiring in India and the world and that everyone should work for Islam. The said statements *prima-facie* cannot be said to be incriminating. Infact, the very same statements were relied upon by the prosecution whilst opposing the bail application of accused No. 3-Iqbal Ahmed, with respect to his presence and participation in the discussions that took place; forming of Whats App group, etc. This Court, whilst considering the said statements, observed in para 32 that the statements, at the highest, would show that they were in the realm of discussions and that there was no *prima facie* material to indicate that the accused therein instigated the commission of an offence or insurgency.

22 Coming to the next circumstance relied upon by the prosecution, which is, showing of the spot by the appellant, where the discussions took place. The said circumstance, by no stretch of imagination, can be said to be incriminating, having regard to what is observed by us aforesaid.

23 Another circumstance relied upon by the prosecution as against the appellant is the Oath (Baith) allegedly written and signed by the appellant. The English translation of the said Oath (Baith) is on page 39 of the compilation tendered by the learned Spl. P.P. Admittedly, the name at the end of the Oath (Baith) is mentioned as `Abu Zunera Al Hindi'. According to the prosecution, the appellant has used `Abu' in several of his email Ids and that Zunera is the name of his daughter. The said Oath (Baith) was allegedly found at the residence of accused No. 3-Iqbal Ahmed. The said Oath (Baith), translated copy of which is at page 39, appears to be a declaration of the acceptance of one Abi Bakar Al Baghdadi Al Hussaini Al Quraishi

as the `Caliph' of the Muslims. It is pertinent to note that initially the said Oath (Baith), handwritten in Urdu was sent alongwith the sample writings and signatures of all the accused to the State Examiner of Documents, Aurangabad, in 2016. It appears that on 12th September 2016, the State Examiner of Documents, Aurangabad sent its letter dated 12th September 2016 to the ATS stating therein, that the seized documents could not be examined due to non-availability of handwriting expert in Urdu/Arabic and as such it was not possible to give any opinion. It is further stated in the said letter that they had taken guidance even from the Chief State Examiner of Documents, Pune. Accordingly, the said documents were sent back by the State Examiner of Documents, Aurangabad. It appears that thereafter, the ATS sent the said Oath (Baith) alongwith all other documents to the CFSL, Hyderabad on 28th September 2016. The said letter is at page 28 of the appeal memo. It appears that the CFSL, Hyderabad, vide letter dated 25th January 2017, sent its report to the Special IGP, ATS, Mumbai, stating therein that the writing marked "Q" purported to be written in Arabic script alongwith some English writings has been

compared with the corresponding specimen writings of the three suspects i.e. accused No. 1-Naser, the appellant and accused No. 3-Iqbal Ahmed, however, all the writing habits as occurring in the disputed writing marked "Q" could not be collectively accounted for, from any of the specimen writings of the said three persons. Accordingly, the Director of the CFSL, Hyderabad, opined that it was not possible to express any opinion regarding its authorship or otherwise. The Director requested for further specimen writings in English from each of the said persons and request was made for repeatedly dictating the entire content of the disputed writing appearing in English, and thereafter sending it for further examination to the said Lab. Thus, no definitive opinion was given by the said Lab. It is pertinent to note that this report dated 25th January 2017 was not placed before the Court during the course of the hearing of the aforesaid appeal. It is pertinent to note that the aforesaid appeal came up for hearing before this Court on 14th June 2019, when the following order was passed :

"1] Learned counsel for the Appellant seeks leave to place on record some documents from the charge-sheet. Leave as prayed is granted.

2] Learned counsel for Respondent No.1 to inform this Court status of hand-writing expert report in respect of documents seized pursuant to confessional statement of accused No.1, which is at Page No.55 of the paper book.

Stand over to 17th June, 2019."

On 17th June 2019, this Court passed the following order :

"1 Heard the learned Counsel for the respective parties.

2 The prosecution is placing reliance on a chit recovered during the course of inquiry, the copy of which is at page 55 of the paper book. The same is in Arabic language. It is seen that the said chit has been forwarded to the Director, Government Examiner of Questioned Documents, Central Forensic Science Laboratory, Directorate of Forensics Science Services Ministry of Home Affairs, Government of India India by the Special Inspector General of Police, Anti Terrorist Squad, Mumbai on 30/09/2016. The learned prosecutor appearing for respondent/National Investigating Agency informed to this

Court that as yet the report of handwriting expert is not received from the said Forensic Science Laboratory.

3 In this view of the matter, we direct the Director, Government Examiner of Questioned Documents, Central Forensic Science Laboratory, Directorate of Forensics Science Services, Ministry of Home Affairs, Government of India to furnish report of handwriting expert within a period of two weeks from today to the concerned Investigating Officer of the NIA. The respondent/NIA is directed to provide that report on the next date of hearing before this Court.

4 The Registry is requested to inform this Order to the concerned Forensic Science Laboratory. Investigating Officer of the NIA is also directed to communicate this Order to the concerned Forensic Science Laboratory and take all necessary
steps for getting the report within the prescribed period.

5 Stand over to 4th July 2019.

6 All parties to act on authenticated copy of this Order."

Thereafter, the matter appeared before this Court on 4th July 2019. This Court, on 4th July 2019 passed the following order:

"1 This court vide order dated 17th June 2019 had directed respondent/National Investigation Agency to produce report from the Director, Government Examiner of Questioned Documents, Central Forensic Science Laboratory, Directorate of Forensic Science Services Ministry of Home Affairs, Government of India, to this court today i.e. on 4th July 2019. It is seen that the said report is not yet produced before this court. The learned Special Public Prosecutor submits that the National Investigation Agency has received the report from the Forensic Science Laboratory, Pune, after examining the questioned documents.

2 We are, therefore, directing the respondent/National Investigation Agency to produce reports from the Forensic Science Laboratory at Hyderabad, so also the reports received from such laboratory at Pune, along with affidavit of the concerned Officer by the next date.

3 Two weeks time, as prayed for, is granted. In the meanwhile, copy of reply affidavit be served on the learned counsel for the petitioner on or before 15th July 2019.

Matter be listed on 18th July 2019."

24 It is pertinent to note that though the report of the CFSL, Hyderabad dated 25th January 2017 was available with the

prosecution, the same was not pointed out when the matter was heard by this Court on 17th June 2019. Instead, it appears that after the order of 17th June 2019 was passed, the NIA sent the very same documents which were sent to the CFSL, Hyderabad i.e. the Oath (Baith) and the specimen writings/signatures of three accused to the CFSL, Pune, vide letter dated 18th June 2019 and within two weeks, CFSL, Pune, gave its opinion stating therein, that the Oath (Baith) in question, matched the specimen writing of the appellant. The said report given by the CFSL, Pune dated 1st July 2019 is on page 38 of the appeal memo.

25 Be that as it may, there is variance in the opinion given by the two Forensic Labs, on the said document in question. It is pertinent to note, that the Hyderabad Lab could not give a definitive opinion based on specimen writings sent and sought more specimen writings, however, the NIA sent the same documents of which no opinion was given to the CFSL, Pune, who opined that the writing on the Oath was that of the appellant. Be that as it may, even a perusal of

the Oath (Baith) allegedly written by the appellant, at the highest, appears to be a declaration of the acceptance of one Abi Bakar Al Baghdadi Al Hussaini Al Quraishi as the `Caliph' of the Muslims. *Prima-facie,* a perusal of the said Oath (Baith) does not appear to be incriminating.

26 Thus, considering the material on record, we are *prima facie* of the opinion that the said circumstances relied upon by the prosecution, do not appear to be of such a nature so as to sustain a reasonable belief that the accusations against the appellant are *prima facie* true and hence, having regard to the same, the bar under Section 43-D(5) of the UAPA will not apply. We have very closely and meticulously gone through the statements of prosecution witnesses and have also given our findings as to their nature and contents thereof. Totality of the material gathered by the investigation agency *qua* appellant-accused and presented before us does not *prima facie* point out the involvement of the appellant-accused in the aforesaid offences.

27 This Court, whilst granting bail to the accused No. 3-Iqbal Ahmed, vide order dated 13th August 2021, has, in detail, considered the statements of witnesses, the recovery of an IED soldered and the Oath (Baith) recovered from the residence of accused No. 3-Iqbal Ahmed and as such, after considering the said material, enlarged the said accused on bail. We are informed that the NIA had challenged the said order before the Apex Court and the Apex Court vide order dated 11th February 2022 declined to disturb the order of the High Court and disposed of the Special Leave to Appeal (Cri.) Nos. 9957/2021 of the respondent-NIA.

28 Having perused the evidence on record, we also find that the role of the appellant is similar to that of accused No. 3-Iqbal Ahmed against whom there are statements similar to that of the appellant. Infact, a soldered IED as well as an Oath (Baith) was recovered from accused No.3-Iqbal Ahmed's residence. It is not in dispute that the appellant is in custody since his arrest on 14th July 2016, for almost 7 years. Charge was framed in the said case on 17th

March 2021. We are informed that 550 witnesses have been cited in the said case, however, learned Spl. P.P. submitted that the prosecution would now examine a lesser number, considering that two of the co-accused have pleaded guilty.

29 Learned counsel for the appellant relied on the judgments of the Apex Court in ***Shaheen Welfare Association vs. Union of India***[2] and ***Union of India vs. K.A. Najeeb***[3] in support of his submission that it is a right of the accused for a speedy trial which flows from right to life under Article 21 of the Constitution. The Apex Court in ***Shaheen Welfare Association (supra),*** after considering the conflicting claims of personal liberty emanating from Article 21 and protection of society from the terrorist acts, which the Terrorist and Disruptive Activities (Prevention) Act, 1987 professed to achieve, reconciled the conflicting claims of individual liberty and the interest of the community by issuing directions for

2 (1996) 2 SCC 616
3 (2021) 3 SCC 713

release of the under-trial prisoners, who had suffered long incarceration, depending upon the gravity of the charges. In this context, it would be apposite to reproduce the observations of the Apex Court in paras 9 to 11, 13 and 14 of the said judgment.

> *"9. The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact the protection to innocent civilians is dependent on such speedy trial and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.*
>
> *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 V. State Of Punjab – (1994) 3 SCC 569, 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 perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

11. These competing claims can be reconciled by taking a pragmatic approach.

13. For the purpose of grant of bail to TADA detenues, we divide the under-trials into three (sic four) classes, namely, (a) hardcore under-trials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general arid to the complainant and prosecution witnesses in particular; (b) other under-trials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) under-trials who are roped in, not because of any activity directly attracting Sections 3 and 4, but by virtue of Section 120B or 14, IPC, and; (d) those under-trials who were found possessing incriminating articles in notified areas & are booked under Section 5 of TADA.

14. Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity or the charges. Adopting this approach we are of the opinion that under-trials falling

within group (a) cannot receive liberal treatment. Cases of under-trials falling in group (b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses. Cases of under-trials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively ……."

30 It is pertinent to note that the said judgment was referred with approval by the Apex Court in ***K A. Najeeb (supra)***. Paras 16 and 18 of the said judgment are reproduced hereinunder :

"16. This Court has clarified in numerous judgments that the liberty guaranteed by 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. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India – (1994) 6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However,

owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

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."

31 It is thus evident that the statutory embargo under section 43- D(5) of the UAPA *per se* does not act as an impediment on the powers of the Constitutional Court to grant bail, if a case of infringement of the constitutional guarantee for protection of life and personal liberty is made out. In such a situation, the prayer for bail on account of prolonged delay in conclusion of trial needs to be considered in the background of the period of incarceration, the prospect of completion of trial within a reasonable time, the gravity of the charge and other attending circumstances.

32 As noted above, charge was framed on 17th March 2021 and the appellant is in custody since his arrest on 14th July 2016 i.e. for almost 7 years. Considering the number of witnesses to be examined, it is unlikely that the trial would conclude within a reasonable time. We have, in detail, considered the evidence on record *qua* the appellant, the gravity of the charges against the appellant and the period already undergone by the appellant as well as the minimum

term of imprisonment prescribed for the offences punishable under Sections 16, 18 and 18B of the UAPA, ultimately if the appellant is convicted.

33 In this view of the matter, having regard to what is stated aforesaid, we are satisfied that the appellant has made out a case for grant of bail. Hence, we pass the following order.

ORDER

(i) The appeal stands allowed;

(ii) The impugned order dated 31st January 2019 passed by the learned Special Court in BA (Exhibit 124) in NIA Special Case No. 3/2018, stands quashed and set- aside;

(iii) The appellant- Mohammad Raisuddin Mohammad Siddique be released on bail on furnishing a P.R bond in the sum of Rs. 1,00,000/- (Rupees One Lakh) with one or two solvent sureties in the like amount to the satisfaction of the learned Judge, NIA Court;

(iv) The appellant shall report to the Office of the NIA., Mumbai Branch, Mumbai, twice every week on Tuesday and Friday, between 10:00 a.m to 12:00 noon,

for a period of one month from the date of his release. Thereafter, the appellant shall report the said Office on every Tuesday between 10:00 a.m to 12:00 noon for the next two months. Thereafter, the appellant shall report to the said Office on first Tuesday of every month between 10:00 a.m to 12:00 noon, till conclusion of the trial;

(v) The appellant shall attend the NIA Court on every date of the proceeding, unless exempted;

(vi) The appellant shall not leave the jurisdiction of the NIA Court, i.e. Greater Mumbai, till the conclusion of the trial, without the prior permission of the NIA Court;

(vii) The appellant shall surrender his passport, if any (if not already surrendered). If the appellant does not hold the passport, he shall file an affidavit to that effect before the NIA Court;

(viii) The appellant shall not, either himself or through any other person, tamper with the prosecution evidence and give threats or inducement to any of prosecution witnesses;

(ix) The appellant shall not indulge in any activities similar to the activities on the basis of which the appellant stands prosecuted;

(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 in 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 undertaking within two weeks before the NIA Court stating therein, that he will strictly abide by the conditions No. (iv) to (x) mentioned hereinabove.

34 Rule is made absolute in the above terms. Appeal is accordingly disposed of.

35 It is made clear that the observations made in this judgment are limited to the consideration of the question of grant of bail to the appellant and they shall not be construed as an expression of opinion on the merits of the case. The learned Special Judge shall proceed with the trial against the appellant and the co-accused uninfluenced by the observations made hereinabove.

36 All concerned to act on the authenticated copy of this judgment.

V. G. BISHT, J. REVATI MOHITE DERE, J.

37 At this stage, after the order was pronounced, learned Spl. P.P sought stay of this judgment.

38 For the reasons recorded in the aforesaid judgment, the prayer for stay is rejected.

V. G. BISHT, J. REVATI MOHITE DERE, J.