

2022 SCeJ 1333

Supreme Court of India

JUSTICE UDAY UMESH LALIT JUSTICE ANIRUDDHA BOSE JUSTICE SUDHANSHU DHULIA

DR. P. VARAVARA RAO v. NATIONAL INVESTIGATION AGENCY & ANR.

CRIMINAL APPEAL NO.1206 OF 2022

10th August 2022

Unlawful Activities (Prevention) Act, 1967 - S.45-D(5) - CrPC S. 438 - Bail - Medical grounds .

Petitioner Counsel: Mr. Anand Grover, Ms. Nupur Kumar, Mr. Paras Nath Singh, Mr. Neeraj Yadav, Mr. Susan Abraham, Mr. R. Satyanarayan, Ms. Nilima Dutta, Mr. Aditya Chitle, Mr. Rohin Bhatt

Respondent Counsel: Mr. Suryaprakash V. Raju, Mr. Kanu Agrawal, Ms. Swati Ghildiyal, Ms. Sairica Raju, Mr. Annam Venkatesh, Mr. Arvind Kumar Sharma

JUDGEMENT

CRIMINAL APPEAL NO.1206 OF 2022

(Arising out of SLP (Crl.) No.5913 of 2022)

1. Leave granted.
2. This appeal challenges the judgment and order dated 13.04.2022 passed by the High Court of Judicature at Bombay in Interim Application No.2018 of 2021 in Criminal Appeal No.52 of 2021 preferred by the present appellant.
3. The appellant, presently 82 years of age, was kept in house arrest on 28.08.2018, whereafter regular custody was obtained by ACP Swargate, Pune on 17.11.2018 in connection with the instant crime. The police thus had the benefit of custodial interrogation though we are not strictly concerned with that facet of the matter as the instant case revolves around the issue of grant of bail on medical condition of the appellant.
4. By order dated 22.02.2021, the Division Bench of the High Court of Bombay while considering Criminal Appeal No.52 of 2021 and Criminal Writ Petition Nos.63 and 64 of 2021 noticed certain salient features including the medical condition of the appellant in paragraph 72 of its order. Said paragraph 72, for facility, is quoted hereunder:

"72. We have perused the entire record in detail and we find that certain undisputed facts can be deduced, which are as follows:

“(a) The undertrial is aged 82 years and he suffers from pre-existing health ailments i.e. piles, prostate enlargement, coronary artery disease, Oedema/Ansarca (swelling of feet), Hypertension, Sinusitis, Migraine and Vertigo.

(b) The undertrial suffered from deterioration of his health at the Taloja Central Prison in May 2020 itself. He was admitted to the J.J. Hospital but the papers pertaining to the said period of his admission to the J.J. Hospital were not brought on record by the respondents.

(c) The medical papers pertaining to the stay of the undertrial in the J.J. Hospital in July 2020 show that he had to be admitted due to deterioration of health, electrolyte imbalance as a result which he was showing signs of delirium. He was bleeding from rectum and he had Urinary Tract Infection causing urinary inconvenience and loss of control of urination.

(d) The undertrial suffered a fall from bed due to which he suffered a cut on his forehead, which had to be stitched/sutured. He had difficulty in walking and he was disoriented.

(e) The undertrial was found to be Covid-19 positive due to which he was shifted to the St. George’s Hospital, which was a recognized Government facility for Covid-19 patients. In the St. George’s Hospital, it was recorded that the undertrial was suffering from delirium and perhaps dementia, requiring treatment for electrolyte imbalance and other ailments noted above.

(f) The health of the undertrial deteriorated further, complicated by having contracted the Covid-19 virus and, at this stage due to the intervention of NHRC, the undertrial was shifted to Nanavati Hospital.

(g) During his stay in the Nanavati Hospital between 19/07/2020 and 27/08/2020, the medical reports consistently showed that he was talking in an irrelevant manner and that he was showing signs of delirium and he was suffering from tremors. In view of his Urinary Tract Infection and complications, the catheter had to be used.

(h) Upon being abruptly discharged from the Nanavati Hospital, the said Hospital gave specific instructions as regards the close monitoring of his health conditions even after discharge.

(i) Upon discharge, the undertrial was lodged in Taloja Central Prison Hospital where the close monitoring expected in terms of the instructions given by the Nanavati Hospital could not be undertaken.

(j) The respondents have not been able to place any contra material on record as regards specific statements made on behalf of the undertrial in the petitions that there were only three Ayurvedic Practitioners in the Taloja Central Prison Hospital with no nursing staff and that the undertrial prisoners were being asked to perform the task of attendants in respect of ailing inmates like the undertrial before this Court.

(k) In this situation, when the health condition of the undertrial deteriorated further at the intervention of this court in the said writ petitions, the undertrial was shifted to the

Nanavati Hospital again, where he had to undergo extensive treatment for various health ailments noted above. It was found that the catheter was not removed for about three months, leading to complications. It was only after detailed treatment and constant monitoring that the health of the undertrial improved, which is reflected in the medical reports dated 12/01/2021 and 27/01/2021 submitted by the Nanavati Hospital before this Court.

(l) In all the medical papers before this court, from the records of the J.J. Hospital to the St. George's Hospital and Nanavati Hospital, as also the medical report dated 12/11/2020 submitted by the Superintendent of Taloja Central Prison, it has been recorded that the undertrial is suffering from brain atrophy, age related cerebral cortical atrophy along with hypertension with BPH with recurrent hyponatremia and recurrent urinary tract infection.

(m) There is no denial about the fact that the said bacterial infection suffered by the undertrial pertains to a highly drug resistant bacteria having propensity of recurrent bouts."

5. In light of the aforesaid observations the Division Bench of the High Court proceeded to grant bail for a period of six months on medical condition, the operative part of said Order being:

"92(a) The writ petitions are allowed in the following terms.

(b) The undertrial – Dr. P.V. Varavara Rao is directed to be discharged from the Nanavati Hospital depending upon his health condition as on today and he be released on bail, for the present, for a period of six months on his furnishing a P.R. Bond of Rs.50,000/- and two solvent sureties in the like amount, subject to the following conditions.

(c) The undertrial shall not leave the jurisdiction of the NIA Court at Mumbai on being released on bail. He shall reside within the said jurisdiction. He shall inform the NIA Court immediately about his place of residence within the said jurisdiction and his contact numbers, as also those of his relatives residing with him.

(d) The undertrial shall attend the proceedings of trial before the NIA Court as and when he is specifically summoned in respect of NIA Special Case No.414 of 2020. However, he may apply for exemption from personal appearance before the NIA Court and, if such an application is made, the said court shall decide the same in accordance with law.

(e) The undertrial shall report to the nearest police station through WhatsApp Video Call fortnightly. The concerned police officers to allow such reporting through WhatsApp Video Call.

(f) The undertrial shall not make any statement regarding the aforesaid proceedings pending before the NIA Court in any form of media i.e. print media, electronic media, etc. including social media.

(g) The undertrial shall not indulge in any activity similar to the activities on the basis of which the said FIR stood registered against him for offences under the IPC and UAPA.

(h) The undertrial shall not try to establish communication with co-accused or any other person involved directly or indirectly in similar activities or make any international call to any person indulging in similar activities as alleged against him, through any mode of communication.

(i) The undertrial shall not undertake any action which is prejudicial to the proceedings before the NIA Court.

(j) The undertrial shall not personally or through anyone make any attempt to influence witnesses or tamper with the evidence.

(k) There shall not be any gathering of visitors, other than near relatives, where the undertrial shall reside, within the jurisdiction of the NIA Court.

(l) On completion of period of six months, the undertrial shall surrender to the jail authorities, or he may apply for extension, depending upon his health condition supported by medical examination reports.

(m) The undertrial shall surrender his passport before the NIA Court within one week of his release.

(n) In the event, the undertrial violates any of the aforesaid conditions, the relief of bail granted by this Court will be liable to be cancelled."

6. Thus, in terms of sub-para (l) of the operative part of the Order, the appellant was obliged to surrender to the jail authorities on completion of period of six months but he was given liberty to apply for extension depending upon his health condition supported by medical reports.

7. It is pursuant to this liberty that Interim Application No.2018 of 2021 came to be preferred by the appellant seeking extension of the facility of bail granted earlier on medical condition.

CRIMINAL APPEAL NO.1207 OF 2022

(Arising out of SLP (Crl.) No.5931 of 2022)

8. Leave granted. This appeal challenges the judgment and order dated 13.04.2022 passed by the High Court of Judicature at Bombay in Writ Petition No. 461 of 2022.

9. The aforesaid Writ Petition was filed by the appellant praying that the appellant be granted permanent bail on medical grounds in connection with the same crime. In support of the prayer for relief of bail, certain documents were relied upon.

10. Interim application No. 2018 of 2021 and Writ Petition No. 461 of 2022 were taken up for hearing together. It was submitted inter alia that considering the age of the appellant and the ailments he suffered from; and the fact that his condition had not improved but had deteriorated to certain extent, the condition regarding surrender be deleted and permanent

bail be granted to the appellant. These submissions were stoutly denied and countered by the respondent.

11. After considering the rival submissions, the Division Bench of the High Court extended the period only for three months on same terms and conditions as were set out in paragraph 92 of the Order dated 22.02.2021. That extended period came to an end on or about 12.07.2022. The interim application No. 2018 of 2021 and Criminal Writ Petition No. 461 of 2022 were thus disposed of.

12. The instant petitions for special leave to appeal, from which the present criminal appeals arise, were preferred on or about 20.06.2022 and under ad-interim orders passed by this Court, the period of bail was extended and continues even today.

13. Mr. Anand Grover, learned Senior Advocate appearing for the appellant in both the appeals submits that considering the age of the appellant and the ailments that he suffers from, the release of the appellant on bail ought not to be limited in point of time but may be granted permanently without fixing any such condition. Mr. Grover, therefore, submits that this Court may grant the appropriate relief either by deleting the original condition placed in the order dated 22.02.2021 or by granting permanent bail on medical grounds.

14. Mr. S.V. Raju, learned Additional Solicitor General appearing for the respondents in both the appeals has vehemently opposed the submissions made by the appellant. It is submitted that the material on record shows involvement of the appellant in a deep rooted conspiracy and as such, going by the letter and spirit of Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 the appellant is not entitled to the relief of bail. Some of the documents placed on record have been adverted to by Mr. Raju, learned Additional Solicitor General.

15. In rejoinder, Mr. Anand Grover, learned Senior Advocate has placed reliance on the decision of this Court in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, and particularly paragraph 17 of the decision, which is to the following effect:

"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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

16. We need not go into the rival contentions as some of the notable factual aspects which emerge from the record are:

“a. The appellant is 82 years of age.

b. He was taken in custody initially on 28.08.2018 and has actually spent 2½ years of custody, leaving aside the period for which benefit of bail was granted pursuant to the order dated 22.02.2021.

c. Though the charge-sheet has been filed, some of the accused are still not apprehended and the matter has not even been taken up for consideration whether the charges need to be framed against the accused who are presently before the Trial Court or not.

d. Various applications preferred by the accused seeking discharge are still pending consideration.

e. The medical condition of the appellant has not improved to such an extent, over a period of time, that the facility of bail which was granted earlier be withdrawn.

17. Considering the totality of circumstances, in our view, the appellant is entitled to the relief of permanent bail on medical grounds.

18. We, therefore, grant bail to the appellant by deleting the condition which was placed in the Order dated 22.02.2021 limiting the relief in terms of time. We therefore direct as under:-

a. The appellant shall present himself before the Trial Court within seven days from today with advance intimation to the Public Prosecutor. The Trial Court shall then direct release of the petitioner on permanent bail, on medical grounds, subject to such conditions as the Trial Court may deem appropriate to impose.

b. It shall be the conditions of bail that:

i. The appellant shall not leave the area of Greater Mumbai without the express permission from the Trial Court.

ii. The appellant shall not in any way misuse his liberty nor shall he get in touch with any of the witnesses or try to influence the course of investigation.

c. Any infraction of the conditions shall entail in cancellation of bail granted to the appellant.

d. The appellant shall be entitled to have the medical attention of his choice but shall keep the respondent authorities in touch with any such development including the medical attention received by him.

e. It is made clear that the benefit of bail is extended to the appellant only on his medical condition.

f. Any observations made in this order are purely from the standpoint of narration of events and shall not be taken as a reflection on merits of the matter or touching upon the rival

contentions advanced by the parties.

19. Criminal Writ Petition No. 461 of 2022 and interim application No. 2018 of 2021 preferred in Criminal Appeal No. 52 of 2021 shall stand disposed of in aforesaid terms.

20. The instant Criminal Appeals are accordingly allowed.