IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2421 OF 2023

Kartik Mohan Prasad,
Aged 43 years, Indian Inhabitant,
permanently residing at Flat No.
D-105, Mary Gold Co.Op. Hsg. Soc. Ltd.
Thakur Village, Kandivali (E),
Mumbai-400 101 and at present
lodged in Taloja Central Prison,
Taloja .....Petitioner

Vs.

1. State Of Maharashtra,
(At the instance of the Director
General of Police (Maharashtra),
Office of the Director General of
Police, Police Headquarters,
Shahid Bhagat Singh Road,
Mumbai-400 001.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Crawford Market,
Mumbai-400 001.

3. The Senior Inspector of Police,
Economic Offiences Wing,
(EOW), Unit-9, Crime Branch,
Mumbai-EOW C.R.No.73/16. .....Respondents

Mr. Subhash Jha (Through VC) with Mr. Samir Vaidya, Ms. Neha Balani, Ms. Komol Thakur & Ms. Apeksha Sharma, i/b. Law Global Advocates, for the Petitioner.
Mr. Sandeep Karnik, Special Public Prosecutor with Mr. V. N. Sagare, APP, for Respondents-State.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.
RESERVED ON : 12th JULY, 2024.
PRONOUNCED ON : 18th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale) :-

1) The present proceedings are peppered with a chequered history. The quintessential thrust, however, is on the Petitioner's grievance of being incarcerated for more that seven and half years for offences for which he claims to have undergone the maximum sentence. The protest of the Petitioner against his prolonged incarceration traveled up to the Apex Court by way of separate Special Leave Petitions against Orders passed by this Court rejecting his Bail Application/s as well as on admission of the present Petition on a limited issue. All the SLP's were dismissed *albeit* with certain observations/directions. In reference to the Special Leave Petition against the Order on a limited admission of this Petition, the Supreme Court vide its Order dated 1st April 2024 granted liberty to the Petitioner to make submissions on all reliefs claimed in this Petition. We were requested to consider all the submissions made on merits and dispose off this Petition expeditiously considering the long incarceration of the Petitioner. In this backdrop, the matter was taken up for final disposal.

2) Vide Order dated 5th September 2023, this Petition was admitted only in terms of prayer clause (b) raising an arguable issue, as to whether an accused while being tried under the provisions of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 ("MPID Act") can simultaneously be tried under the Indian Penal Code, 1860. Pursuant to the Judgment and Order dated

1st April 2024 passed by the Supreme Court in SLP (Criminal) Diary No 51460 of 2023, Rule is issued on all the prayers in the Petition and is made returnable forthwith. With the consent of the parties, the matter is heard finally.

3) After the matter was heard for some time, Mr. Subhash Jha, learned counsel representing the Petitioner on instructions sought leave to withdraw all prayers in the Petition save and except prayer clause (f) seeking to be set at liberty on account of having suffered long incarceration as an under trial for the maximum period with which he claims, he could be convicted. We thus, restrict our finding only to this prayer, reserving liberty to the Petitioner to raise all other issues before the trial Court during the trial.

3.1) Trial has progressed, charge has been framed-two witnesses have been examined.

4) Shorn of unnecessary details, the facts of the case are that, F.I.R.No. 223 of 2016 was registered at the Vanrai Police Station, Mumbai for offences punishable under Sections 406, 409, 420 and 120-B of the Indian Penal Code. The investigation was subsequently transferred to the Economic Offences Wing, Unit-9, Crime Branch, Mumbai (EOW) and the said crime was renumbered as C.R.No.73 of 2016 with addition of offences under Sections 3 and 4 of the MPID Act. Section 2 of the MPID Act was added in the form of alteration of charge. The MPID Special Case No.8 of

2016 arising from the above is now pending before the Addl. Sessions Judge, City Civil and Sessions Court, Greater Mumbai ("Designated Court"). Charges are framed vide Order dated 14th February 2023 and the prosecution has examined two witnesses.

5) The contention of the First Informant one Dr. Kedar N. Ganla, a Gynecologist and Fertility Physician is that, he was introduced to the Petitioner in April 2013 by common friends. The Petitioner and his wife represented that, they operated various financial schemes of long and short-term maturities with high assured returns. They gave attractive presentations and lured the informant and his friends into investing huge amounts in various funds. It is his say that during the period between 27th November 2013 and 30th October 2014, he invested Rs.9.65 Crores through cheques and cash through various entities of the Petitioner's family. The general terms of the scheme assured a return of 180% over and above the principal invested amount. Despite requests made by the informant, the Petitioner refused to execute agreements. The informant received only Rs.93,67,500/- and the Petitioner and his wife defaulted in repaying further amounts on maturity of the investments. According to the informant, 19 of his friends are duped by the Petitioner and his family to the tune of approximately Rs.35 crores. Thus, the informant lodged the impugned F.I.R.

6) On the prayer relating to bail, Mr. Jha submits that the

Petitioner has already undergone maximum sentence for offences punishable under the MPID Act and under Section 420 of the I.P.C. He thus, vehemently argues that even a day of further incarceration of the Petitioner is a gross violation of his right to life and liberty. He contends that, the MPID Act, being a special statute prescribes for imprisonment for a term which may extend to six years and thus the quantum of punishment can never exceed six years. He further says that, the MPID Act does not create any embargo in the matter of bail as is created in different statutes such as the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Maharashtra Control of Organised Crime Act, 1999, the Narcotic Drugs And Psychotropic Substances Act, 1985 and the Unlawful Activities (Prevention) Act, 1967, etc. Even otherwise, long incarceration entitles an accused to be set free as held by the Supreme Court in its many decisions. Thus, the crux of the arguments of Mr. Jha is that, the Petitioner could not, under any circumstances, be detained for a period of time much less beyond the period for which he could eventually be convicted. Mr. Jha placed reliance on the following judgments of the Supreme Court and the Bombay High Court:-

i) *Union of India vs K.A Najeeb,*[1]

ii) *Ashim @ Asim Kumar Bhattacharya Vs NIA,*[2]

1 (2021) 3 SCC 713.
2 (2022) 1 SCC 695.

iii) *Shaheen Welfare Association Vs Union of India,*[3]

iv) *Paramjit Singh Vs State (NCT of Delhi),*[4]

v) *Babba Vs State of Maharashtra,*[5]

vi) *Umarmia Vs State of Gujarat,*[6]

vii) *Sachin Atma Vartak Vs State of Maharashtra,*[7]

viii) *Kaushal Jagdish Dube and another Vs State of Maharashtra,*[8]

7) Mr. Sandeep Karnik, Special Public Prosecutor representing the State emphatically resisted the prayer of the Petitioner for enlargement on bail. He traced the litigation history of the Petitioner as under.

7.1) Petitioner was arrested on 27th February 2017 in the present case;

7.2) He applied for bail before the Designated Court which vide its Order dated 19th December 2017 granted bail to the Petitioner on an undertaking that the Petitioner would deposit the entire amount involved in the case;

7.3) Petitioner applied for modification of the Order dated 19th December 2017. The Application was rejected by Order dated 6th February 2018 by the Designated Court;

7.4) Petitioner challenged Order dated 6th February 2018 before the

3 (1996) 2 SCC 616.
4 (1999) 9 SCC 252.
5 (2005) 11 SCC 569.
6 (2017) 2 SCC 731.
7 Order in Bail Application No.430 of 2021 dated 5th January 2022, Bombay High Court.
8 Order in Bail Application No.1852 of 2021 dated 27th February 2023, Bombay High Court

Single Bench of this Court. This Petition was withdrawn with leave to file a fresh Appeal which was granted by Order dated 29th November 2018;

7.5) A second modification Application was filed before the Designated Court. It was rejected by Order dated 21st June 2019;

7.6) The Petitioner preferred a Criminal Appeal No.912 of 2019 before the Division Bench of this Court. The said Appeal was rejected vide Order dated 16th October 2019;

7.7) Special Leave Petition (Cri) No.11093 of 2019 against Order dated 16th October 2019 was filed before the Supreme Court. The said SLP was dismissed by Order dated 11th December 2019;

7.8) An Application was filed by Petitioner before the Designated Court under Section 436-A of the Code Criminal Procedure (Cr.P.C) once again seeking bail. The Application was rejected by Order dated 6th October 2020.

7.9) An Application was again filed before this Court under Section 436-A of the Cr.P.C. It was rejected on 5th May 2022.

7.10) The Designated Court framed charges by its Order dated 5th November 2022. Supplementary charge sheet was filed and new accused were added. Thus, the charges were altered on 14th February 2023;

7.11) Bail Application No.3163 of 2023 was filed by the Petitioner before the Single Judge of this Court. Vide Order dated 22nd January 2024, this Court dismissed the Application holding that the Petitioner continues to

be in jail for non-compliance of bail condition to deposit an amount of Rs.32,52,80,000/-. The Court further observed that since the request to modify the bail condition was earlier denied by a Division Bench of this Court and by the Supreme Court, it is not within the powers of this Court to entertain the second Bail Application;

7.12) The Order dated 22nd January 2024 passed in B.A.No.3163 of 2023 was carried in SLP (Crl) No. 6241 of 2024 to the Supreme Court. The SLP was dismissed with liberty to the Petitioner to seek bail in changed circumstances.

7.13) In the meantime, by Order dated 5th September 2023, the Petition was partially admitted by this Court. This Order of partial admission was again challenged by the Petitioner in SLP (Crl.) Diary No.51460 of 2023. By Order dated 1st April 2024, the Supreme Court dismissed the SLP with liberty to the Petitioner to raise all submissions before this Court in the present proceedings, including the ground of bail and requested this Court to consider all the submissions of the Petitioner and decide this Petition expeditiously since the Petitioner is in jail for over seven years.

8) Mr. Karnik sought to advance arguments on the other issues in the Petition but we curtailed the same since the Petitioner had already made a statement withdrawing his prayer on other issues with liberty to raise them before the Designated Court, which liberty is granted by this

Court.

9) Thus, the upshot of the arguments of Mr. Karnik was that, the Designated Court directed release of the Petitioner vide its Order dated 19th December 2017 but the Petitioner chose to remain in jail as he failed to comply with the bail condition of depositing an amount of Rs.32,52,80,000/- in the Court. Mr. Karnik also states that, since the Supreme Court dismissed the SLP challenging a second Bail Application made by the Petitioner as recently as on 13th May 2024, this Court did not have the powers to grant bail to the Petitioner. He thus urges the Court to reject the prayer to grant bail to the Petitioner.

10) Heard both the counsels and perused entire record of the proceeding with their assistance. We have carefully read the decisions of the Supreme Court and this Court cited on behalf of both the parties.

11) Before delving on the merits of the Petition, it is necessary to set out the jurisprudence in matters of bails as developed by the Supreme Court. A five Judges Bench of the Apex Court in the case of *Kartar Singh vs State of Punjab*[9] in the matter relating to the repealed TADA, despite holding that the High Courts should refrain from exercising their jurisdiction in entertaining Bail Applications in respect of an accused indicted under the special Act, has also held that, at the same time it cannot be said that, the High Court has no jurisdiction under Article 226 of the

9 (1994) 3 SCC 569.

Constitution of India in appropriate cases. A Three Judges Bench of the Supreme Court in *Union of India v. K.A. Najeeb*[10] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under :

> *"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.*
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> *19. 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*

10 (2021) 3 SCC 713.

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.

20. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre−condition under the UAPA. Instead, Section 43-D(5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well−settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc."

12) In a recent decision in the matter of *Javed Gulam Nabi Shaikh* Vs *State of Maharashtra & Anr.,*[11] the Supreme Court has held as under: -

"9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

11 Order dated 3rd July 2024 in Criminal Appeal No.2787 of 2024, Supreme Court of India.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]: "I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."*

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11. The same principle has been reiterated by this Court in Gurbaksh Singh Sibba v. State of Punjab reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in Hussainara Khatoon v. Home Secy., State of Bihar reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and

content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

13. The aforesaid observations have resonated, time and again, in several judgments, such as *Kadra Pahadiya & Ors. v. State of Bihar* reported in (1981) 3 SCC 671 and *Abdul Rehman Antulay v. R.S. Nayak* reported in (1992) 1 SCC 225. In the latter, the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option: "The State or complainant prosecutes him. It is, thus, the obligation of the State or

the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In *Mohd Muslim @ Hussain v. State (NCT of Delhi)* reported in 2023 INSC 311, this Court observed as under:

> *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*
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> *22. The danger of unjust imprisonment, is that*

inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State reported in 1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts, therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

13) In another recent decision in the matter of *Sanjay Dubey vs*

State of Madhya Pradesh & Anr.,[12] the Apex Court has held thus:

> ***"12****. …. The High Court is a Constitutional Court, possessing a wide repertoire of powers. The High Court has original, appellate and suo motu powers under Articles 226 and 227 of the Constitution. The powers under Articles 226 and 227 of the Constitution are meant for taking care of situations where the High Court feels that some direction(s)/order(s) are required in the interest of justice. Recently, in B S Hari Commandant v. Union of India,* 2023 SCC OnLine SC 413*, the present coram had the occasion to hold as under:*
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> *"50. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful reference can be made to, amongst others,A Venkateswaran Vs. Ramchand Shobhraj Wadhwani, (1962) 1 SCR 573 and U P State Sugar Corporation Ltd. v. Kamal Swaroop Tandon, (2008) 2 SCC 41. The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to safeguard rights of citizens. For exactly this reason, this Court has never laid down any strait-jacket principles that can be said to have "cribbed, cabined and confined" [to borrow the term employed by the Hon. Bhagwati, J. (as he then was) in E P Rovaooa v. State of Tamil Nadu, (1974) 4 SCC 3: AIR 1974 SC 555] the extraordinary powers vested under Articles 226 or 227 of the Constitution. Adjudged on the anvil of Nawab Shaqafath All Khan supra), this was a fit case for the*

12 (2023) SCC OnLine SC 610.

> *High Court to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield."*
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> *(emphasis supplied)*

14) In another recent decision in the matter of *Ankur Chaudhary Vs State of Madhya Pradesh & Anr,*[13] the Apex Court while granting bail to the accused having undergone incarceration of two years observed as under:-

> *"…….. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered."*

15) In the case of Sachin Vartak *(supra)* a Single Judge of this Court has also held that, in view of the observations of the Supreme Court in aspects of bail, the Court has to perform a balancing act. Sympathy for under trials who are in custody has to be balanced with the gravity/ magnitude and likelihood of threat to witnesses and the analysis may be based on the facts of each case. This Court has also observed that prolonged custody infringes the right to life and liberty under Article 21 of the Constitution of India.

16) A well settled principle of law emerges from the above decisions of the Supreme Court (*supra*). It is clear that prolonged

13 Special Leave to Appeal (Cri.) No.4648 of 2024 dated 28th May 2024, Supreme Court of India.

incarceration without trial amounts to infringement of Article 21 of the Constitution of India. In the case at hand, admittedly the Petitioner has already undergone incarceration of seven and half years. There is a list of 37 witnesses given by the prosecution agency to be examined during the trial. It is unlikely that the trial will be expeditiously completed in near future.

17) The only argument advanced by the State contesting the bail plea is that the Petitioner having undertaken to deposit the entire amount involved as a condition of bail failed to comply with the same. The undertaking of the Petitioner is recorded in the Order of the Designated Court dated 19th December 2017. Much water had flown under the bridge and the Petitioner has undergone a further detention of seven years thereafter. The Petitioner has thus suffered additional incarceration for failing to deposit the entire amount. We do not find substance in this submission of the State.

18) Mr. Karnik hinges his further argument on the Order dated 13th May 2024 passed by the Supreme Court dismissing the SLP filed by the Petitioner assailing the rejection of his second Bail Application by a Single Judge of this Court. Learned Single Judge appears to have rejected the Bail Application on the basis that the Petitioner failed to deposit the amount involved in the case. Learned Single Judge has further held that, since the

Supreme Court refused to interfere in the earlier Order of this Court arising from the rejection of an Application of the Petitioner seeking modification of the condition of depositing the entire amount, the High Court does not have jurisdiction to entertain the Petitioner's plea in the second Bail Application.

19) In the entire factual matrix, Mr. Karnik seems to have overlooked the Order dated 1st April 2024 passed by the Supreme Court in a SLP filed by the Petitioner assailing the Order dated 5th September 2023 passed in the present proceeding partially admitting the Petition. *Albeit* the Order dated 1st April 2024 is prior to the Order dated 13th May 2024 passed by the Supreme Court, but both Orders specifically request this Court to expeditiously dispose the present Petition. Moreover, by Order dated 1st April 2024, the Supreme court has specifically asked this Court to consider all the submissions raised by the Petitioner in the present proceeding, including the prayer for bail. A harmonious reading of both the Orders dated 1st April 2024 and 13th May 2024 indicate that the Supreme Court expects this Court to dispose this Petition expeditiously and in its entirety.

20) Having withdrawn his other prayers as noted earlier, the Petitioner now urges the Court to consider restoring his liberty after having undergone seven and half years of incarceration. Considering the offences charged it is clear that, even if he is convicted and sentened to maximum

tenure, the Petitioner has already undergone maximum punishment prescribed under the MPID Act and Section 420 of the IPC. Admittedly the sole remaining section 409 IPC prescribes a maximum sentence of life. However, the same provision vests the Court with a discretion to sentence the accused to a term which may extend to ten years and fine instead of life sentence. Under Section 409 of the I.P.C. minimum sentence is not prescribed. Be that as it may, it will be appropriate to leave this issue to be decided by the Designated Court in the pending trial. We are thus of the considered view that since the Petitioner has already undergone the maximum sentence under the MPID Act and Section 420 of the IPC as levelled against him, condemning him to further incarceration is a violation of his right to life and liberty under Article 21 of the Constitution of India.

21) We are unable to appreciate the vociferous resistance of the State in contesting the bail plea of the Petitioner. In this regard, the views expressed by the Supreme Court in its decision in the matter of Javed Sheikh (*supra*) are significant. The Supreme Court observed as under: -

> *"19) If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed*

is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20) We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

22) In the light of the above discussion, we are inclined to allow prayer (f) of the Petition. We direct that the Petitioner be released forthwith. It would serve the best interest of justice and society at large to impose conditions as follows:

(i) The Petitioner shall fuinish a bail bond of Rs.One Lakh with one or two solvent local sureties to make up the amount;

(ii) The Petitioner shall attend all the dates in the trial without seeking any exemption from appearance except under dire circumstances, if permitted by the Designated Court; and

(iii) The Petitioner shall also mark his presence every week on Monday at 10 a.m. at the concerned Office of the EOW and inform in writing that he is not involved in any other new crime.

22.1) In case the Petitioner violates any of the above conditions or attempts to tamper with the evidence or influence witnesses or hamper the

trial in any other way, then the Designated Court shall be at liberty to cancel his bail.

23) Petition is partly allowed. Rule is partially made absolute in the above terms.

(DR NEELA GOKHALE, J.) (A.S. GADKARI, J.)

24) At this stage, learned counsel for the Petitioner submitted that, the Petitioner may be permitted to furnish cash security for a period of four weeks to enable him to submit solvent sureties as per clause No.22(i) of the present Judgment and Order.

24.1) Taking into consideration the fact that, the Petitioner is in pre-trial incarceration for more than seven and half years, we are inclined to accept the said request of the learned counsel for the Petitioner.

24.2) In view of the above, the Petitioner is permitted to furnish cash security of Rs.One Lakh within a period of four weeks from today to enable him to comply with the condition No.22(i) of the present Judgment and Order.

24.3) It is made clear that, the Petitioner shall not seek any extension of time for complinace of the said condition.

25) After pronouncement of the present Jugment, Mr. Karnik, learned Special Public Prosecutor prayed that, the operation and

implementation of the present Judgment and Order be stayed for a period of four weeks from today.

25.1) We are disheartened to note that despite the consistent view of the Apex Court on the subject of pre-trial bail and some of the decisions whcih we have relied upon in this judgment, the State exhibits a mindset and intent to continue to curtail the liberty of the Petitioner despite having undergone the maximum punishment in majority of the offences alleged against him.

25.2) To assail the correctness of our Order in the Apex Court is constitutional right, but in a democcracy, there can never be an impression that it is a Police State as both are conceptually opposite to each other. Admittedly, charges have been framed way back on 5th November 2022 and the trial is proceeding at a snail's pace. In these circumstances, we urge the State to have a relook at Paragraph 19 of the decision of the Supreme Court in Javed Shaikh's case reproduced by us in paragraph 21 of this Judgment. We say no more.

25.3) The request for stay of the operation and implementation of this Judgment is declined.

(DR NEELA GOKHALE, J.) (A.S. GADKARI, J.)