



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.52 OF 2021
(CRIMINAL APPEAL LDVC NO.143 OF 2020)

Dr. P.V. Varavara Rao,]
R/o. Himsai Heights, Flat No.419,]
Lane No.6, Jawahar Nagar, Kawali]
Gadda, Secunderabad, Telengana.]

[At present, lodged in Taloja Central]
Prison.]] ... Appellant

Versus

1. **National Investigation Agency,** an]
Agency constituted under the]
National Investigation Agency,]
Act, 2008, having its address at]
7th Floor, Cumbala Hill, MTNL]
Telephone Exchange Building,]
Pedder Roar, Mumbai – 400 026.]

2. **The State of Maharashtra.**] ... Respondents

ALONG WITH
CRIMINAL WRIT PETITION NO.63 OF 2021
(CRIMINAL WRIT PETITION (ST.) NO.4869 OF 2020)

Pendyala Hemalatha]
R/o. Flat No.419, Hima Sai Heights,]
Above Heritage Fresh, Street No.6,]
Jawahar Nagar, Gandhi Nagar,]
Hyderabad, Telangana – 500 020.] ... Petitioner

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Versus

1. **The State of Maharashtra,**]
(Through the learned Chief]
Prosecutor for State of]
Maharashtra).]

2. **National Investigation Agency,** an]
Agency, constituted under the]
National Investigation Agency]
Act, 2008 having its registered]
address at CGO Complex, Lodhi]
Road, New Delhi – 110 003 and]
having its Mumbai Office at 7th]
Floor, Cumbala Hill, MTNL]
Telephone Exchange Building,]
Pedder Road, Mumbai – 400 026.]

3. **The Superintendent of Taloja Jail,**]
Kharghar, Navi Mumbai, Raigad,]
Maharashtra – 410 210.] ... Respondents

ALONG WITH
CRIMINAL WRIT PETITION NO.64 OF 2021
(CRIMINAL WRIT PETITION (ST.) NO.6320 OF 2020)

Dr. P. V. Varavara Rao,]
R/o. Himsai Heights, Flat No.419,]
Lane No.6, Jawahar Nagar, Kawali]
Gadda, Secunderabad, Telengana.]
]]
[At present, lodged in Taloja Central]
Prison.]] ... Petitioner

Versus

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1. **National Investigation Agency**, an]
Agency, constituted under the]
National Investigation Agency,]
Act, 2008 having its address at 7th]
Floor, Cumbala Hill, MTNL]
Telephone Exchange Building,]
Pedder Road, Mumbai – 400 026.]

2. **The Superintendent**, Taloja]
Central Jail, Taloja, Navi]
Mumbai.]

3. **The State of Maharashtra.**] ... Respondents

...

Ms. Indira Jaising, Senior Advocate with Ms. Susan Abraham, Mr. Paras Nath Singh, Ms. Nilima Datta and Mr. Nihal Singh Rathod for the Petitioner in WP No.63 of 2021 and WP No.64 of 2021.

Mr. Anand Grover, Senior Advocate with Mr. R. Sathyanarayanan, Mr. Neeraj Yadav, Mr. Pratik Surti, Ms. Aparna Ashitvikar, Mr. Borun Kumar and Ms. Ujjaini Chatterjee for the Appellant in Criminal Appeal No.52 of 2021.

Mr. Anil C. Singh, A.S.G. with Mr. Sandesh Patil, Mr. Aditya Thakkar, Mr. Shriram Shirsat and Mr. D. P. Singh i/b Mr. Vishal Goutam for National Investigation Agency (NIA).

Mr. Deepak Thakare, Public Prosecutor for the Respondent/State.

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CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 01ST FEBRUARY, 2021

PRONOUNCED ON : 22ND FEBRUARY, 2021.

JUDGMENT:-

1. An appeal and two writ petitions have come up for consideration before this court for release of Dr. P.V. Varavara Rao, an accused and undertrial (hereinafter referred to as “**the undertrial**”) from custody, on the ground of his advanced age and precarious health condition.

2. The appeal being Criminal Appeal No.52 of 2021 has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (for short, “**the NIA Act**”) to challenge order dated 26/06/2020 passed by the Court of Special Judge for Greater Mumbai (hereinafter referred to as “**the NIA Court**”) in NIA Special Case No. 414 of 2020, whereby a bail application filed on behalf of the undertrial on the ground of old age and medical conditions, stood dismissed.

3. Criminal Writ Petition No.63 of 2021 has been filed by the wife of the undertrial with prayers for declaration that the respondents have failed to provide appropriate medical treatment

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to the undertrial in custody, thereby violating his fundamental right to health, dignity and life guaranteed under Article 21 of the Constitution of India, apart from violating International Covenants pertaining to Human Rights and for a direction to the respondents to set the undertrial at liberty on such conditions that this court may deem fit. In the said writ petition, further prayers are also made for shifting the undertrial to Nanavati Hospital at Mumbai and appointing a Medical Board for assessing the medical condition of the undertrial.

4. Criminal Writ Petition No.64 of 2021 was filed by the undertrial himself seeking a direction to respondent No.2 to produce the entire medical reports and to send him for medical check-up and for appropriate treatment.

5. Since arguable questions have been raised in the appeal and in the writ petitions, the appeal is admitted and Rule is granted in the writ petitions, making it returnable forthwith. The appeal as well as the writ petitions were finally heard with the consent of learned counsel appearing for the rival parties.

FACTS:

6. On 08/01/2018, a First Information Report (for short, “FIR”) bearing C.R. No.4 of 2018 was lodged at Vishrambaug

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Police Station, Pune City under Sections 153A, 505(1)(b), 117 and 34 of the Indian Penal Code (for short, “the IPC”) against six persons for speeches and songs performed at a meeting of Elgaar Parishad conducted on 31/12/2017. On 06/03/2018, Section 120-B of the IPC was added in the said FIR and the investigation was taken over by the A.C.P., Swargate Pune. The said official led a team and carried out raids at Pune and Mumbai on 17/04/2018, against the six accused persons named in the FIR and also against two suspected accused persons, one from Delhi and the other from Nagpur. Pursuant thereto, on 17/05/2018, Sections 13, 16, 17, 18, 18-B, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short, “the UAPA”) were added to the said FIR against the aforesaid six accused persons as also the two suspected persons.

7. On 06/06/2018, the subsequently added two accused persons were arrested, leading to search of their residences and arrest of two more accused persons. On 28/08/2018, the undertrial was arrested from his home at Hyderabad but, following directions of the Hon’ble Supreme Court, issued in the case of *Romila Thapar & Ors. v. Union of India*¹, the undertrial and four other arrested persons were kept under house arrest.

8. On 15/11/2018, charge-sheet was filed against some of the

¹ Judgment dated 28/09/2018 passed in Writ Petition (Criminal) No.260 of 2018



accused persons and the undertrial was taken into police custody from house arrest and he was taken to Pune. On 31/01/2019, the undertrial and other co-accused persons were arrested in C.R. No.35 of 2016 for offences under the IPC, UAPA, Arms Act and the Bombay Police Act. They were produced before the Court of Judicial Magistrate, First Class, Aheri, Gadchiroli. Thereafter, on 21/02/2019, a supplementary charge-sheet was filed against the undertrial and other accused persons in the present case for having committed offences under Sections 121, 121(A), 153(A), 505(1)(B), 117, 120(B), 124(A) read with Section 34 of the IPC and Sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAPA. The allegation against the undertrial is that he is a senior member of a banned organization-Communist Party of India (Maoist). He has been allegedly actively involved in arranging funding and providing arms and ammunition to the cadre of the said organization to wage war against the established Government, causing death of a number of security personnel and citizens.

9. The undertrial had filed a bail application in December, 2018 before the Sessions Court at Pune and on 06/11/2019, the said application was rejected. In the order rejecting the bail application, a finding was rendered that the material on record indicated that the accusations against the undertrial were *prima facie* true. On 21/12/2019, the undertrial filed Criminal Bail

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Application No.3640 of 2019 before this court, which is admittedly pending.

10. On 24/01/2020, the aforesaid case bearing C.R. No.4 of 2018 was taken over by the NIA and, consequently, the case stood transferred to the NIA Court pertaining to offences investigated by the aforesaid Agency. It was renumbered as NIA Special Case No. 414 of 2020. The undertrial and other accused persons were produced before the NIA Court in Mumbai and on 29.02.2020, they were sent to Talaja Central Prison in Navi Mumbai.

11. In March, 2020, the Covid-19 pandemic hit the nation. In this situation, a letter was addressed to the Superintendent of Talaja Central Prison stating that since the undertrial was a patient of respiratory issues, he ought to be lodged in confinement separately to avoid contracting the Covid-19 virus. Considering the manner in which the Covid-19 pandemic started spreading all over the country, the Hon'ble Supreme Court took *suo motu* cognizance of the matter and directed the States and Union Territories to constitute High Power Committees to determine which class of prisoners could be released on parole or interim bail.

12. On 25/03/2020, the High Power Committee constituted by the State of Maharashtra issued Guidelines for release of
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prisoners on interim bail in view of the Covid-19 pandemic. The undertrial applied for grant of interim bail on the ground of his advanced age and age-related health complications before the NIA Court. But, on 30/03/2020, the said application was rejected on the ground that those arrested under the UAPA were not entitled for grant of such interim bail.

13. On 11/05/2020, the High Power Committee issued a direction that notwithstanding the aforesaid Guidelines not permitting grant of bail to those arrested under the UAPA, it would be open to prisoners over the age of 60 years to apply for interim bail and that the courts would consider such applications on their individual facts after examining the medical reports and other relevant records. Therefore, on 15/05/2020, the undertrial applied for a second time for grant of interim bail. It was specifically stated that the undertrial was aged 81 years and that he was suffering from piles, prostate enlargement, coronary artery disease, Oedema/Anasarca (swelling of feet), Hypertension, Sinusitis, Migraine and Vertigo. On 22/05/2020, the NIA Court directed the Talaja Central Prison authorities to file a report regarding the health condition of the undertrial. At this stage, while the medical report was not filed by the Superintendent of Talaja Central Prison before the NIA Court, the undertrial had to be admitted to the J.J. Hospital, Mumbai due to deterioration of his health. It is claimed in the appeal as well as the writ petitions

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that the family members of the undertrial were not informed about this development.

14. On 01/06/2020, the undertrial was discharged from J.J. Hospital and he was taken back to Taloja Central Prison where he was admitted in the jail hospital.

15. A medical report dated 01/06/2020 pertaining to the undertrial was filed before the NIA Court and although a copy of the same was not supplied to the advocate representing the undertrial, inspection of the same was permitted. According to the statement made in the writ petition filed by the wife of the undertrial, inspection of the medical report demonstrated that the undertrial had been complaining of giddiness for about four days and that the blood test reports suggested that he was suffering from dyselectrolytemia (imbalance in the required amount of electrolytes in blood), Hypokalemia (low level of potassium in the blood serum) and Hyponatremia (low level of sodium in the blood serum). Yet, the report stated that he was asymptomatic, hemodynamically stable and fit for discharge.

16. It was advised that the condition of the undertrial should be followed up with serum electrolyte tests. There was also reference to enlarged prostate gland of the undertrial and certain tests were advised.

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17. A medical report was submitted by the Superintendent of Talaja Central Prison before the NIA Court by relying upon the report of the J.J. Hospital, but the details of the health condition of the undertrial before his admission to J.J. Hospital, were not brought on record. During this period, when the undertrial was sent back to Talaja Central Prison, his co-accused was kept with him as his attendant. On 26/06/2020, the NIA Court rejected the bail application of the undertrial on the ground that he was found to be fit for discharge by the J.J. Hospital. Apart from this, the said court referred to an earlier order passed by the Sessions Court at Pune, whereby the bail application of the undertrial was rejected on merits.

18. It is this order dated 26/06/2020 that is made subject matter of challenge in the aforesaid Criminal Appeal No.52 of 2021. The appeal was filed on 01/07/2020. During the pendency of the said appeal, the condition of the undertrial again deteriorated and he had to be admitted to the J.J. Hospital once again. It is stated by the wife of the undertrial that immediately prior to being admitted to J.J. Hospital, the undertrial had spoken to his family and it was evident that his speech was not clear, he was incoherent and that he was hallucinating.

19. Upon being admitted to J.J. Hospital, it was recorded that
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he was in delirium and suffering from tremors. According to the wife of the undertrial, when she along with her brother and daughters, visited the undertrial at J.J. Hospital, he was found in a pitiable condition, without proper nursing assistance. Therefore, Writ Petition No.64 of 2021 was filed before this Court on behalf of the undertrial for conducting proper medical tests and for providing him with appropriate treatment.

20. On 16/07/2020, the undertrial slipped and fell from his bed sustaining an injury on his forehead requiring stitches. The health condition of the undertrial was precarious and it was compounded by the fact that he tested positive for Covid-19 virus. Due to this, the undertrial was shifted to St. George Hospital, Mumbai, which was a designated Covid-19 Hospital. But, in the said hospital also, his condition further deteriorated with the sodium level falling, resulting in bouts of delirium. At this stage, due to intervention of the National Human Rights Commission (“NHRC”), on 19.07.2020, the undertrial was shifted to Nanavati Hospital. Upon tests being conducted, it became evident that the electrolyte levels of the undertrial were not proper and that his sodium levels had gone down resulting in bouts of delirium. Apart from the fact that he had contracted Covid-19 virus, the undertrial was also found to be suffering from Urinary Tract Infection caused by severe bacterial infection of a resistant type.

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21. In the meanwhile, the respondent NIA filed reply affidavit dated 16.07.2020 in Criminal Appeal No. 52 of 2021 and opposed the same. It was submitted that there was ample material in the chargesheet against the undertrial to show his direct involvement in anti-national activities for overthrowing the lawfully established government. Much emphasis was placed on the finding of the Sessions Court that the material on record demonstrated that the serious accusations made against the undertrial were prima facie true. It was emphatically stated that the undertrial was not justified in seeking relief on humanitarian grounds when the acts that he was accused of were against human and State interest.

22. The aforesaid writ petition filed on behalf of the undertrial came up for consideration before this court when a Division Bench directed that the medical report of the undertrial be furnished. The report submitted by the Nanavati Hospital, in pursuance of the aforesaid direction, indicated that the undertrial was disoriented with regard to time and place and he was having intermittent tremors with irrelevant speech. It was opined that in view of the multiple diseases and comorbidities, as well as the advanced age with Covid-19 infection, the situation of the undertrial was likely to worsen and he needed close monitoring. This report was submitted on 14/08/2020 and yet, on
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28/08/2020, the undertrial was discharged from Nanavati Hospital and he was sent back to Talaja Central Prison. The undertrial was kept in Talaja Central Prison hospital with two of his co-accused persons as his attendants. The undertrial remained bedridden with catheter (urine bag).

23. When the writ petition came up for consideration on 17/09/2020 before a Division Bench of this Court, one of the Hon'ble Judges recused from the matter. At this stage, the wife of the undertrial filed Writ Petition No.325 of 2020, before the Hon'ble Supreme Court. By the said writ petition, the wife of the undertrial prayed before the Hon'ble Supreme Court for granting bail to the undertrial on medical grounds. The Hon'ble Supreme Court disposed of the said writ petition by order dated 29/10/2020, granting liberty to the said petitioner (wife of the undertrial) to withdraw the said writ petition for filing appropriate petition before this court or to amend the pending writ petition already filed on behalf of the undertrial. The Hon'ble Supreme Court did not express any opinion on the merits of the matter.

24. Consequently, the wife of the undertrial filed Criminal Writ Petition No.63 of 2021, before this Court on 05/11/2020 invoking Article 21 of the Constitution of India to seek an order for release of the undertrial from custody, in view of his advanced

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age and precarious health condition. During the pendency of the writ petition, the Nanavati Hospital asked the authorities of the Talaja Central Prison to get the urine culture of the undertrial so as to monitor his health condition. On 12/11/2020, this court issued an order in Writ Petition No.63 of 2021, to assess the medical condition of the undertrial through video examination by the doctors of Nanavati Hospital and also to nominate doctors to visit Talaja Central Prison for his examination.

25. The blood test reports prepared by the Laboratory engaged by Talaja Central Prison hospital were brought on record and, on 18/11/2020, this court passed an order in Writ Petition No.63 of 2021, along with the connected writ petition and the appeal, recording statement made by the Public Prosecutor on specific instructions from the Government of Maharashtra that as a special case, the undertrial be immediately sent to Nanavati Hospital for further investigation and treatment. Accordingly, the undertrial was shifted to Nanavati Hospital.

26. In the meanwhile, reply affidavit dated 12.11.2020 was filed by the respondent NIA in Criminal Writ Petition 63 of 2021. In this affidavit copious references were made to letters and communications exchanged between the co-accused to show that the undertrial was one of the senior leaders of banned organization Communist Party of India (Maoist) and that there

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was enough material demonstrating that the undertrial had arranged for funding of anti-national activities, including violence that had caused death of number of security personnel. It was stated that the undertrial was accused of grave offences and this was a material factor, particularly when the bail application moved by the undertrial on merits had been rejected on the basis that the accusations made against him were found to be prima facie true. Much emphasis was placed on the observations made by a Division Bench of this court while rejecting an application filed by co-accused Gautam Navlakha for quashing of FIR under section 482 of the Cr.P.C. It was submitted that the undertrial and co-accused persons had adopted strategy of filing petitions relentlessly against the NIA on deceptive grounds and the present petition seeking to invoke Article 21 of the Constitution of India on health grounds was also one such step on the part of the undertrial.

27. The undertrial started receiving treatment at Nanavati Hospital. On 03/12/2020, the Nanavati Hospital prepared a medical report regarding his health status and the treatment given to him after admission in the said hospital. It was stated that the undertrial was suffering from Urinary Tract Infection and other ailments. The details of medicines being administered to the undertrial were also given in the said report. This court perused the said report and, on 15/12/2020, while adjourning the matter,

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it was directed that the interim order would continue. Thereafter, the matters were adjourned on a couple of dates and they were listed for hearing on 13/01/2021.

28. The Nanavati Hospital submitted a report dated 12/01/2021, giving the latest position about the health status of the undertrial. The said report was taken on record and it was directed that copies of the report be furnished to learned counsel appearing for the rival parties. In the said report, the chronology of events pertaining to the health status and treatments given to the undertrial were stated in detail, and thereafter, it was opined that the undertrial was having normal cognitive functions, which indicated that he was capable of self-care. It was also stated that based on the clinical parameters and bedside testing, it was apparent that he did not have Dementia, however in order to rule it out completely, a detailed neuropsychological testing of the undertrial was required, but as per the opinion of the neurologist of the Nanavati Hospital such test was not required at the said point of time. Thus, Dementia was not completely ruled out in the said report dated 12/01/2021. Thereafter, a list of medicines prescribed to the undertrial was given and then it was stated that as on 12/01/2021, the undertrial was hemodynamically stable, he did not require indoor medical management and that he was fit to be discharged.

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29. After the copies of the said report were furnished to the learned counsel appearing for the rival parties, arguments were again commenced on 21/01/2021. After some hearing, the matters were adjourned and the undertrial was granted an opportunity to file an affidavit regarding the lack of proper facilities in the Taloja Central Prison hospital. Thereafter, when the matter was listed on 21/01/2021, this court passed an order asking for the latest health status of the undertrial, in the backdrop of specific submissions made on his behalf by his counsel. Accordingly, medical report dated 27/01/2021 was prepared by Nanavati Hospital and it was placed before this court on 28/01/2021. In this report also, it was reiterated that considering the present status of the undertrial, he did not require indoor medical management and that he was fit to be discharged. Copies of the said medical report dated 27/01/2021 were furnished to the learned counsel for the rival parties and the appeal as well as the writ petitions were further heard on 01/02/2021. Learned counsel for the rival parties addressed this court on various aspects.

30. Since elaborate submissions were made on behalf of the rival parties, it would be appropriate to refer to the contentions raised by learned counsel appearing in the appeal and the writ petitions. The contentions are as follows:

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CONTENTIONS:

31. Mr. Anand Grover, learned senior counsel appearing with Mr. R. Satyanarayanan in Criminal Appeal No.52 of 2021 and Criminal Writ Petition No.64 of 2021 submitted that: –

- (a) The undertrial is admittedly aged about 82 years. He has pre-existing medical conditions, including piles, prostate enlargement, coronary artery disease, Oedema/Anasarca (swelling of feet), Hypertension, Sinusitis, Migraine and Vertigo.
- (b) The health of the undertrial in the backdrop of such advanced age and pre-existing medical conditions, faced deterioration upon being arrested and kept in custody. There can be no doubt about the fact that a person of such advanced age upon being incarcerated would suffer complications induced by the physical and mental stress that such incarceration brings about. The court needs to take notice of this aspect of the matter while considering the prayers made on behalf of the undertrial.
- (c) A perusal of the papers pertaining to the journey of the

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undertrial in and out of the hospitals, be they hospitals attached to the jail or Government hospitals or even private hospitals, would show that there had been a consistent deterioration in the health condition of the undertrial. Learned senior counsel referred to large number of documents pertaining to the admission of the undertrial in J.J. Hospital in July, 2020 till his discharge from the said hospital, then being shifted to St. George Hospital upon testing positive for Covid-19, followed by shifting to the Nanavati Hospital in July, 2020 itself on the intervention of the NHRC. It was pointed out that during this period, the undertrial had become incoherent. There were bouts of delirium induced by hemodynamic instability and that there was reference to dementia. By referring to the medical reports over the entire period from July, 2020 to January, 2021, learned senior counsel submitted that even if the last report indicated that the undertrial was fit to be discharged, his continued custody and further incarceration was wholly incompatible with his health condition and that, putting him back in the custody, would endanger his life.

- (d) It was submitted that the Taloja Central Prison hospital did not have any facility to deal with the health issues regularly being faced by the undertrial. It was stated on affidavit

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before this court that there were no doctors at the Taloja Central Prison hospital and that there were only three Ayurvedic practitioners to look after the inmates who were suffering from health issues. It was specifically stated that mandatory requirements under the Maharashtra Prison Hospital (Amendment) Rules 2015, framed under the Prisons Act, 1894, were not followed in the Taloja Central Prison hospital. It was specifically submitted that there were no staff nurses, no pharmacists, no compounders, no nursing assistance, no Lab technicians and no medical specialists at all, to attend to the inmates at the Taloja Central Prison hospital. On this basis, it was submitted that if the undertrial was not granted bail on medical conditions and he was to be sent back to Taloja Central Prison hospital, the life of the undertrial would certainly be endangered. On this basis, it was reiterated that continued incarceration of the undertrial was wholly incompatible with his health condition and that, therefore, the appeal as well as the writ petitions deserved to be allowed.

- (e) It was submitted that a perusal of the report of Taloja Central Prison Hospital itself would show that the undertrial was suffering from cerebral atrophy. The medical papers on record of the J.J. Hospital also demonstrated that when the undertrial was admitted for treatment, he was

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suffering from delirium and tremors. There was a reference to dementia in the papers of St. George hospital during his stay in July, 2020. It was submitted that delirium was induced by hemodynamic instability, and that, delirium was one of the causes for the onset of dementia. Much emphasis was placed on the interface between delirium and dementia in old age persons and it was submitted that since the undertrial was in a precarious health condition, always in the zone of risk, suffering from delirium induced by hemodynamic instability, it was necessary for this court to enlarge the undertrial on bail. It was submitted that putting him back in Taloja Central Prison hospital would certainly invite further deterioration of his health and, perhaps even worse.

- (f) It was submitted that the advanced age and the precarious health condition of the undertrial clearly indicated that he required constant monitoring of health, which was impossible in jail and that, it would be cruel to continue the custody of the undertrial despite the admitted position that in the present case, even charges were not framed and the trial would take years to be completed. It was submitted that the NIA court did not pay attention to this aspect of the matter at all, while passing the impugned order and rejecting the bail application of the undertrial.

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- (g) It was further submitted that notwithstanding the stringent provisions of Section 43D(5) of UAPA and the non-obstante clause with which sub-section (5) opens, the court certainly has power to consider the prayer for grant of bail purely on health and medical grounds. In this regard, learned senior counsel for the undertrial submitted that the power of the court under the proviso to Section 437 (1)(i) and (ii) of the Cr.P.C. to grant bail to the sick and infirm was unaffected by the stringent nature of the provisions of the UAPA, particularly Section 43D(5) thereof. It was emphasized that the stringent nature of the provisions and the additional requirement manifested in Section 43D(5) of UAPA could not take away the power of the NIA court and certainly not the power of this court to grant bail on health and medical grounds. In this regard, learned senior counsel appearing for the undertrial relied upon the judgment of Gauhati High Court in the case of *National Investigation Agency v. Redaul Hussain Khan*². Reliance was also placed on judgment of this court in the case of *Ms. Purnima Upadhyay v. State of Maharashtra & Ors.*³ wherein a Division Bench of this court held that an accused under UAPA could be granted bail on health grounds, despite the fact that his bail application had been rejected

² (2010) 5 Gauhati Law Reports 704

³ 2015 SCC Online Bom 5989

on merits on the touchstone of Section 43D(5) of UAPA.

- (h) It was also submitted that there was recognition in International Systems of Jurisprudence to the proposition that an accused deserved to be granted bail on health grounds if his continued incarceration was detrimental to his health status. In this regard, reliance was placed on the judgment of the European Court of Human Rights in the case of *Holomiov v. Moldova⁴ and Hummatov v. Azerbaijan⁵*.
- (i) In both these judgments, the European Court of Human Rights found that the health status of the accused, who was behind bars and the nature of treatment given to him demonstrated that his continued incarceration was in conflict with his health status, which necessitated a direction to release such an accused from custody.
- (j) It was further submitted that the emphasis being placed by the respondents on the last two medical reports dated 12/01/2021 and 27/01/2021, to contend that the undertrial was now fit to be discharged, was wholly misplaced because the undertrial was found by Nanavati Hospital fit to be discharged on the basis of his health

⁴ Decided on 07/02/2007

⁵ Decided on 29/02/2008 In Application No.9852 of 2003 and 13413 of 2004



status after extensive treatment and consequent improvement of his health. It was submitted that these reports advisedly used the expression “as of today” while certifying about the fitness of the undertrial for discharge. It was submitted that the undertrial could certainly not be fit for being sent back to Taloja Central Prison, given the lack of facility to monitor the health of the undertrial or to give any kind of treatment in case of emergency. It was submitted that the undertrial could not be sent back to Taloja Central Prison as it would risk his life and there was every possibility of the health of the undertrial deteriorating, necessitating further rounds of being admitted to hospitals, which was fraught with risk of hospital acquired infections and such other complications.

- (k) By referring to the said latest reports of Nanavati Hospital, it was emphasized on behalf of the undertrial that there was a list of medicines being administered to the undertrial even today, indicating his weak physical and mental condition. It was submitted that any further instability in the hemodynamic readings of the undertrial would further accelerate the condition of dementia and cerebral atrophy. In such a situation, this court ought to exercise its powers not only under the provisions of Section 437(1)(i) and (ii) of the Cr.P.C. but also as a Constitutional Court to uphold

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the right to life of the undertrial under Article 21 of the Constitution.

- (l) It was further submitted that keeping the undertrial in custody had a real possibility of his health deteriorating, leading to worsening of health or more, which was not in the interest of prosecution also. This was because the undertrial himself desires to face trial to clear his name and the prosecution was certainly interested in seeing that he is made to face the trial. In this context, it was brought to the notice of this court that even earlier, on as many as 24 occasions, the undertrial had been charged with serious offences, including offences under the UAPA and that in all 24 cases, he had faced the trial and he was either acquitted or the charges had been dropped. Therefore, according to learned senior counsel, there was no question of the undertrial avoiding trial, upon being released on bail on health grounds.

- (m) Learned senior counsel then stressed upon the law laid down by the Hon'ble Supreme Court in the context of trials remaining pending for long periods of time, while the undertrials languished in jail. It was submitted that the charge-sheet in the present case ran into thousands of pages, there were more than 200 witnesses to be examined

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by the prosecution and basic needs like providing clone copies of the electronic data to the undertrials and other accused persons was taking months, indicating that the trial in the present case would remain pending for years together. On this basis, it was submitted that the undertrial could not be kept in custody despite his precarious health condition while the trial was not likely to even begin in the near future. Reliance was placed on the judgments of the Supreme Court in *Kashmir Singh v. State of Punjab*⁶, *Ramnik Singh v. Intelligence Officer, Directorate of Revenue Intelligence*⁷, *Dhiren Ghanshyam Mehta v. Union of Inida & Anr.*⁸ and judgment of the Punjab and Haryana High Court in *Daler Singh v. State of Punjab*⁹. Reliance was also placed on the judgment of the Karnataka High Court in *Kum. Archana Manohar Galrani @ Sanjana Galrani v. State of Karnataka*¹⁰ wherein bail was granted on health ground, despite the fact that the petitioner therein was an accused for offences under the Narcotic Drugs and Psychotropic Substances Act (“NDPS Act”), which has even more stringent provisions with regard to grant of bail. Learned senior counsel appearing for the undertrial candidly submitted in the context of Cri. Writ Petition No.64 of 2021, that in view of the orders passed

⁶ AIR 1977 (SC) 2147

⁷ (2013) SCC OnLine SC 1276

⁸ 2018 SCC OnLine Bom 2765

⁹ 2017 Cri. L.J. 2337

¹⁰ Order dated 11/12/2020 passed in Cri. W.P. No.6829 of 2020



by this court pertaining to medical treatment to be given to the undertrial, the prayers made in the said writ petition stood satisfied.

- (n) Ms. Indira Jaising, learned senior counsel appearing on behalf of the undertrial in Cri. Writ Petition No.63 of 2021, submitted that the said writ petition was filed under Article 226 of the Constitution of India invoking fundamental right guaranteed to the undertrial under Article 21 of the Constitution of India. Learned senior counsel submitted that she is neither arguing the bail application nor the appeal under the NIA Act for release of the undertrial. It is submitted that the undertrial has a right to health under the right to life guaranteed by Article 21 of the Constitution of India and that this court as a Constitutional Court ought to exercise its prerogative writ to direct the release of the undertrial forthwith, in view of his health condition and advanced age. It was submitted that the admitted facts in the present case demonstrated that the respondents had failed to provide basic medical facilities to the undertrial, which amounted to cruelty and that the continued incarceration of the undertrial was incompatible with his health condition, thereby violating his right to health under Article 21 of the Constitution of India.

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- (o) Learned senior counsel appearing for the undertrial relied upon the contentions raised in the accompanying Criminal Appeal in respect of the health status of the undertrial. It was submitted that the medical reports on record and detailed submissions made in that regard on behalf of the undertrial clearly justify the apprehension that if the undertrial was discharged from Nanavati Hospital and sent back to Taloja Central Prison hospital, he would suffer physically and mentally to the point of no return. It was submitted that such incarceration in cruel conditions demonstrated that the process of trial itself had become punishment.
- (p) It was submitted that the material brought on record clearly indicated that the Taloja Central Prison hospital had no medical facilities to treat persons having health conditions, much less the serious health conditions suffered by the undertrial in view of his advanced age. According to learned senior counsel, the undertrial suffered from cerebral atrophy, delirium induced by fluctuations in hemodynamic parameters and onset of dementia. Reference was made to a letter written by the undertrial to his wife from jail, which indicated that he had progressively become incoherent due to such unstable

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readings and that sending the undertrial back to prison was a certain invitation to disaster. It was emphasized that the family members of the undertrial were denied access to him and they were not informed about his health status while he was in Taloja Central Prison hospital and, thereafter, when he was admitted to hospital more than once. On this basis, it was submitted that the undertrial did not deserve to be sent back to custody.

- (q) Learned senior counsel specifically referred to judgments of the Hon'ble Supreme Court wherein it has been categorically laid down that even though the prisoner may be kept in custody in terms of procedure established by law, such a person is not denuded of the fundamental rights guaranteed under Part III of the Constitution. It was submitted that even within the four walls of the prison, the right to life of a prisoner stood guaranteed under Article 21 of the Constitution as recognized in various judgments. This included the rights of prisoners to meet their family members, access to proper food and water, access to proper medical treatment, the right to intermingle with other prisoners, right to speedy trial and such other rights, so as to ensure that prisoners were not reduced to mere animal existence or vegetable subsistence. In this regard, reliance was placed on the judgments of the Hon'ble Supreme

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Court in the case of *D. Bhuvan Mohan Patnaik v. State of U.P.*¹¹, *Sunil Batra (I) v. Delhi Admn.*¹², *Sunil Batra (ii) v. Delhi Admn.*¹³, *T.V. Vatheeswaran v. State of Tamil Nadu*¹⁴, *Nilabati Behera v. State of Orissa*¹⁵, *Charles Sobraj v. Supdt., Central Jail*¹⁶, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹⁷, *Inhuman Conditions in 1382 Prisons, In re.*¹⁸, *Sjatrigjam Cjajjam v. Union of India*¹⁹ as also the judgment of the Rajasthan High Court in *Vaman Narayan Ghiya v. State of Rajasthan*²⁰.

- (r) Learned senior counsel further relied upon Article 5 of the Universal Declaration of Human Rights, 1948, mandating that no one shall be subjected to torture, inhuman or degrading treatment or punishment, Article 7 of the International Covenant on Civil and Political Rights, 1976, mandating the same spirit as also the United Nations Standard of Minimum Rules for Treatment of Prisoners, emphasizing upon Rules 24, 25 and 26 pertaining to right of a prisoner to enjoy the same standards of health care as are available to the community.

¹¹ (1975) 3 SCC 185

¹² (1978) 4 SCC 494

¹³ (1980) 3 SCC 488

¹⁴ (1983) 2 SCC 68

¹⁵ (1993) 2 SCC 746

¹⁶ (1978) 4 SCC 104

¹⁷ (1981) 1 SCC 608

¹⁸ (2017) 10 SCC 658

¹⁹ (2014) 3 SCC 1

²⁰ AIR 2013 Raj. 35



- (s) It was further submitted that no penological purpose would be served while further detaining the undertrial. It was emphasized that his survival was ensured only because of the intervention of this court as he was sent to Nanavati Hospital and proper medical treatment was given to him.

- (t) It was vehemently submitted that the stringent provisions pertaining to bail in special acts like the UAPA could not limit the power of Constitutional Courts like this court and that when sufficient material was placed before this court demonstrating that the undertrial deserved to be released from custody on health grounds, nothing can prevent this court from exercising such power in the facts and circumstances of the present case. It was further submitted that the undertrial had suffered persecution and prosecution on several occasions earlier and that in all such cases, he had come through absolutely without blemish.

- (u) It was emphasized that the undertrial deserved an order of release from the custody and his right to be with his family members, at this stage of his life, particularly when he himself desired to face the trial to clear his name from the serious allegations levelled against him.

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32. Mr. Deepak Thakare, learned Public Prosecutor appearing for the State of Maharashtra stated that since the NIA had taken over the proceedings, it was essentially respondent No.1, which was the contesting respondent. He submitted that insofar as the State was concerned, he had instructions to submit that looking to the apprehensions expressed in the appeal and in the writ petitions, the State was ready to keep the undertrial in the Prison Ward of J.J. Hospital, so that his medical condition could be constantly monitored. It was submitted that this could be continued for the time period that this court may direct so as to take care of the apprehensions expressed on behalf of the undertrial.

33. Mr. Anil Singh, Additional Solicitor General (ASG), appearing on behalf of respondent No.1-NIA submitted, as follows: -

(a) It was submitted that in view of the aforesaid statement made by learned Public Prosecutor for the State of Maharashtra, nothing actually remained in the appeal as well as in the writ petitions. It was submitted that when the undertrial could be kept in the Prison Ward of J.J. Hospital with constant monitoring by Doctors and other medical staff, the apprehension expressed on behalf of the

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undertrial stood addressed and, therefore, the whole basis of the arguments advanced on behalf of the undertrial was taken away. It was further submitted that the prayers made in Writ Petition No.64 of 2021 had already been addressed in view of the various directions given by this court.

- (b) Learned A.S.G. emphasized upon the two latest medical reports dated 12/01/2021 and 27/01/2021, submitted by Nanavati Hospital before this court. It was submitted that in both these reports, it was categorically opined that the health condition of the undertrial was stable on all parameters, he did not require indoor medical management and that he was fit for discharge. It was emphasized that no objection was raised on behalf of the undertrial in respect of the said reports, indicating that even the undertrial and his family members were fully satisfied with the treatment given at State cost in the Nanavati hospital and now there was no cause for complaint.
- (c) In this backdrop, it was submitted that the undertrial was not justified in calling upon this court for grant of bail or release from custody on the ground of medical conditions, simply on the basis of apprehensions as to what might happen to the undertrial if he was sent back to Taloja

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Central Prison. The prayers made in the appeal as well as in the writ petition could not be granted on mere apprehensions of the undertrial.

- (d) It was submitted that if the contentions raised on behalf of the undertrial were to be accepted, this court would have to substitute its own opinion over the categorical opinion of the experts of Nanavati Hospital that the undertrial was now fit for discharge. It was submitted that since no objections were raised to the aforesaid latest medical reports issued by Nanavati Hospital, this court ought not to accept the contentions raised on behalf of the undertrial based on mere apprehensions. According to learned A.S.G., this court cannot go against the opinion of the Doctors and experts, as manifested in the latest reports issued by Nanavati Hospital and this court could certainly not sit in appeal over such expert opinion.
- (e) It was further submitted that the contentions raised on behalf of the undertrial on the issue of dementia are wholly unacceptable because in the latest medical report dated 12/01/2021 issued by Nanavati Hospital, it was categorically stated that the undertrial did not have dementia and that he has normal cognitive functions indicating that he is capable of self-care. It was submitted

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that there was a passing reference to the word 'dementia' in a document pertaining to the medical record of the undertrial in St. George hospital, but, such reference was in the context of a discussion amongst the medical professionals as regards the physical and mental condition of the undertrial when he was admitted to the said Hospital. It was submitted that a proper reading of the said document would show that there was no finding on the aspect of dementia. In view of the finding rendered in the latest report of Nanavati Hospital, it was submitted that there was no scope to raise any contention that the undertrial suffered from dementia and it could be a factor to be considered by this court.

- (f) Learned A.S.G. then referred to the judgments relied upon by learned senior counsel appearing for the undertrial in the appeal and in the writ petitions to contend that such judgments pertained to the nature of rights available to a prisoner in the context of Article 21 of the Constitution, with particular reference to facilities to which prisoners are entitled, while being incarcerated. It was submitted that none of the judgments recognized any right for grant of bail or an order of release under Article 21 of the Constitution of India, in the absence of specific finding that continued custody of the prisoner would amount to

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endangering his or her life. It was submitted that in the present case, there was no question of this court rendering any finding to that effect, particularly when the latest medical reports categorically stated that the undertrial was fit for discharge. It was submitted that when the State has made a statement that the undertrial would be kept in the Prison Ward of J.J. Hospital, there was no scope for placing reliance on the said judgments on behalf of the undertrial to claim that he deserved to be released from custody.

- (g) On the question of the stringent requirements of Section 43D(5) of the UAPA in the context of grant of bail, it was submitted that there was already an order by the competent court rendering a finding that the material on record indicated that the accusations made against the undertrial were *prima facie* true. A bail application filed on behalf of the undertrial on merits is still pending before this court and, therefore, the appeal and the writ petitions filed on behalf of the undertrial could not be taken up for consideration by this court.
- (h) It was submitted that the interplay between Section 437 and 439 of the Cr.P.C. on the one hand and Section 43D(5) of the UAPA on the other, could not lead to a conclusion that notwithstanding the rejection of grant of

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bail to the undertrial on merits, he could be released from custody purely on health grounds. It was submitted that the question of entitlement of the undertrial for grant of bail had to be seen in the context of the seriousness of the allegations and accusations made against him, particularly when they were found to be *prima facie* true by a competent court of jurisdiction. In the absence of such findings being dislodged in the manner known to law, it was submitted that the prayer for grant of bail made on behalf of the undertrial could not be granted.

- (i) Learned A.S.G. has placed reliance on various judgments in order to support his contentions. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *State v. Jaspal Singh Gill*²¹, wherein it was held that even though the accused had undergone a cardiac operation and he needed constant medical attention, he could not be released on bail on medical conditions when charges against the accused were *prima facie* made out on the basis of the material available on record. Judgment of the Hon'ble Supreme Court in the case of *State of U.P. v. Gayatri Prasad Prajapati*²² was brought to the notice of this court where bail granted on the ground of medical condition was set aside on the basis that the High Court

²¹ (1984) 3 SCC 555

²² 2020 SCC OnLine SC 843



had failed to record its satisfaction that the treatment offered to the accused was not adequate. In the case of *Rajesh Ranjan Yadav @ Pappu Yadav v. CBI*²³, the Hon'ble Supreme Court had rejected the prayer made on behalf of the accused that his treatment for medical conditions was possible only outside the jail. In the case of *Asharam Bapu v. State of Rajasthan*²⁴, the Hon'ble Supreme Court refused to consider the prayer for grant of bail even when the petitioner therein was about 85 years old and he suffered from numerous medical conditions, as the Medical Board had suggested only medical management of the petitioner therein on OPD basis. It was lastly submitted by the learned ASG that if the contentions raised on behalf of the undertrial were to be accepted, there would be a deluge of petitions invoking writ jurisdiction by prisoners on the ground of old age and health conditions.

- (j) In rejoinder, learned senior counsel appearing for the undertrial submitted that the statement made by learned Public Prosecutor on behalf of respondent-State that the undertrial could be kept in the Prison Ward of J.J. Hospital was not a solution in the present case. It was submitted that the undertrial had already suffered from severe Urinary Tract Infection caused by the highly drug resistant

²³ (2008) 1 SCC 667

²⁴ 2015 All MR (Cr.) 4138



bacteria and that sending the undertrial back to the hospital would certainly flare up the said condition. It was submitted that at the advanced age of 82 years and suffering from the aforementioned health conditions, keeping the undertrial in the hospital and that too, in the Prison Ward was an invitation to hospital acquired infections, which would lead to deterioration of health of the undertrial. Therefore, it was submitted that learned A.S.G. was not justified in contending that the appeal and the writ petitions deserved to be dismissed in view of the statement made by learned Public Prosecutor appearing on behalf of the State. It was emphasized that the right to health covered under the right to life in Article 21 of the Constitution required a direction from this court to release the undertrial from custody and to permit him to go back to Hyderabad and join his family, so that the mental and physical health of the undertrial was properly taken care of. This would ensure that the undertrial withstands trial in the present case. It was submitted that the undertrial was ready to appear before the NIA court through Video Conferencing and, whenever required even personally.

- (k) After the arguments were over and judgment was reserved, learned counsel appearing for the rival parties mentioned before this court that a judgment was recently rendered on

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01/02/2021 by the Hon'ble Supreme Court in the case of *Union of India v. K.A. Najeeb*²⁵, which had a bearing on the contentions raised by the rival parties. While learned counsel appearing for the undertrial submitted that the Hon'ble Supreme Court in the said judgment had emphatically held that statutory restrictions like those in Section 43D(5) of UAPA *per se* do not oust the ability of the Constitutional Court to grant bail on the ground of violation of Part III of the Constitution, learned counsel appearing for the respondents submitted that the Hon'ble Supreme Court held in favour of the undertrial therein on peculiar facts of that particular case. We propose to take into consideration the said latest pronouncement in the context of the facts of the present case.

34. Although specific contentions have been raised on behalf of the undertrial in the appeal on the aspect of interplay between provisions of Cr.P.C, particularly Sections 437 and 439 thereof and Section 43D(5) of UAPA, on the question of power available to the Court for granting bail purely on the ground of sickness and infirmity, we do not propose to go into the said question, as we are considering the prayers made in the writ petitions for release of the undertrial on health grounds. We shall be dealing with the scope and ambit of power of this court, as a Constitutional Court, to consider the prayers made on behalf of

²⁵ Judgment dated 01/02/2021 in Criminal Appeal No.98 of 2021

the undertrial by invoking our extraordinary writ jurisdiction. This is also because the documents pertaining to the health status have come on the record of this court in the writ petitions. The appeal will stand disposed of in the light of the order being passed in the writ petitions.

QUESTIONS FOR CONSIDERATION:

35. In view of the above and the contentions raised on behalf of the undertrial, as also the respondents, the following questions arise for consideration before this court: -

- A. Whether the High Court, as a Constitutional Court, can issue its prerogative writs under Article 226 of the Constitution of India for release of an accused from custody, even when regular bail application on merits has been rejected under Section 43D(5) of the UAPA with a finding that the accusations against the accused are found to be *prima facie* true?
- B. Whether an accused in custody can invoke Article 21 of the Constitution to seek his release on the ground that his continued incarceration is incompatible with his health condition and it would amount to endangering his life?

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- C. Whether the respondents are justified in contending that such expansion of rights under Article 21 of the Constitution would lead to a deluge of petitions for release of inmates from jails on health grounds, despite rejection of bail applications on merits, thereby diluting the powers of courts in the hierarchical regime pertaining to consideration and grant of bail applications?
- D. Whether the undertrial in the facts and circumstances has made out a case for grant of bail or an order of release from custody, on the ground of his advanced age and health conditions?
- E. Whether such an order can be granted in favour of the undertrial in the present case, in the face of latest medical reports certifying that he has normal cognitive functions indicating that he is capable of self-care and further that he does not require indoor medical management with a specific certification that he is fit for discharge?
- F. Whether the contentions raised on behalf of the undertrial are merely based on apprehensions and that therefore, they cannot be considered for granting him bail on health grounds?

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G. In the light of rejection of bail of the undertrial on merits with a specific finding that the material on record shows that the accusations against him are *prima facie* true, whether appropriate conditions need to be imposed upon him, even if this court is to grant bail to the undertrial on health grounds?

CONSIDERATION AND FINDINGS:

In Re: Questions A, B and C.

36. These questions pertain to the power of Constitutional Courts while exercising jurisdiction under Article 226 of the Constitution of India to order release of an accused person, even when regular bail application filed by such an accused person has been rejected on merits under Section 43D(5) of the UAPA. The crux of the said question is, as to whether an accused person can invoke writ jurisdiction of the High Court to pray for release from custody while asserting his right under Article 21 of the Constitution of India, notwithstanding the hierarchical system of courts pertaining to the question of grant of bail under the Cr.P.C. as also the special Acts like the UAPA. This is particularly significant in view of the apprehension expressed on behalf of the respondents (noted in Question C above) that such expansion of

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rights under Article 21 of the Constitution of India would lead to a deluge of petitions before the High Court for release from custody, when the High Courts in writ jurisdiction are already overburdened.

37. Ordinarily, an accused, who is either an undertrial or a convict, has to approach courts as specified in the Cr.P.C. and special statutes like UAPA for grant of bail within the four corners of the conditions specified in such provisions. The accused usually exhaust the hierarchy of courts while claiming that they need to be enlarged on bail. Such applications are made at various stages of criminal proceedings including applications made when investigation is underway or pending trial or post-conviction. The parameters for grant of bail during all these situations are now well settled, not only where only the provisions of the Cr.P.C. are applied but even where the provisions of the special Acts like UAPA are applicable. Despite availability of such a well recognized machinery for considering bail applications, it needs to be examined as to whether the High Court while exercising writ jurisdiction under Article 226 of the Constitution can entertain prayer for release from custody.

38. Article 21 of the Constitution of India, which guarantees right to life and personal liberty, has been interpreted over the years in various judgments of the Hon'ble Supreme Court and

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High Courts to read rights of prisoners in the said Article. It has been held that merely because a prisoner is confined within the four walls of the prison, it cannot be said that he stands denuded of the rights guaranteed under Part III of the Constitution of India. Although, the prisoners stand confined within the prison and, to that extent, stand deprived of their liberty as per procedure established by law, it cannot be said that they cannot invoke myriad shades of rights guaranteed under Article 21 of the Constitution of India.

39. It is in this context that the Hon'ble Supreme Court of India held that even a person sentenced to death and confined within a prison, cannot be reduced to mere animal existence [**See Sunil Batra I (supra)** and **Kashmir Singh (supra)**]. The Hon'ble Supreme Court went on to hold in **Sunil Batra II (supra)** that basic human rights cannot be denied to a person even though he remains confined in jail as per the procedure established by law. The Hon'ble Supreme Court referred to the problems of overcrowding in jails, untrained jail staff leading to continuous harassment to prisoners and such other aspects while directing corrective measures to be undertaken. The aspect of delay in execution of death sentence violating Article 21 of the Constitution was recognized in **T.V. Vatheeswaran (supra)** while commuting such death sentence to sentence of life imprisonment. In the case of **Nilabati Behera (supra)**, the question of torture and custodial death of prisoners was taken into consideration and

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various directions were issued. In the case of *Charles Sobraj (supra)*, the Hon'ble Supreme Court discussed the penological goals of incarceration and what could be done for improving the quality of life of prisoners. In the case of *Francis Coralie Mullin (supra)*, the right to consult legal advisor and meet family members as also friends was recognized as a right available to prisoners under Article 21 of the Constitution of India. The question of harassment suffered by delay in disposal of Mercy Petitions was the subject matter in *Shatrughan Chauhan (supra)* in the context of Article 21 of the Constitution.

40. In the case of *Inhuman Conditions in 1382 Prisons, In re, (supra)*, the Hon'ble Supreme Court referred to the conditions in prisons in the context of human rights violations and the urgent need for reforms, including implementation of International Covenants, to which India is a signatory, particularly the United Nations Standard of Minimum Rule for Treatment of Prisoners, also called Nelson Mandela Rules. The Rajasthan High Court in *Vaman Narayan Ghiya (supra)*, specifically considered the right of a prisoner to proper medical treatment in the light of his health conditions. The right of a prisoner to obtain proper medical treatment was specifically recognized as a right under Article 21 of the Constitution of India by holding that the status of a prisoner could not be a consideration and that the prime consideration had to be adequate effective medical treatment

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necessary to keep the soul intact with the body.

41. Learned counsel appearing for the undertrial has relied on all these judgments and more to contend that the undertrial in the present case is invoking his right under Article 21 of the Constitution to plead that his continued incarceration is incompatible with his health condition and that therefore, this court needs to exercise its power under Article 226 of the Constitution of India for a direction to release him from custody.

42. In this context, specific reference is also made to two judgments of the European Court of Human Rights in the case of *Holomiov (supra)* and *Hummatov (supra)*. It is contended that the very fact that the undertrial is about 82 years of age and suffering from various health conditions shows that his continued detention violates his right under Article 21 of the Constitution. In this context, reference is also made to a recent judgment and order passed by the Hon'ble Supreme Court in the case of *Arnab Manoranjan Goswami v. State of Maharashtra*²⁶, wherein it has been specifically held that the Constitutional Court cannot abdicate its responsibility when the question of fundamental rights is involved and, in a given case, the High Court can issue a direction for release of a person from custody despite availability of hierarchy of courts for consideration of bail applications. Reliance is also placed on judgment of the Hon'ble Supreme

²⁶ 2020 SCC OnLine SC 964
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Court in the case of *Ramnik Singh (supra)* and *Kashmir Singh (supra)* and other such judgments to contend that where offences under special Acts are involved and it is clear from the material on record that the trial would take years to be completed, an accused in custody can invoke writ jurisdiction of the High Court for asserting his right under Article 21 of the Constitution of India for release from custody. In the present case, learned counsel appearing for the NIA informs this court that yet the charges have not been framed by the NIA Court and prosecution wishes to examine around 200 witnesses. This court is not informed as to whether the NIA Court, after framing the charges, would commence the trial on day-to-day basis and whether the other cases under the NIA Act and also under the other Special Acts are assigned to the said Court or not.

43. In a very recent pronouncement of the Hon'ble Supreme Court in the case of *K.A. Najeed (supra)*, it has been held categorically that statutory restrictions like the one found in Section 43D(5) of the UAPA *per-se* do not oust the ability of the Constitutional Courts to grant bail on the ground of violation of Part III of the Constitution of India. Much emphasis has been placed on the necessity to strike a balance between the rights of an accused in custody as against the rights of the Society at large, considering the serious offences for which such an accused person is proceeded against. In the said recent pronouncement, the

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Hon'ble Supreme Court has held as follows:

“18. It is thus clear to us that the presence of statutory restrictions like Section 43D (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 Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonized. 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 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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 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 43D(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

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no such pre-condition under the UAPA. Instead, Section 43D (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.”

44. Although in the said judgment, the Hon’ble Supreme Court was concerned with the plight suffered by an undertrial, who had continued in custody for a long period of time, the principle laid down in the said case appears to be that the restrictions in special statutes like the UAPA can be harmonized with the jurisdiction of Constitutional Courts. Therefore, in special circumstances, a Constitutional Court can certainly exercise its jurisdiction under Article 226 of the Constitution in favour of an accused in custody, even when regular bail application has been rejected on merits under the provisions of special statutes like Section 43D(5) of the UAPA.

45. Thus, the position of law, as it emerges from various pronouncements of the Hon’ble Supreme Court and the High Courts, is that not only is a prisoner not deprived or denuded of his fundamental right guaranteed under Article 21 of the Constitution of India, when he is confined within the four walls of a prison but in special circumstances the walls of the prison can be breached to allow release of an accused from custody, subject to

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his being put to conditions which would act as a safety net to take care of the apprehensions of the State or prosecuting agency with regard to the availability of such a prisoner to face trial.

46. In the case of *Ms. Purnima Upadhyay (supra)*, a Division Bench of this court specifically recognized that in rare and exceptional cases, the prerogative writ of this court under Article 226 of the Constitution could be issued for release of a prisoner from custody, notwithstanding the rejection of his bail application on merits. It was held in the said judgment as follows:

“23. Having carefully considered the rival submissions, we are of the view that the proviso to sub-section (5) of section 43-D of the Act does not and cannot take away the constitutional remedy of an accused under Article 226 of the Constitution. Of course, it is only in exceptional cases that the Court would consider exercising its extraordinary, prerogative and discretionary writ jurisdiction under Article 226 of the Constitution for the purpose of granting bail or temporary bail in extremely rare and exceptional cases. In the facts and circumstances indicated above, the present case is one such rare and exceptional case.”

47. Thus, it becomes clear that the writ jurisdiction of this court under Article 226 of the Constitution cannot be said to have been ousted merely because the application for grant of bail has been rejected under Section 43D(5) of the UAPA, on a finding that the accusations against the undertrial are found to be *prima facie* true.

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This is further fortified by the conclusion rendered by the Hon'ble Supreme Court in the case of *State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal & Ors.*²⁷, relevant portion of which reads as follows:

“(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights.”

48. Even if an application for bail on merits of such undertrial is pending before this court, that would also not prevent exercise of writ jurisdiction by this court to consider releasing the undertrial from custody, subject to the undertrial making out a special case on the ground that his continued incarceration is incompatible with his health condition and that if an order is not issued for his release for some period on health grounds, it would amount to endangering his life.

49. The respondents cannot be permitted to truncate such a right available to a prisoner, like the undertrial in the present case, on the plea that if such prayers were to be entertained by this court, it would lead to a deluge of petitions for release of inmates

²⁷ Judgment dated 17/02/2010 in Civil Appeal Nos.6249-6250 of 2001
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from jail on health grounds. Merely because there is a possibility of filing of petitions under Article 226 of the Constitution of India for release of prisoners from custody on health grounds, it cannot be said that this court ought not to consider cases where such grounds are genuinely made out. In this context, the judgments relied on behalf of the respondents in Gayatri Prasad Prajapati (supra), Rajesh Ranjan Yadav @ Pappu Yadav (supra), Asharam Babu (supra) and Jaspal Singh Gill (supra), would not be of much assistance because those were cases where on facts the courts came to a conclusion that an order for release from custody could not be granted on medical and health grounds. But, none of the judgments in any manner indicate that in a deserving case, the Constitutional Courts cannot exercise power under Article 226 of the Constitution to consider prayer for release from custody on health grounds despite rejection of bail application on merits. Therefore, recognizing such a power in the Constitutional Courts does not amount to diluting power of the hierarchical courts pertaining to consideration of bail application on merits.

50. Taking any other view in the matter would amount to diluting rights available to prisoners to claim relief on health grounds under Article 21 of the Constitution, particularly when material available on record indicates that continued incarceration of such persons would amount to endangering their life. This would certainly require findings to be rendered by the court on

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the facts and circumstances of each case. Another significant aspect of the right pertains to the manner in which prisoners of advanced age, suffering from various health ailments, are to be treated. The prisoners of advanced age like the undertrial, who is about 82 years old, and such other prisoners suffering from various health ailments induced by old age when put beyond bars, certainly face the danger of their health conditions worsening and accelerating their journey towards the end of their life. This is an aspect, which cannot be ignored while considering the prayer for grant of an order of release from custody, despite rejection of bail application on merits. The onset of old age and concomitant debilitating effect on the mental and physical conditions is an aspect which assumes great significance in the context of keeping such old aged persons behind bars. Even if such old aged prisoners with various health conditions are accused of serious offences, the question is as to whether they can be forced to live a subhuman existence behind bars, only because they stand accused of serious offences? In the facts of the present case, the charges are not yet framed by the NIA Court and the prosecution wishes to examine around 200 witnesses. Hence, today, nobody is in a position to tell us within how much time, the trial would be completed. When such situations are brought before the Constitutional Courts and the fundamental rights guaranteed under Article 21 of the Constitution of India are asserted, the answer to the said question has to be in the negative.

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51. In view of the aforesaid, Questions A and B are answered in the affirmative and it is held that the respondents are not justified in raising the apprehensions noted in Question C above and same stands answered accordingly.

In Re: Questions D, E and F.

52. We have already found in our answers to Question A to C that an accused like the undertrial herein can be granted bail purely on the grounds of sickness, advanced age, infirmity and health conditions, provided it is found that the continued incarceration of the undertrial would be incompatible with his health condition and that it would amount to endangering his life. Since the findings to be rendered on the aforesaid Questions D, E and F are necessarily fact based, in the present case an inquiry in that behalf would necessarily require detailed perusal of the medical reports and other related documents placed on record.

53. In order to support the contentions raised on behalf of the undertrial on the basis of his advanced age, sickness and health conditions, learned counsel appearing for the undertrial placed emphasis on the medical reports pertaining to all the hospitals in which the undertrial had to be admitted and treated from July, 2020, till date. The undertrial was in and out of the Taloja

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Central Prison Hospital, the J.J. Hospital, the St. George Hospital and the Nanavati Hospital, till he was again admitted to the Nanavati Hospital as per the order dated 18/11/2020 passed by this court where his treatment has continued till date. A perusal of the documents and medical reports pertaining to the visits of the undertrial to the aforesaid hospitals is necessary to appreciate the contentions raised on behalf of the rival parties.

54. There is no dispute about the fact that the undertrial had to be admitted to the J.J. Hospital, which is a Government facility, initially in May 2020 and then in July, 2020 since his health condition started deteriorating. The medical papers pertaining to May 2020 were not made available, while such papers were available pertaining to his admission in J.J. Hospital in July 2020. A perusal of the medical papers pertaining to the said period shows that on 13/07/2020, it was recorded in the papers of the J.J. Hospital that the undertrial, being an 81 year old male prisoner, was brought from the Taloja Central Prison. The papers show that he was suffering from bleeding from the rectum and urinary inconvenience. Yet, surprisingly, it is recorded that at that time the undertrial had no complaints. Another entry in the papers dated 13/07/2020 records that the undertrial was having tremors for the past few months and generalized weakness with bleeding from rectum. In an entry dated 14/07/2020, it is recorded that the undertrial was having mild delirium and it was

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further specifically recorded as follows:

“Bed wetting due to inconvenience. Patient unable to void in toilet. Pain due to weakness and imbalance on walking. No relative with the patient.”

55. On the same day, it was recorded in the papers of J.J. Hospital by the Department of Neurology that the undertrial stood referred from Talaja Central Prison for disorientation and tremors with slurring of speech. On 15/07/2020, the Head of the Department of Neurology of J.J. Hospital examined the undertrial and recorded that *“although the patient was conscious and oriented, his attention was poor, recall poor, able to calculate with difficulty.”* It was further recorded that the undertrial was admitted for evaluating delirium/tremors. It was also recorded on 16/07/2020 that the undertrial had to be put on diapers and that a catheter was urgently required in view of his health condition.

56. There is no doubt about the fact that when the undertrial was being examined for his deteriorated health at J.J. Hospital, he also tested positive for Covid-19 virus. Since St. George’s Hospital, also a Government facility, was a designated Covid-19 Hospital, the undertrial was shifted on 16/07/2020 from the J.J. Hospital to the St. George’s Hospital. In the discharge summary of the J.J. Hospital dated 16/07/2020, it was specifically recorded that the undertrial had been admitted to J.J. Hospital for delirium, secondary to electrolyte imbalance, a month back and

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that presently, he was suffering from occasional tremors of upper limbs.

57. The undertrial was kept in St. George's Hospital in view of his having tested positive for Covid-19 virus between 16/07/2020 to 19/07/2020. In the papers of St. George's Hospital recorded Transfer Summary, it was specifically stated that when the undertrial was admitted to the J.J. Hospital, he was found to have hyponatremia and that in the J.J. Hospital, he had suffered a fall from the bed on 16/07/2020. There is no dispute about the fact that the undertrial did suffer such a fall, as a result of which, he suffered cut on his forehead which had to be stitched/sutured. It was also recorded in the said papers of St. George's Hospital that sodium level of the undertrial was 120 Meq/Lit. It is significant that in the said papers under the heading "Course in the Hospital and Discussion", after recording that the undertrial had mild age related brain atrophy, it was recorded as follows:

"Pt. was admitted in JJH on 14/7/2020 with above mentioned complains and was under neurology care. His sodium was found to be 122 Meq/L on admission. He was given adequate IV Hydration and Electrolyte correction. Detailed Neurological examination by senior neurologist was s/o. ? Delirium?Dementia with dyselectrolytemia. Pt nasopharyngeal swab was sent for RT PCR – turned to be positive on 16/7/2020, hence decision was made to transfer him to St. George's Hospital, designated critical Covid care centre for further management.. During his stay at SGH, on admission

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his sodium was 115 Meq/L.. and his mental status was conscious but confused and fluctuating sensorium... in view of the above he was started on IV fluids and electrolyte correction .. over the period his sodium corrected to 120 Meq/L on 18/7/2020.. In view of his medical condition following references were made -

1) Neurology -

*Advised – CT Brain in view of fall
MRI Brain after stabilisation
Nephrology opinion
Input Output charting
Sodium correction*

Nephrology Opinion -

*Serum potassium and magnesium
Urinary Spot Sodium
100 ML 3 %Saline Slowly after 8 hrs.
Repeat Sodium After 8 Hours.*

Surgery Opinion on 17th July 2020 : Suture line healthy advised suture removal after 5 days.

ENT Opinion on 17th July 2020 : conservative management at present and plan for 3D CT and plastic surgery opinion once medically stable.

Urology Reference – CT Condom Catheter

*USG Abdomen +Pelvis for post void residue
USG Abdomen and Pelvis – Mild Prostatomegaly
USG B/L Lower Limb Venous Doppler – No significant Abnormality.*

As per the telephonic communication received by the superintendent of St. George's Hospital from Superintendent Talaja Jail, Mr. Kurlekar (7219204992) at 11.34 pm on 18/7/2020 that the bed has been reserved for Mr. VV Rao at Nanavati Hospital for further management. Hence, patient is being transferred by St. George's Hospital

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Ambulance with Accompanying Medical Officer and Ward boy at 12.30 am on 19/07/2020.”

58. Accordingly, the undertrial was shifted further from St. George’s Hospital to the Nanavati Hospital, a private facility. This was on the intervention of the NHRC. A perusal of the above quoted portion from the papers of the St. George’s Hospital would show that the question of delirium/dementia with electrolyte imbalance did come up for discussion amongst the doctors and that brain atrophy was clearly found in the C.T. scan of the undertrial dated 17/07/2020.

59. The papers of Nanavati Hospital, upon admission of the undertrial on 19/07/2020, show that his history was recorded, including the fact that he had suffered wound on left forehead above eyebrow due to fall from bed and it was specifically recorded that no family members were available. It is significant that in the in-patient progress note dated 19/07/2020 of the Nanavati Hospital, it was recorded that although the undertrial was received as a patient from the St. George’s Hospital, apart from the Transfer Summary, no reports were handed over to the doctors at the Nanavati Hospital. Upon examination by the doctors at the Intensive Care Unit (“ICU”) of the Nanavati Hospital, it was found that the undertrial was disoriented and that there was generalized weakness. In the notes pertaining to examination conducted at the Nanavati Hospital in the ICU from

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22/07/2020, it was recorded that the undertrial was suffering from tremors, he was confused and at that time he was talking in an irrelevant manner.

60. The entries pertaining to 23/07/2020 also show that the undertrial was suffering from tremors and confusion. On 24/07/2020, it was recorded by the doctors that although the undertrial was conscious, he was disoriented as to time and place and that he was suffering from tremors. This entry was again found on 26/07/2020 made by doctors upon examination of the undertrial. He was given treatment in the hospital continuously and yet, on 29/07/2020, it was recorded in the notes that the undertrial was disoriented as to time and place and that he had intermittent tremors with irrelevant talking. By 31/07/2020 and 03/08/2020, it appears that with continued treatment, the undertrial was obeying simple commands, although there was some confusion on detailed questioning. But, by 12.00 p.m. on 03/08/2020, the notes of the ICU of the Nanavati Hospital show that the undertrial was again disoriented with tremors and he was required to be restrained.

61. On 11/08/2020, the notes prepared by the said hospital show that the undertrial was obeying commands and cognition was better. It was recorded on 11/08/2020 upon review of the undertrial by the Neurologist, as under:

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*“Case reviewed
Cognition improvement
More awake
Answers simple commands
Was mobilised yesterday
Was able to take few steps with support.
Answers correctly to time, place and person.
Behaviour.”*

62. The undertrial continued receiving treatment at the Nanavati Hospital in August, 2020, where he was able to walk with support and he could obey oral commands. Then on 27/08/2020, the undertrial was discharged to be sent back to Taloja Central Prison Hospital.

63. At this stage, although the undertrial was discharged, the Nanavati Hospital recorded that he required follow up in view of the underlying comorbid conditions and regarding hyponatremia, it was specifically recorded that the undertrial required close monitoring, particularly because he had suffered from Covid-19 infection. The undertrial was brought to the Taloja Central Prison and he was admitted to the prison hospital. Although it is claimed by the respondents that the health of the undertrial was being monitored as per the instructions given by the Nanavati Hospital, it has been specifically stated on behalf of the undertrial that there was no nursing staff to look after him and that only a co-accused person was provided as an attendant. It has been

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specifically asserted in an affidavit filed by the wife of the undertrial in Criminal Writ Petition No.63 of 2021, that there was no facility in the Taloja Central Prison Hospital as there was no doctor available and that there were only three Ayurvedic practitioners to look after the ill and infirm inmates. It was further stated that there was no nursing staff and tasks of nursing were being performed by untrained undertrial prisoners. There was nothing placed on record on behalf of the respondents to deny such specific allegations.

64. Therefore, it becomes clear that when the undertrial was brought from the Nanavati Hospital to Taloja Central Prison and lodged in the hospital attached to it, despite the requirement of constant monitoring, no such facility was made available and there was absence of trained medical staff to look after the inmates like the undertrial suffering from various health conditions at an advanced age.

65. It is in this backdrop that the undertrial had filed Criminal Writ Petition No.64 of 2021 and his wife filed Criminal Writ Petition no.63 of 2021. It was stated in these petitions that the condition of the undertrial was pitiable during his stay in Government hospitals i.e. the J.J. Hospital and the St. George's Hospital and that it was only when he was admitted to the Nanavati Hospital at the intervention of NHRC that his health

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improved. The undertrial was abruptly discharged from the Nanavati Hospital when his health required close monitoring and when he was lodged in Taloja Central Prison Hospital, his health condition predictably started deteriorating. The catheter inserted at the Nanavati Hospital was not removed or changed for a long period of three months, as a result of which, on or about 14/09/2020, upon his return to the Taloja Central Prison Hospital, blood clots started appearing in the catheter tube, thereby showing the callous neglect shown by the authorities, resulting in fast deterioration of the health condition of the undertrial.

66. In this backdrop, when a medical report was called by this court, the Superintendent of Taloja Central Prison forwarded Report dated 12/11/2020. In this report, the history of the undertrial having been admitted to the J.J. Hospital in May, 2020, onwards was traced and it was recorded in the said report as follows:

“Again the prisoner patient Pendayala Varavara Rao was referred and send to J. J. Hospital on 13.07.2020 through police escort for Hypertension with BPH with Recurrent Hyponatremia Recurrent Urinary track Infection with Brain Atropy with mild Supra Pictorial White Matter ischemia, age related Cerebellar and diffuse and Cerebral Cortical atrophy and treatment of serum electrolyte and ... and follow up in Medicine, Urology and Neurology OPD. The said prisoner got admitted in Sir J.J Hospital Mumbai

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on same day.

According to information from J. J. hospital his Covid-19 test was done on 15.07.2020 and report dated 16.07.2020 the said prisoner was found Covid-19 positive. Hence Said Prisoner was transfer to Saint George Covid19 Hospital on 19.07.2020 for covid19 care.

Again as per the Direction given by National Human Rights Commission and State Government and Sir J J Hospital Mumbai the said Prisoner shifted to Nanavati Super Specialty Hospital Mumbai on 19.07.2020 where he got admitted Form 19.07.2020 to 27.08.2020 for Hypertension with BPH with Recurrent Hypertension Recurrent Urinary track Infection with Brain Atropy with mild Supra Pictorial White Matter ischemia, age related Cerebellar and diffuse and Cerebral Cortical atrophy and in view of covid-19 care, Neurological Acute Encephalopathy. Regarding his Comorbidity and Advanced Age. And Treated Accordingly and Discharged on 27.08.2020.

With advice Following Medications and Following Instructions

*Tab. Pan 40mg,
Syp. Cremaffin plus 30ml,
Ing. Clexane 0.4ml
Tab. Atorva 40mg,
Tab. Olimelt 2.5mg,
Tab. Urotone 25mg,
Tab. Supradyn,
Tab. Ecosprin 150mg,*

INSTRUCTIONS BY NANAVATI HOSPITAL

1 Mr. P Varavara Rao has Improved Considerably from the time of admission and can

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be discharged with proper follow-up in view of underlying comorbid conditions and recurrence of Hyponatremia.

2 He needs to be closely monitored for development of warning signs (altered sensorium/giddiness/dysuria/fever etc) which would warrant evaluation by Neurologist/Urologist/Physician as needed.

3 Post COVID followup with Chest Physician is advisable if any respiratory complaints arise,

He was diagnosed as covid-19 illness resolved, with urinary tract infection, (Ecoli-CRE), underlying recurrent hyponatremia, hypertension with BPH.

67. Although, it was claimed in the said report that the health of the undertrial was being monitored as per the instructions given by the Nanavati Hospital, it has come on record that the blood and urine samples of the undertrial were only intermittently sent for testing and, that too, to Laboratory outside the Taloja Central Prison Hospital, because no such facility was available in the said hospital. Considering the serious allegations made in the writ petitions filed before this court, on 18/11/2020, this court recorded the statement of learned Public Prosecutor that the undertrial was being shifted to Nanavati Hospital again for further treatment.

68. The undertrial has continued as an in-patient in Nanavati

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Hospital during the pendency of the appeal and writ petitions before this court and there is no dispute about the fact that pursuant to his admission to the said hospital and because of the constant monitoring and treatment given at the said hospital, the health condition of the undertrial appears to have improved gradually. During the course of hearing, this court asked for latest medical reports pertaining to the undertrial, pursuant to which on 12/01/2021, the Nanavati Hospital submitted a report, relevant portion of which reads as follows:

“It is pertinent to note that our neurologist has certified that the Patient has normal cognitive functions, which indicates that he is capable of self-care. Based on the clinical parameters and bedside testing it is apparent that he does not have Dementia; however, to rule out Dementia completely we will need to do a detailed neuropsychological testing for the Patient. Although, at this state a detailed neuropsychological assessment is not required for the Patient as per our neurologist.

Also the Patient is voiding well. Epididymorchitis fully resolved

He has no bothersome lower urinary tract symptoms.

He needs to continue with Tab SILODOCIN 8 mg at bedtime daily.

As of 12th January 2021, the Patient is on the following medications:

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TAB ECOSPRIN 75 MG 0-0
TAB ATORVA 1010MG 0-0-1
TAB ESCITALOPRAM 5MG 1 1/20-0
TAB A-Z 0-0-1
TAB PAN 40MG 1-0-0
SYSTANE EYE DROP
NAIL LACQUIRE LOCAL APPLICATION
VENUSIA MAX LOTION LOCAL APPLICATION
XERNIA CREAM FOR LEG LOCAL APPLICATION
SYSSTANE EYE DROP APPLICATION 1-1-1-1
FLUTICON FT NASAL SPRAY 2 SPRAY
EACH NOSTRIL 1-0-
AMOROLFINE NAIL LA 1-0-1

Based on the above sequence of events and observations of the attending medical doctors, it is our medical opinion that as of today the Patient is hemodynamically stable. His Blood Pressure is well controlled on medications. His urological condition has been completely treated. The Patient doesn't require indoor medical management & is fit to be discharged.

69. During the course of hearing, this court again directed a report to be called from the Nanavati Hospital in view of certain statements made on affidavit on behalf of the undertrial that he had suffered chest pain in the interregnum. The Nanavati Hospital submitted its Report dated 27/01/2021, wherein the sequence of events was recorded and it was stated as follows:

"The Patient's vitals are stable and the medical treatment is being continued as-is .

As of 27th January 2021, the Patient is one the following medications:

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TAB ECOSPRIN 75 MG 0-1-1
TAB ATORVA 10MG 0-0-1
TAB ESCITALOPRAM 5 MG 1-0-0
TAB A-Z 0-0-1
TAB DOLO 650 MG Per Oral, if required.
SYS CREMAFFIN PLUS HS 30 ML
TAB CILACAR 5MG 1-0-1
TAB SILODOSIN 8 MG 0-0-1
TAB PAN 40MG 1-0-0
SYSSTANE EYE DROP LOCAL
APPLICATION 1-1-1-1
SYRUP SUCRALFATE 30MI 0-1-1
T- BACT Ointment Local application

Based on the above sequence of events and observations of the attending medical doctors, it is our medical opinion that as of this date the Patient is hemodynamically stable. His Blood Pressure is well controlled on medications. His urological condition, for which he was referred, has been completely treated. The Patient doesn't require indoor medical management and is fit to be discharged.

70. We have referred to the observations made in the abovementioned medical papers pertaining to the journey of the undertrial in two Government Hospitals and one Private Super-speciality Hospital to appreciate the rival contentions made before us pertaining to the claim of the undertrial for being released on bail on the ground of his old age, sickness and health conditions.

71. It is significant that one of the contentions raised on behalf of the undertrial was that the family members of the undertrial
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could meet him and they could provide him company only during the period after November, 2020 when he was admitted to the Nanavati Hospital at the intervention of this court. It was specifically submitted that when the undertrial was in Taloja Central Prison, the relatives of the undertrial were not informed about his serious health conditions induced by his long-standing health ailments and old age, despite the fact that he had to be admitted repeatedly to Government Hospitals and even when he had contracted the Covid-19 virus. The respondents have denied the claims made on behalf of the undertrial and it is contended that since the undertrial did receive treatment whenever it was required and, as of now, he was found fit to be discharged, there was no question of grant of bail to the undertrial on the basis of old age, sickness and health conditions.

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/Anasarca (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

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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,

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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

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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

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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.

73. It is in the backdrop of the above stated findings pertaining to the status of the health of the undertrial that this court needs to answer the aforementioned Questions D, E and F mentioned in paragraph 35 above. There can be no dispute about the fact that the undertrial is at an advanced stage of his life, aged about 82 years and suffering from various ailments noted above as also age-related degenerative conditions. It is significant that the medical reports and papers on record have indicated that the undertrial is suffering from cerebral atrophy, which can be age-related and that he has suffered from bouts of delirium induced by electrolyte imbalances. The papers also show that there is a reference to dementia in respect of the undertrial, due to the bouts of delirium and cerebral atrophy. There is material placed on record on behalf of the undertrial to indicate a causal connection between cerebral atrophy and delirium leading to onset of dementia. There can be no doubt about the fact that a person in the health status of the undertrial would face

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acceleration and intensification of ailments if he continues to remain in custody.

74. Upon frequent and continued deterioration of health of the undertrial, he would have to be shifted to hospital attached to the Talaja Central Prison. We find that the material on record clearly indicates that the said hospital attached to the Talaja Central Prison is ill-equipped and inadequate to take care of the health of the undertrial. This would mean that the undertrial would have to be shifted to the Government Hospitals like the J.J. Hospital and the St. George's Hospital to take care of his health. The papers on record pertaining to the manner in which the undertrial could be treated in the said Government Hospitals show that his health continued to deteriorate causing bouts of delirium, irrelevant talks and tremors. It was only when the undertrial was shifted to a Private Super-speciality Hospital viz. the Nanavati Hospital that his health did show gradual signs of improvement. It is significant that the undertrial was shifted to the said Private Super-speciality Hospital only upon the intervention of the NHRC and this court. What is even more significant is that when the undertrial was discharged from the Nanavati Hospital on 27/8/2020 and shifted back to the Talaja Central Prison to be lodged in the hospital attached to the said prison, the close monitoring of the health of the undertrial as instructed by the Nanavati Hospital was not undertaken, leading

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to sharp deterioration of his health, necessitating the admission of the undertrial at Nanavati Hospital again and, that too, at the intervention of this court.

75. In view of the aforesaid material and sequence of events, we have come to the conclusion that sending the undertrial back to Talaja Central Prison would certainly endanger his life. In fact, continued custody of the undertrial at the Talaja Central Prison is wholly incompatible with his health condition, because the hospital at the Talaja Central Prison is not adequately equipped to take care of the undertrial, given his advanced age and various health conditions.

76. In these circumstances, it is necessary to deal with the statement made on behalf of respondent-State that it is ready to keep the undertrial at the J.J. Hospital in the Prison Ward. We are of the opinion that if the latest medical reports of the Nanavati Hospital dated 12/01/2021 and 27/01/2021 are to be accepted, the undertrial would stand discharged as he is found to be fit for discharge and he would have to go back to Talaja Central Prison, indicating that sending him back to a Government Hospital cannot be countenanced. Even otherwise, there is substance in the contention raised on behalf of the undertrial that sending him to the prison ward of the J.J. Hospital, a Government facility, would be fraught with the risk of inviting hospital acquired

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infections, particularly when the undertrial has already suffered repeated bouts of drug resistant bacterial infection to his urinary tract and he also tested positive for Covid-19 virus. We find that respondent-NIA is also not justified in relying upon the said statement made on behalf of respondent-State that the undertrial could be kept in the J.J. Hospital Prison Ward and that this could be a ground for rejecting his prayer for grant of bail on health grounds.

77. In this context, it is necessary to examine the contentions raised on behalf of the respondents that since the Nanavati Hospital itself has categorically stated in its reports dated 12/01/2021 and 27/01/2021, that the undertrial is fit for discharge, this court cannot sit in appeal over such an expert opinion, particularly when the undertrial has not disputed the said reports submitted by the Nanavati Hospital. But, a perusal of the aforesaid reports and the above-quoted portions thereof, would show that even the Nanavati Hospital has certified that as per its opinion the undertrial is found to be hemodynamically stable “as of today”. It is then stated that the undertrial does not require indoor medical management and that he is fit to be discharged. In respect of his neurological condition, it is stated that the undertrial has normal cognitive functions indicating that he is capable of self-care and fit to be discharged. On the question of dementia, it is significant that according to the Nanavati

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Hospital, as per clinical parameters and bedside testing, he does not appear to be having dementia but for ruling out the same, a detailed neuropsychological testing of the undertrial was required, which as per the opinion of the neurologist of the Nanavati Hospital was not required at the said point of time.

78. There is no doubt that the said report and the subsequent report dated 27/01/2021, stating that the undertrial was fit for discharge, are reports submitted by Experts but, they have to be appreciated in the context of the health condition of the undertrial as is evident from the entire set of medical papers on record. The reports dated 12/01/2021 and 27/01/2021 submitted by the Nanavati Hospital cannot be appreciated in isolation and they have to be read along with the entire set of medical papers placed before this court, tracing the health condition of the undertrial from July, 2020 till date, which we have discussed in detail in paragraph 72 above.

79. Upon perusal of the entire set of medical papers brought before this court, we are of the opinion that although the Nanavati Hospital in its latest reports has certified that the undertrial is fit for discharge, it cannot be concluded that he is fit to be sent back to the Taloja Central Prison or the hospital attached to the said prison. There is no question of this court sitting in appeal over the opinion given by the Experts. By

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appreciating the entire material on record, we are of the opinion that the old age, sickness, infirmity and health conditions, as also the admitted sufferings faced by the undertrial during incarceration including infection of Covid-19 virus, lead to a conclusion that upon his discharge from the Nanavati Hospital, placing the undertrial back in custody would be incompatible with his health conditions and it would endanger his life. On an overall analysis of the material on record, we find that placing the undertrial in custody or even in the Prison Ward of the J.J. Hospital upon his discharge, is incompatible with his health conditions and that it would run the risk of deterioration of his health to the point of no return. As rightly argued by learned senior counsel appearing for the petitioner, in Taloja Central Prison, few inmates died due to infection of Covid-19 virus and sizable number of prisoners were tested positive for Covid-19. It is also an admitted position that the persons convicted for serious offences including offence under Section 302 of the IPC were released on emergency Covid parole by the State Government and also by this court on the basis of the Guidelines laid down by the High Power Committee.

80. We find substance in the apprehensions expressed on behalf of the undertrial about the possibility of the undertrial requiring repeated admissions to Government facilities which have proved to be inadequate, which would lead to the undertrial or his

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relatives repeatedly approaching courts for appropriate directions for dealing with deterioration of his health if he is put back in custody. In the said process, possibility of casualty cannot be ruled out. Therefore, it cannot be said that the contentions raised on behalf of the undertrial are based merely on unfounded apprehensions and that they cannot be considered for grant of bail to the undertrial on the basis of his old age, sickness, infirmity and health conditions.

81. We are of the opinion that the material brought before this court indicates that this court can exercise its writ jurisdiction to direct release of the undertrial on the basis of his health conditions.

82. Since we have found on facts in favour of the undertrial, we are of the opinion that the position of law on which we have rendered findings hereinabove, would apply to the facts of the present case. The condition of old age, sickness, infirmity and multiple health ailments suffered by the undertrial indicate that his continued custody would be incompatible with his health conditions and that sending him back to Taloja Central Prison would amount to endangering his life, thereby violating his fundamental right under Article 21 of the Constitution of India.

83. As we have noted above, in a given case, the fundamental rights guaranteed in Part III of the Constitution of India to
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prisoners languishing in four walls of prisons could be asserted on the basis of appropriate material to show that to recognize such rights, particularly the right guaranteed under Article 21 of the Constitution of India, the walls of the prison would have to be breached, subject of course, to imposition of appropriate conditions. Imposition of conditions would be in the nature of a safety net to ensure that the undertrial / accused is made to face proceedings before the trial court. The Hon'ble Supreme Court in the case of *K.A. Najeeb (supra)*, has categorically held in the context of sufferings of undertrials where the proceedings before the trial court take years to be completed, that the rigours of provisions pertaining to grant of bail found in special statutes like the UAPA will melt down where there is no likelihood of the trial being completed within a reasonable time. Therefore, such a position of law is now well recognized and it can be relied upon where on facts, the court comes to a conclusion that continued incarceration of an accused like the undertrial in the present case, would violate his right under Article 21 of the Constitution, considering the precarious health condition of such an accused. Even otherwise, in the present case also, the respondents have conceded that at least 200 witnesses will be examined by the prosecution. The chargesheet itself runs into thousands of pages. The charge is not framed yet, and consequently, the trial is yet to commence and, even after commencement of trial, it may take a long time to complete since the prosecution intends to examine at least 200 witnesses.

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84. We are of the opinion that this court, as a Constitutional Court, cannot be a mute spectator to the undertrial being sent to prison and then to Government Hospitals where his health deteriorates further, to be ultimately shifted to the Private Super-speciality Hospitals, upon intervention of courts and such movements of the undertrial continue back and forth only because his bail application has been turned down on merits under Section 43D(5) of the UAPA. In addition to the discussion hereinbefore on law as well as on facts, in the facts of the present case, we are of the opinion that adopting a humanitarian approach in the peculiar facts and circumstances of the case is warranted. We do not appreciate and we do not agree with the stand taken on behalf of respondent-NIA in its reply affidavit filed in Criminal Appeal No.52 of 2021, wherein it is stated as follows:

“As such it is not justifiable for an accused of such offence to seek relief on humanitarian grounds when such acts are itself against the human and state interest. Hence the accused is not entitled to any relief under humanitarian or for any other grounds keeping the gravity of the offence and its barring on the state.”

85. With all humility at our command, keeping in view human consideration, the well recognized fundamental rights of the undertrial to have quality medical aid for serious ailments suffered by him, advanced age, inadequate facilities in the hospital

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attached to the Talaja Central Prison, we are of the opinion that this is a genuine and fit case to grant relief; or else, we will be abdicating our constitutional duty and function as a protector of human rights and right to health covered under right to life guaranteed by Article 21 of the Constitution of India (See the judgment of the Hon'ble Supreme Court in *Arnab Manornjan Goswami v. State of Maharashtra & Ors.*²⁸)

86. We have to be conscious of the fact that at present the undertrial is accused of having committed such serious offences and he is yet to face trial and the charges are yet to be proved against him. There is no denial about the fact that the undertrial has indeed faced 24 such cases earlier, as repeatedly and vehemently pleaded on behalf of respondent-NIA. Yet, the respondents are not able to deny the assertion made on behalf of the undertrial in the affidavit filed by the petitioner (wife of the undertrial) in Criminal Writ Petition No.63 of 2021, wherein it has been stated that out of the said 24 cases, in some the undertrial was acquitted, in some he was discharged and in other cases, either the Government withdrew the allegations or did not pursue the same. Therefore, as of today, the undertrial is an accused in the case from which the present appeal and writ petitions arise and two other cases in which he is an accused. Merely because the undertrial is an accused in the said cases pertaining to serious offences, his health condition cannot be

²⁸ Judgment dated 27/11/2020 in Criminal Appeal No.742 of 2020 & Group matters.

ignored.

87. In this context, the contentions raised on behalf of the undertrial pertaining to the question as to how much life of the undertrial now remains also assumes some significance. Admittedly, the undertrial is about 82 years old, suffering from health ailments noted above, requiring support from his immediate relatives in order to have some semblance of normalcy during whatever period of life now remains. The documents pertaining to the journey of the undertrial to the aforesaid hospitals show that initially the relatives were not even informed about his health condition till he was admitted to the Nanavati Hospital on the intervention of this court. In these proceedings, his relatives were also granted access to him in the said hospital, which remarkably improved his health condition and appeared to bring him back from the brink. It is in this backdrop we find that Question D deserves to be answered in the affirmative and by applying the law laid down hereinabove, the undertrial deserves to be released from custody on health conditions.

88. As regards Question E, we find that although the latest reports dated 12/01/2021 and 27/01/2021 issued by the Nanavati Hospital do state that the undertrial appears to have normal cognitive functions indicating that he is capable of self-care and he does not require indoor medical management, certifying that

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he is fit for discharge, such findings cannot lead to the conclusion that the undertrial can be sent back to the Taloja Central Prison in view of the specific findings rendered hereinabove. We are also of the opinion that the offer made by respondent-State that the undertrial will be kept in the Prison Ward of the J.J. Hospital is also not tenable in the facts and circumstances of the case. We find that the contentions raised on behalf of the undertrial cannot be said to be based merely on mere apprehensions and hence Question F is answered accordingly. Yet, we are of the opinion that the undertrial cannot be granted bail on medical grounds, for the present, for unlimited period of time and unconditionally. The court needs to strike a balance between the rights of the undertrial and the necessity of bringing the accused to book, as early as possible. Therefore, appropriate conditions need to be imposed on the undertrial, which takes us to Question G framed above.

In Re: Question G.

89. It is an admitted position that as per the accusations levelled against the undertrial and the material placed along with the charge-sheet, the undertrial is accused of being a senior member of the banned organization Communist Party of India (Maoist). It is an organization which believes in violence and overthrow of the Constitutionally and legally established Government. The

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material on record, including letters and communications exchanged between the co-accused prima facie show that there is reference to the undertrial, indicating that he had facilitated financing of such violent activities. The said material, subject to proof and proceedings before the trial court, indicates that the undertrial was also involved in providing arms and ammunition for illegal and nefarious activities.

90. Thus, it is evident that the undertrial stands accused of serious offences under the UAPA as well as IPC, which if proved, can lead to imposition of death penalty or punishment of imprisonment for life. In this situation, it becomes clear that even though this court at this stage is inclined to grant bail to the undertrial for a specific period on medical grounds, based on findings rendered on Questions A to F above, such an order cannot be passed in favour of the undertrial unconditionally. Question G is answered accordingly.

91. We feel that although the material on record does show that the health condition of the undertrial is precarious, sending the undertrial back to where he belongs, is fraught with the risk of his presence being used by those allegedly associated with him to seek to revive the aforesaid nefarious activities. This court cannot rule out such a contingency and, therefore, it would be appropriate to impose such conditions as would be necessary for

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ensuring that the undertrial on his own or those allegedly associated with him do not take undue advantage of the situation, which would ultimately adversely affect the trial.

92. Having heard learned counsel for the rival parties on this aspect also, we are of the opinion that appropriate conditions need to be imposed on the undertrial even if he is to be released on bail on medical conditions. Hence, we pass the following order:

:ORDER:

- (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

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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.

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- (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.

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- (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.

93. The writ petitions stand disposed of in above terms and, in that light, the appeal is also disposed of. Accordingly, Rule is made absolute.

94. In view of the disposal of the writ petitions and the appeal, all pending applications stand disposed of.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)

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95. After pronouncement of the final judgment and order, Mr. Singh, learned A.S.G. prays for stay of the order for three weeks.

96. Learned senior counsel appearing for the undertrial vehemently opposed the prayer. Since we have ordered the release of the undertrial on health grounds and when the Nanavati Hospital has declared him fit to be discharged, we do not deem it appropriate to send him to Taloja Central Prison for three weeks which would endanger his life. Hence, we cannot accede to the prayer of learned A.S.G. Accordingly, the prayer for stay of the judgment and order is rejected.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)

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