



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 261 OF 2023

Vaibhav Subhash Raut

(Accused no. 2)

Aged 44 years, Indian Inhabitant,
Residing at: Lakshadeep, First Floor,
BhandarAali, Sopara Village,
Nalasopara, Dist. Palghar

...Appellant

Versus

The State of Maharashtra (ATS)

...Respondent

Ms. Sana Raees Khan a/w Mr. Aniket Pardeshi for the appellant
Mr. K. V. Saste APP for the State

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 20th SEPTEMBER 2023

ORAL JUDGMENT: *(Per: Revati Mohite Dere, J.)*

1. Heard learned counsel for the parties.
2. Admit. Learned APP waives notice on behalf of the respondent-State. By consent, taken up for final disposal.

3. By this appeal, the appellant seeks his enlargement on bail in connection with CR No. 11 of 2018 registered with Kalachowki Police Station, for the alleged offences punishable under sections 4 and 5 of The Explosives Substances Act, 1908; Section 9(B) of The Explosives Act, 1884; Section 120-B of the Indian Penal Code; and section 16, 18 and 20 of Unlawful Activities(Prevention) Act,1967. ('UAPA').

4. Learned counsel for the appellant seeks bail on the ground of parity, on merits and on the ground of long incarceration of the appellant. She submits that co-accused Avinash Anant Pawar @ Ajit Dada has been granted bail by the Hon'ble Apex Court vide order dated 11th August 2022, on the ground, that the said accused had suffered incarceration for about 4 years and there is no likelihood of an early conclusion of his trial. She submits that two other co-accused i.e. Liladhar @ Vijay Lodhi and Pratap Judhisthir Hajra have also been enlarged on bail by this Court vide order dated 23rd March 2023, for the reasons spelt out in the said orders. She submits that the appellant is in the custody for more than 5 years with no prospect of his trial

concluding in the immediate near future. On merits, learned counsel submits that although, there is recovery of 8 crude bombs from the house of the appellant, the said house does not stand in the name of the appellant, nor are the bombs recovered under section 27 of the Indian Evidence Act. She further submits that even the godown from where 12 crude bombs are recovered, does not stand in the name of the appellant, but stands in the name of Om Sai Developers and that there is no documents on record, to show, that the appellant had purchased the said godown. She further submits that the alleged diary which is in the handwriting of the appellant was recovered from the garage, however, the contents therein, have not been corroborated by any witness.

5. Learned APP opposed the grant of bail. He submits that a diary was recovered at the instance of the appellant and the hand writing expert has opined that the hand writing is that of the appellant. He does not dispute the fact, that there is recovery of bombs even from co-accused Liladhar @ Vijay Lodhi i.e. recovery of three crude bombs.

6. Perused the papers with the assistance of learned counsel for the respective parties. According to the prosecution, the accused including the appellant are part of a conspiracy to destabilize India and destroy the sovereignty and integrity of India by indulging in some terrorist activity. The appellant is also said to be an active member of an organization (Sanatan Sanstha) of which the other co-accused are also alleged to be members. The object of this organization is stated to be to form a 'Hindu Rashtra', by secretly forming a terrorist gang within the State of Maharashtra and adjoining states. It is further alleged by the prosecution that in order to achieve the said object of the Sanatan Sanstha, the accused persons, including the present appellant collected or prepared crude bombs and stored explosives in his house and in the godown. It is further alleged that the appellant alongwith other accused also conducted recce of the places where the bombs were to be planted. It is further alleged that one of the aims of the members of the Sanatan Sanstha was to prevent screening of movies, holding of western cultural programmes and organisation of such events, such as the 'Sunburn' festival in Pune and other events, which according to

Sanatan Sanstha are perceived to be against the tenets of Hinduism, an ideology followed by the Sanatan Sanstha. According to the prosecution, there is sufficient evidence to show that the appellant is a member of such Sanatan Sanstha and during the house search, some crude bombs were found in his house as well as in the godown and therefore, it cannot be said that there is no prima facie evidence to connect the appellant to the conspiracy theory, as profounded by the prosecution.

7. We have perused the papers as well as the bail orders of the Apex Court enlarging co-accused Avinash Pawar @ Ajit Dada on bail, as well as, the Orders passed by this Court enlarging Liladhar @ Vijay Lodhi and Pratap Hajra on bail. The Apex Court released Avinash Pawar @ Ajit Dada on bail having regard to the fact, that the accused therein, had suffered incarceration for about 4 years and there was no likelihood of an early conclusion of the trial. As far as Liladhar @ Vijay Lodhi is concerned, he was enlarged on bail by this Court vide order dated 23rd March 2023. Evidence against Liladhar @ Vijay Lodhi was recovery of three crude bombs during the search of his

ancestral house, which recovery was not one under section 27 of the Indian Evidence Act. This Court noted that the house from where the three crude bombs were recovered was not owned by Liladhar @ Vijay Lodhi and was an ancestral house. As far as the allegation of holding training camps for imparting training to members of Sanatan Sanstha is concerned, this Court noted that there was no physical evidence in existence of such training camps nor any such evidence was brought to the notice by the prosecution. Infact, this Court in paragraph 12 of its order noted that Sanatan Sanstha is an organization which is not declared to be a banned or terrorist organization or a frontal organization by the terrorist group within the meaning and contemplation of Unlawful Activities (Prevention) Act, 2004. After noting the same, this Court in paragraph 13 noted, that except the bald statements of co-accused, there was no prima facie assurance that the said statements were correct, from the other material on record and as such, enlarged Liladhar @ Vijay Lodhi on bail.

8. As far as co-accused Pratap Hajra is concerned, this Court in its

order dated 23rd March 2023 noted that although one mobile handset having sim-card number XXX was found and seized from Pratap Hajra and, reliance placed on CDR's to show that the appellant was in touch with co-accused Sudhanwa Gondhlekar, appears to be doubtful. It is the prosecution case, that Pratap Hajra would attend the office of Sudhanwa Gondhlekar and that he would take part in the discussions in his office regarding preparation of bombs, use of explosive material for committing terrorist crimes, use of fire arms and so on and that the seizure of the diary from the office of Sudhanwa Gondhlekar prima facie shows the involvement of the appellant in the crime. This Court while granting bail to Pratap Hajra noted that as far as seizure of mobile handset is concerned, there was no prima facie evidence to show that the mobile handset or sim card of the said number was issued in the name of Pratap Hajra or that he was found in possession of the said mobile alongwith the sim card of the year 2020, whereas, the discussions and criminal conspiracy allegedly hatched are of the year 2017. This Court further noted in paragraph 7 of its order that there was prima facie necessity to connect Pratap Hajra to the

incriminating discussions and criminal conspiracy of the year 2017 or to the ownership of mobile handset or the sim card and that the same was absent as far as Pratap Hajra is concerned. This Court further noted that although the mobile and the sim card was seized from the possession of Pratap Hajra in 2020, the possibility of the said mobile handset being used by somebody else cannot be ruled out. As far as the alleged incriminating entries in the diary is concerned, this Court in para 8 noted as under:

“8. As regards the alleged incriminating entries in the diary, we must say that these entries by themselves, without there being any further evidence establishing a link between these entries and actual crime, would constitute hardly any incriminating evidence against the appellant.”

9. Accordingly, this Court granted bail to Pratap Hajra.

10. As far as the appellant is concerned, there is alleged recovery of 8 crude bombs from his residence. Admittedly, the house does not stand in the name of the appellant but stands in the name of his father.

It is also pertinent to note that the said recovery of 8 crude bombs is not under section 27 of the Indian Evidence Act, but the crude bombs were seized prior to the arrest of the appellant. As far as recovery of 12 crude bombs from the godown allegedly used by the appellant is concerned, the said godown does not stand in the name of the appellant but stands in the name of Om Sai Developers. According to the learned prosecutor, although there is no document evidencing the same, some amount was handed over by the appellant to Om Sai Developers towards its purchase. The said recovery from the godown is also not under section 27 of the Indian Evidence Act, but, was effected prior to the arrest of the appellant. As far as recovery of diary from a garage at the behest of the appellant is concerned, it appears that the handwriting expert has opined that the said diary is in the hand writing of the appellant. According to the prosecutor, the entries will show that the planning was done by the appellant and other co-accused for preparation of crude bombs. Prosecution has not been able to show that the contents of the diary are corroborated by any other statements of any witnesses or any other document on record. The

allegation by the prosecution is that it was the intention of the accused to plant bombs at the 'Sunburn' festival which was to be held in Pune which for some reason could not take place as the police got a tip off of the same. Pursuant to the said information received by the police, the plan to plant bomb did not materialize.

11. It is pertinent to note that the minimum sentence that can be awarded under the provisions of the UAPA is 5 years and the same can extend upto life imprisonment. The appellant is in custody and had been incarcerated for the last 5 years. Learned APP, on instructions of the officer who is present, states that the prosecution intends to examine about 417 witnesses. It is not disputed that till date only 4 witnesses have been examined by the prosecution. It is also not in dispute that co-accused Avinash Pawar @ Ajit Dada, Liladhar @ Vijay Lodhi and Pratap Hajra have been enlarged on bail by the Hon'ble Apex Court and this Court as noted above.

12. The Hon'ble Apex Court in **Union of India Vs. K. A. Najeeb**¹ in paragraph 15 and 18 has noted as under:

¹ 2021(3) SCC 713

“15 . The facts of the instant case are more egregious than these two above-cited instances. Not only has the Respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, two opportunities were given to the Appellant-NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co-Accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can therefore be legitimately expected that if found guilty, the Respondent too would receive a sentence within the same ballpark. Given that two-third of such incarceration is already complete, it appears that the Respondent has already paid heavily for his acts of fleeing from justice.

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.”

13. Similarly, in **Angela Harish Sontakke Vs. State of Maharashtra**² the Apex Court granted bail and enlarged the appellant therein on bail after framing of charge against the appellant therein under UAPA and under the IPC provisions, after noting that no doubt the charges were serious but the seriousness of the charges will have to be balanced with certain other factors like the period of custody suffered and the likely period within which the trial can be expected to be completed.

² SLP (Crl) No. 6888 of 2015

14. Learned counsel for the appellant has tendered an affidavit-cum-undertaking by the appellant duly affirmed before the Jailor-Grade II, Mumbai Central Prison, Mumbai. Same is taken on record. In the said affidavit-cum-undertaking, appellant has undertaken not to contact the prosecution witnesses; not to tamper with evidence; to regularly attend the trial with his advocate and to extend cooperation for expeditious completion of his trial. The appellant has also undertaken not to leave the jurisdiction of Mumbai and Vasai-Virar, District-Palghar without the prior permission of the Trial Court. The appellant also undertaken that he shall not seek adjournment on any date. The said affidavit-cum-undertaking of the appellant is accepted.

15. Considering what is stated aforesaid, the impugned order dated 14th December 2022 rejecting the appellant's prayer for enlarging him on bail is quashed and set aside and the appellant is directed to be enlarged on bail on the following terms and conditions.

ORDER

I. Appeal is allowed.

II. Appellant be enlarged on bail on furnishing PR bond in the sum of Rs. 50,000/- with one solvent surety in the like amount.

III. Appellant shall not tamper with the prosecution witnesses/evidence.

IV. Appellant shall appear before the Trial Court on every date and will not seek any adjournment.

V. Appellant shall not leave the jurisdiction of Mumbai and Vasai-Virar, District-Palghar without the prior permission of the Trial Court.

VI. The affidavit-cum-undertaking tendered by him before this Court shall also be placed before the Trial Court by the appellant.

VII. The appellant shall file an undertaking before the Trial Court within two weeks of his release to comply with all the aforesaid conditions.

VIII. We make it clear that the observations are prima facie in nature and the learned Trial Judge to conduct the trial on its own merits, uninfluenced by the same.

16. Appeal stands disposed of.

17. All parties to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.