



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 612 OF 2022

Kafeel Ahmed Mohd Ayub

Age :-62 years, Occupation : Nil

Mohalla Shivdhara, Darbhanga, Bihar

(Presently in Judicial Custody, Lodged at

Mumbai Central Prison)

... Appellant

V/s.

The State of Maharashtra

(Through : ATS Vide their C.R. No.28 of 2011

(Opera House) C.R No.29 of 2011 (Zaveri Bazar)

And C.R. No.30 of 2011 (Kabutarkhana Dadar West)

Bomb Blast Cases)

... Respondent

Mr. Mubin Solkar a/w Mr. Tahir Hussain, Mr. Anas Shaikh, Ms.Tahera Qureshi, Adv. Hemal Shah for Appellant.

Mr. Vaibhav Bagade, Special PP a/w Mr. Ajay S. Patil, A.P.P. for Respondent State.

Mr. Prashant Mohite, P.I. a/w Mr. S. Lad, H.C. attached to ATS.

CORAM : A. S. GADKARI AND

RANJITSINHA RAJA BHONSALE, JJ.

DATE OF RESERVE : 25th SEPTEMBER, 2025

DATE OF PRONOUNCE : 4th NOVEMBER, 2025

JUDGMENT : (Per :- A.S. Gadkari, J.)

1) This is an Appeal under Section 21(4) of the National Investigation Agency Act (for short NIA Act), by the original accused No.5, impugning Order dated 5th February, 2022, passed below Exh.733 in MCOC Special Case Nos.11 of 2012 alongwith 14 of 2012, 5 of 2014, 5 of 2015, 15 of 2015 and 20 of 2016 arising out of CR No.28 of 2011 (Opera House), CR No.29 of 2011 (Zaveri Bazar) and CR No.30 of 2011 (Kabutarkhana Dadar West), (Bomb Blast Cases), Mumbai, by the learned Additional Sessions Judge & Special Judge Under MCOC/NIA/POTA Act, Greater Mumbai, rejecting his Application for bail under Section 439 of the Code of Criminal Procedure (Cr.P.C.).

2) Heard Mr.Solkar, learned counsel for the Appellant and Mr.Bagade, learned Special PP. for the Respondent-State. Perused entire record.

3) Mr.Solkar submitted that, the Appellant was initially arrested by the Delhi Police, Special Cell on 22nd February, 2012. He was taken into custody and arrested by the ATS in this case on 19th May, 2012, on the basis of transfer warrant duly issued by the learned Judge of the MCOCA Court, Mumbai. Mr.Solkar submitted that, the Appellant is canvassing his Appeal, *inter alia* his Application for bail under Section 439 of Cr.P.C. only on the ground of prolonged incarceration without trial and not on merits. He submitted that, as of today the Appellant has undergone more than 13 ½

years of actual imprisonment without trial. That, the prosecution is yet to examine 233 witnesses in the present case and the possibility of conclusion of trial in near future is remote. That, the Appellant as of today is aged about 65 years and is suffering from age related elements. He submitted that, speedy and expeditious trial is a facet of right to live as embodied under Article 21 of the Constitution of India. He submitted that, trial Court therefore has committed an error while rejecting his Application for bail. He therefore prayed that, impugned Order may be set aside and the appellant may be released on bail on suitable conditions.

4) Mr.Bagade learned Special P.P. opposed the Appeal. He submitted that, Mr. Deepak Pagare, Assistant Commissioner of Police, A.T.S. has filed his Affidavit dated 18th July, 2022, in opposition to the Appeal. He submitted that, in pursuance of Orders passed by this Court the trial Court of the present case is being conducted thrice a week and if this Court further directs, the trial of the case can be conducted on day to day basis. He submitted that, the offence committed by the Appellant along-with co-accused is not only serious but also grievous in nature. That, the Appellant is one of the accused in triple bomb blast case which took place on 13th July, 2011, in three different parts of the City. He submitted that, merely because the Appellant is behind bars for more than 13 years, cannot itself be a ground for granting him bail only on that count. Mr.Bagade placed reliance on the decisions of the Hon'ble Supreme Court and this Court namely ;

- i) *Shaheen Welfare Association Vs. Union of India, reported in (1996) 2 SCC 616.*
- ii) *Ash Mohammad Vs. Shiv Raj Singh Alias Lalla Babu and Another, reported in (2012) 9 SCC 446.*
- iii) *Chandrakeshwar Prasad Alias Chandu Babu Vs. State of Bihar and Another, reported in (2016) 9 SCC 443.*
- vi) *Brijmani Devi Vs. Pappu Kumar and Another, reported in (2022) 4 SCC 497.*
- v) *Gurwinder Singh Vs. State of Punjab and Another, reported in (2024) 5 SCC 403.*
- vi) *Kailash Vs. State of Maharashtra, through the National Investigating Agency and Another, reported in 2024 SCC OnLine Bom 983.*
- vii) *Mr. Mazin Abdul Rahman @ Mazin S/o. Ibrahim Rahmathulla and National Investigation Agency Bengaluru, in Criminal Appeal No.2248 of 2023, decided on 8th February, 2024.*

4.1) Mr. Bagade therefore prayed that, the Appeal may be dismissed.

5) Perusal of record indicates that, by the impugned Order dated 5th February, 2022, the bail application preferred by the Appellant below Exhibit 733 has been rejected by the trial Court. Appellant thereafter preferred present Appeal on 5th May, 2022. By an Order dated 30th October, 2023, the co-ordinate Bench of this Court had directed the learned Judge of the trial Court to dispose off the present case as expeditiously as possible and in any event within a period one year from the date of receipt of said Order. It was

also kept open for the learned Judge to take up the case on day to day basis, if possible. This Appeal was therefore kept pending to consider the Application of the Appellant for bail, as per the progress of the said case after 6 months. The hearing of present Appeal was thereafter adjourned from time to time at the request of either of the parties. It is an admitted fact on record that, as of today the trial of the present case is not concluded.

6) Perusal of record further indicates that, the Application for discharge preferred by the Appellant was rejected by the trial Court by its common Order dated 29th March, 2019 and thereafter charges against the Appellant were framed on 5th March, 2021. The prosecution has cited 700 witnesses in support of its case in the 'List Of Witnesses'. On 11th October, 2024, the learned Special PP on instructions made a statement that, the prosecution intends to examine 400 witnesses, out of the said 700 witnesses. The said fact is recorded in Order dated 11th October, 2024. The prosecution as of today, has examined 167 witnesses and 233 witnesses are yet to be examined. The confessional statements recorded under Section 18 of the MCOC Act of Appellant and co-accused Yasin Bhatkal @ Imran, *prima facie*, indicates that, the role attributed to the Appellant, is of giving shelter to co-accused i.e. harboring co-accused either prior to or after commission of the alleged offence.

7) Record discloses that, after framing of charges on 5th March, 2021, in last more than 4 ½ years the prosecution has examined only 167

witnesses. As noted above, the prosecution is yet to examine 233 witnesses. According to us, the possibility of concluding the trial of the present case in near future is bleak. Appellant is aged 65 years as of today and is suffering from age related elements.

7.1) A three Judge Bench of the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb reported in (2021) 3 SCC 713*, in para Nos. 17 and 18 has held as under:

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

threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

8) After applying the ratio enunciated by the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeed (supra)* and in view of the facts mentioned above, the Appellant is entitled to be released on bail during the pendency of his trial.

9) Hence, the following Order.

(i) The impugned Order dated 5th February, 2022, passed by the learned Additional Sessions Judge & Special Judge Under MCOC/NIA/POTA Act, Greater Mumbai below Exhibit-733 in MCOC Special Case Nos.11 of 2012 alongwith 14 of 2012, 5 of 2014, 5 of 2015, 15 of 2015 and 20 of 2016 is quashed and set-aside.

(ii) The Appellant be enlarged on bail, on his executing PR Bond in the sum of Rs.1,00,000/- with one or more solvent local sureties in the like amount, to the satisfaction of the learned Judge, NIA Court.

(iii) After his release from jail, the Appellant shall report to the office of the

ATS, Mumbai (Respondent), on the first Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial.

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

(v) The Appellant shall not leave the jurisdiction of trial Court without the prior permission of the trial Court, till the conclusion of the trial.

(vi) Appellant shall surrender his passport, if any, before the NIA Court, before his actual release from jail.

(vii) Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Agency i.e. the Respondent herein.

(viii) Appellant to co-operate in conducting the trial of present case and attend the trial Court on all dates, unless specifically exempted.

(ix) Appellant shall file an undertaking with regard to clauses (iii) to (viii) before the trial Court, within two weeks of his release.

(x) If there is breach of any of the aforesaid conditions, the prosecution will be at liberty to seek cancellation of the Appellant's bail.

9.1) Appeal is allowed in the aforesaid terms.

10) It is made clear that, the observations made herein are *prima facie* in nature and for deciding the Application for bail only. The learned

Special Judge shall decide the main case on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

11) All the concerned to act on an authenticated copy of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)

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SANJAY
GHUGE
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