ABC 2025(I) 519 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(J.B. Pardiwala & R. Mahadevane, JJ.)

Criminal Appeal no. 738 of 2025

(Arising Out of Special Leave Petition (Crl.) No. 15971 of 2024)

(From Allahabad High Court)

Decided on : 14 February 2025

TAPAS KUMAR PALIT - ***Appellant(s).***

Versus

STATE OF CHHATTISGARH - ***Respondent(s).***

Law Covered :- (A) Unlawful Activities (Prevention) Act, 1967 – Sections 10, 13, 17, 38(1)(2), 40 – Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 – Sections 8(2), (3), (5) – Indian Penal Code, 1860 – Sections 120B, 201, 149 r/w 34 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 61(2), 238, 190 r/w3(5)) – Grant of Bail – Prolonged Trial & Right to Speedy Trial – Accused apprehended while traveling in a vehicle alleged to be carrying items linked to Naxalite activities – Recovery of items including electric wires, walkie-talkies, and printed cloth – Charge sheet filed – Accused in custody since March 2020 – No criminal antecedents – Panch witnesses turned hostile – Trial in progress, 42 out of 100 witnesses examined – Indeterminate timeline for trial completion – Held, indefinite incarceration as an undertrial violates the accused's fundamental right under Article 21 of the Constitution – Bail granted with conditions including territorial restrictions & mandatory online appearance before the trial court. (Paras 1-16)

Facts :- *The appellant was arrested in March 2020 while traveling in a vehicle allegedly carrying materials associated with Naxalite activities. He was charged under various provisions of the UAPA, the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, and the IPC. Despite the commencement of the trial and examination of 42 out of 100 witnesses, the State failed to provide an estimated timeline for trial completion. The Supreme Court noted that indefinite detention without trial violates Article 21 of the Constitution, particularly in the absence of prior criminal antecedents and the fact that key witnesses had turned hostile. The Court emphasized the responsibility of prosecutors in managing trial efficiency and ensuring that only relevant witnesses are examined. Accordingly, the appellant was granted bail with conditions, including restrictions on entering Kanker district and mandatory online appearances before the trial court.*

Law of Relief :- Prolonged incarceration without trial

completion violates the accused's fundamental right to a speedy trial.

***Counsel* :-** ***For Appellant(s)*:** *Mr. Sameer Shrivastava, Adv.* a

***For Respondent(s)*:** *Mr. Prashant Kumar Umrao, Adv.*

***Cases Referred* :-**

Malak Khan v. Emperor, AIR 1946 Privy Council 16. (Para 13)

ORDER b

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Chattisgarh at Bilaspur dated 16.02.2024 in Criminal Appeal No.1951 of 2023 by which the High Court dismissed the Criminal Appeal filed by the appellant herein (original accused) and thereby declined to release him on bail in connection with Sessions Case No.32/2020 arising from the First Information Report bearing no.9/2020 dated 24th March, 2020 registered for the offence punishable under Sections 10, 13, 17, 38(1)(2), 40, 22-A and 22-C respectively of the Unlawful Activities Prevention Act, 1967 (for short "the UAPA"), Sections 8(2), (3) and (5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 and Sections 120B, 201 and 149 read with 34 of the Indian Penal Code, 1860. c d e

3. It is the case of the prosecution that the appellant herein on 24th March, 2020 was travelling in a vehicle bearing registration no. CG-07/AH-6555. The police had information that the above numbered vehicle is to pass by and the same is carrying articles ordinarily used relating in the Naxalite Activities. Accordingly, the vehicle was intercepted. f

4. The search was undertaken and the following articles were recovered from the car alleged to be in conscious possession of the appellant herein: (i) 95 pair of shoes (ii) green black printed cloth (iii) two bundles of electric wire each of 100 meters (iv) LED lens and (v) walki talki and other articles. g

5. The appellant was arrested on the very same date i.e. 24th March, 2020. At the end of the investigation charge-sheet came to be filed. h

6. The trial is in progress. Till this date the prosecution has been able to examine 42 witnesses. The prosecution intends to examine as many as 100 witnesses. We are conscious of the Order passed by us taking the view that once the trial commences and the witnesses are being examined then in serious crimes like murder,

dacoity, rape, etc, the Court ordinarily should not exercise its discretion for the purpose of grant of bail, more particularly, looking into the evidence which has come on record.

7. However, this is a case in which the appellant is in custody as an under trial prisoner since 24th March, 2020. He has no other antecedents. The panch witnesses to the recovery panchnama have also turned hostile.

8. It's been now 5 years that he is in judicial custody. The learned counsel appearing for the State has no idea as regards the time likely to be consumed to complete the recording of the oral evidence.

9. In such circumstances, we are left with no other option but to order release of the appellant on bail. We do not undermine the seriousness of the crime that has been alleged.

10. However, many times we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.

11. Before we close this matter, we would like to observe as to why the Public Prosecutor wants to examine 100 witnesses. Who are these 100 witnesses? We are aware that it is the public prosecutor who could be said to be in-charge of the trial and he has to decide who is to be examined and who is to be dropped. But at the same time, no useful purpose would be served if 10 witnesses are examined to establish one particular fact.

12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion in so far as examination of the witnesses is concerned.

13. Where the number of witnesses is large, it is not, in our opinion, necessary that everyone should be produced. In this connection, we may refer to Malak Khan vs. Emperor [AIR 1946 Privy Council 16] where their Lordships observed as follows at page 19:

> "It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a Court ought, and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it

must judge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses."

14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witness might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons – who remain innocent until proven guilty – can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.

16. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside. The appellant is ordered to be released on bail forthwith subject to terms and conditions as may be imposed by the trial court.

17. However, we direct that the appellant shall not enter into the revenue limits of district Kanker, State of Chhattisgarh. He shall appear on-line on each date of the hearing before the trial. It is only in the last when his further statement under Section 313 of the Cr.P.C. is to be recorded, he shall personally remain present before the Trial Court. For this limited purpose, he shall enter into district Kanker.

18. We make it clear that if the appellant commits breach of the condition in any form as imposed by us, the bail shall stand automatically cancelled.

19. Pending application(s), if any, stand disposed of.

***Result*:-** Appeal allowed, impugned order set aside. Bail granted with conditions including territorial restrictions & mandatory online appearance before the trial court.

ABC 2025(I) 523 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(J.B. Pardiwala & R. Mahadevan, JJ.)

Criminal Appeal No. 1588 of 2015

(From Allahabad High Court)

Decided on : 23 January 2025

STATE OF UTTAR PRADESH - ***Appellant(s).***

Versus

RAGHUVIR SINGH - ***Respondent(s).***

Law Covered* :-** ***(A) Criminal Procedure Code – Section 378 (BNSS, 2023 – Section 419) – Indian Penal Code – Section 302 (Bharatiya Nyaya Sanhita, 2023 – Section 103) – Appeal Against Acquittal – Evidentiary Gaps & Omission of Key Accused in FIR – Delay of 14 hours in lodging FIR without proper explanation – Omission of co-accused names despite alleged eyewitness account – Trial court convicted accused based on eyewitness testimony – High Court reappreciated evidence & disbelieved prosecution witnesses due to inconsistencies – Held, unnatural conduct of witnesses & unexplained delay rendered prosecution case doubtful – Absence of corroborative evidence – Acquittal upheld. (Paras 1-35)

(B) Indian Evidence Act – Section 27 (Bharatiya Sakshya Adhiniyam, 2023 – Section 23) – Discovery of Weapon – Lack of Independent Corroboration – Weapons allegedly recovered at accused's instance – Independent Panch witnesses failed to support recovery memo – Held, failure to prove discovery beyond reasonable doubt undermines prosecution case – Acquittal justified. (Paras 20-28)

(C) Criminal Jurisprudence – Credibility of Defence Evidence –