

shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.461 OF 2022

Dr. P. Varavara Rao]
Aged 83 years,]
Indian Inhabitant, having address at]
419, Himasai Heights,]
Lane No.6, Jawahar Nagar,]
Secunderabad,]
And at Present residing at]
Retreat House, Room No.17,6,]
Kane Road, Bandra (West), Mumbai]
Maharashtra 400 050.] Petitioner

Vs.

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. State of Maharashtra] Respondents

a/w

CRIMINAL WRIT PETITION NO.6319 OF 2021

Dr. P. Varavara Rao]
Aged about 81 years, adult,]
Indian Inhabitant, resident of]
Himasai Heights, Flat No.419,]
Lane No.6, Jawahar Nagar,]
Kavadiguda, Secunderabad,Telengana,]
Presently residing at]
Room No.17, Retreat House, Road No.6,]
Bandra, Mumbai – 400 050.] Petitioner

Vs.

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. State of Maharashtra] Respondents

a/w
INTERIM APPLICATION NO.2018 OF 2021
IN
CRIMINAL APPEAL NO.52 OF 2021

Dr. P. Varavara Rao]
Aged about 81 years, adult,]
Indian Inhabitant, resident of]
Himasai Heights, Flat No.419,]
Lane No.6, Jawahar Nagar,]
Kavadiguda, Secunderabad, Telengana,]
Presently residing at]
B 701, Sachidananda, Raheja Complex]
Rd., Malad (East), Mumbai – 400 097.] Applicant

Vs.

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. State of Maharashtra] Respondents

a/w

INTERIM APPLICATION NO.2779 OF 2021

IN

CRIMINAL APPEAL NO.52 OF 2021

Dr. P. Varavara Rao]
Aged about 81 years, adult,]
Indian Inhabitant, resident of]
Himasai Heights, Flat No.:419,]
Lane No.6, Jawahar Nagar,]
Kavadiguda, Secunderabad,]
Telengana,,]
Presently residing at]
Room No.17, Retreat House,]
Road No.6, Bandra, Mumbai – 400 050] Petitioner

Vs.

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. State of Maharashtra] Respondents

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Mr. Anand Grover, Senior Advocate a/w Aditya Chitale, R. Sathyanarayan, Neeraj Yadav a/w Susan Abraham, Swapnesh Salvi, for Applicant/Petitioner.

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh Patil, Special P.P (NIA) a/w Mr. Vishal Gautham and Mr. Chintan Shah, for Respondent No.1 – NIA.

Ms. S.D. Shinde, A.P.P, for Respondent No.2 – State.

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CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

RESERVED ON : 21st MARCH, 2022.

PRONOUNCED ON : 13th APRIL, 2022.

COMMON JUDGMENT: [Per G.A. Sanap, J.]

1. All the proceedings have been filed by the accused – Dr. P. Varavara Rao. The accused and other 14 accused have been charge-sheeted for commission of the offence under sections 121, 121(A) 153(A), 505 (1) (B), 117, 124 (A) r/w section 120 (B) of the Indian Penal Code (for short “I.P.C”) and sections 13, 16, 17, 18 (B), 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short “UA (P) Act”). The Division Bench of this Court vide order dated 22nd February, 2021 decided the proceedings filed by the accused namely Criminal Appeal No.52 of 2021 (Criminal Appeal

LDVC No.143 of 2020), Criminal Writ Petition No.63 of 2021 and Criminal Writ Petition No.64 of 2021. This decision is reported in **(2021) 2 Bom CR (Cri.) 483**. The Division Bench of this Court partly allowed the prayer made by the accused and granted him bail for a limited period of six months on medical ground subject to the conditions set out in paragraph 92 of the judgment.

2. The period of six months has already expired. However, before expiry of the period of six months, the accused has filed Interim Application No.2018 of 2021 for extension of the temporary bail. He has filed Interim Application No.2779 of 2021 for modification of clause No.92 (c) of the order dated 22nd February, 2021. The accused has filed Criminal Writ Petition No.461 of 2022 and prayed to release him on a permanent bail on medical grounds. Substantive Criminal Writ Petition No.6319 of 2021 has been filed seeking modification of clause 92 (c) of the order dated 22nd February, 2021. Since the question of facts and law involved is identical, all the proceedings can be disposed of by the common judgment. The facts are as follows.

3. It is the case of the accused that from the day of his arrest, he has been in custody. He is 82 years old. He has been charge-sheeted without any evidence. The case is pending before the Special Court. Investigation even after filing the charge-sheet is in progress. There is no possibility of commencement of the trial for years together.

4. The accused is suffering from Neurological Systems. He was examined by Dr. Wadia on 26th July, 2021. Dr. Wadia suspected earlier Parkinson. MRI Test was conducted at Nanavati Hospital. The report shows signs of early Parkinson. The accused has also memory retention problem, movement disorders with tremors and gait instability. The accused is also found to have lacunar infarcts in six major lobes of the brain. He has undergone the city scan. There is abnormality in the posterior margin of the substantia nigra of the brain. In short, it is his case that he has been suffering from Neurological, heart and other old age related ailments. His health condition is not compatible with the conditions prevailing in jail. No facilities have been provided in Jail as per the Jail Manual. Due to old age and the ailments, chances of survival of the accused in the conditions and environment of Jail are minimal. His health condition has worsened. After the order of bail, he is suffering from dementia. He may fall due to the ailments and his overall health condition. He has, therefore, prayed for bail on his health ground.

5. On receipt of the report of the examination of the accused from Nanavati Hospital, the accused has filed a separate affidavit. In the said affidavit, it is stated that the medical opinion and the reports have been manipulated by the National Investigation Agency (for short "N.I.A"). The medical opinion and reports from Nanavati Hospital have, therefore, lost it's credibility.

6. It is further case of the accused that in case this Court is inclined to grant him bail then condition No.92 (c) of the judgment

and order dated 22nd February, 2021 may be modified and he may be allowed to stay with his family at Secunderabad in the State of Telangana. He needs to be looked after by his family members. His children are Doctors. The medical facilities in the State of Telangana are provided free of costs. His stay at Mumbai is costly. It is, therefore, necessary to allow him to stay with his family.

7. One Mr. Vikram Khalate has filed affidavit-in-reply in all the proceedings on behalf of N.I.A. N.I.A has opposed the proceedings. It is contended that the crime committed by the accused and others is very serious. Elgar Parishad organized by the activists Kabir Kala Manch at Shaniwarwada, Pune on 3rd December, 2017 prompted enmity between the caste groups and led to violence resulting in loss of lives and state wide agitation. Investigation in the crime revealed that senior leaders of the CPI (Maoist) a banned organization under UA (P) Act were in contact with organizers of Elgar Parishad as well as the arrested accused persons in this case to spread the ideology of Maoism/Naxalism to encourage unlawful activities. There is voluminous evidence to establish the complicity of this accused and other accused in the commission of crime. Investigating Officer has collected ample evidence to establish the complicity of this accused in the crime. The accused mostly made use of the electronic devices for communication. Analysis of the seized articles revealed the grave and serious crime of a larger conspiracy. The object of the conspiracy is not limited to the State of Maharashtra. It covers all the regions of the country which are

affected by Naxalite movements. The accused have conspired to overthrow the Government established by the people and establish the rule based on their ideology. The Division Bench of this Court on humanitarian ground granted temporary bail for six months. The Division Bench had not found the accused entitled for a permanent bail. There is no change in the circumstances. The accused was referred to Nanavati Hospital which is a private hospital for medical examination and check up. The report submitted by Nanavati Hospital which is Super Specialty Hospital does not support the contention of the accused. The accused has unnecessarily blamed the Hospital Administration. The intention is to gain sympathy. No case has been made out for granting bail to the accused on the grounds stated in the writ petition. Similarly, no case has been made out for extension of bail granted by the Division Bench of this Court vide order dated 22nd February, 2021 and also the prayer for modification of condition No.92 (c) of the said order and allow the petitioner to stay at his home at Secunderabad, State of Telangana.

8. The learned Senior Advocate Mr. Anand Grover submitted that considering deteriorating health condition of the accused in Taloja Central Jail, the Division Bench of this Court has recorded a finding vide order dated 22nd February, 2021 that health of the accused is incompatible with judicial custody in Taloja. The learned Senior Advocate submitted that the petitioner had history of Piles, Prostrate enlargement, Coronary artery disease, Oedema/Anasarca (Swelling of feet), Vertigo, Hypertension with prostatic hypertrophy

with Recurrent Urinary Tract Infection caused by superbug CRE (Carbapenem resistant Enterobacteriaceae) E. coli, recurrent hyponatremia, serum electrolyte imbalance, Brain Atrophy with brain Ischemia, Cerebral Cortical atrophy, Migraine and Sinusitis. The learned Senior Advocate submitted that during the course of his custody, his ailments got aggravated. He was not provided proper treatment and attention. The learned Senior Advocate submitted that due to timely intervention by this Court in the earlier round of litigation, the accused was sent to Nanavati Hospital and, therefore, he survived. The learned Senior Advocate submitted that the petitioner's health conditions have worsened post-release. He has undergone surgery for umbilical hernia. The accused needs to be operated for cataract in both eyes. The learned Senior Advocate submitted that his neurological problem has aggravated. His examination by Dr. Wadia on 26th July, 2021 reveals that he is suspected case of early Parkinson. The learned Advocate submitted that at the old age of 82 years with his underlying health conditions and now early Parkinsonism, the health of the accused is going to deteriorate. The learned senior Advocate submitted that considering the lack of medical facilities provided in Taloja Jail, survival of the accused is next to impossible if he is sent back to jail. There are no trained medical officers, nurses, staff and other infrastructure in the Hospital at Taloja Jail as provided under the Prisons Manual. The learned Senior Advocate submitted that the trial would take its own time for completion. Learned Senior Advocate submitted that in order to ensure that accused faces trial, it is necessary to allow him to

take his own care. The learned Senior Advocate ultimately submitted that the Doctors at Nanavati Hospital have not been fair to the accused. The learned Senior Advocate took us through the opinion of the Doctor and the medical papers of the examination of the accused from Nanavati Hospital and submitted that it is noting short of creating the evidence to deny bail to the accused. Learned Senior Advocate submitted that some of the Doctors at Nanavati Hospital had acted out of concern to satisfy the interest of NIA rather than the health and life of the accused. The learned Senior Advocate, therefore, submitted that this is a fit case to grant bail to the accused on health and medical ground.

9. Mr. Anil Singh, learned Additional Solicitor General of India submitted that the accused is not entitled to bail on any ground. The learned A.S.G submitted that earlier Division Bench though granted a temporary bail for six months for the specific reasons recorded in the order, was not pleased to grant his bail application out rightly. The learned A.S.G. submitted that, therefore, there is no change in this situation. The said finding has attained finality and, therefore, in the background of the said finding, the bail cannot be granted to the accused. The learned A.S.G submitted that during the course of hearing of the Interim Application for extension of bail, this Court directed NIA to get the accused examined at Nanavati Hospital. The learned A.S.G submitted that NIA complied with this order. The learned A.S.G has taken strong exception to the allegations made by the accused against NIA on the point of manipulation of the report to deny the bail to the accused. The

learned A.S.G submitted that medical experts have conducted thorough examination of the accused and gave a report and opinion. The opinion does not support case of the accused and, therefore, wild allegations have been made against the NIA. The learned A.S.G submitted that this Court cannot sit in appeal to examine the correctness or otherwise of the opinion of the expert medical officers. In the submission of the learned A.S.G, in the backdrop of the medical reports and the opinion, the contention of the accused that his health condition is not compatible with the jail and environment of jail, is not at all sustainable.

10. The learned A.S.G reiterated the facts with regard to the seriousness of the crime committed by the accused and the evidence collected during the course of investigation to establish complicity of the accused. The learned A.S.G submitted that no case has been made out on any ground permissible within the parameters of the concept of the bail to enlarge the accused on bail. Mr. Singh, the learned A.S.G further submitted that the prayer made by the accused in earlier round of litigation to allow him to stay at his home at Secunderabad in the State of Telangana has already been rejected. There is no change in the circumstances and, therefore, this prayer also deserves to be rejected. The learned A.S.G submitted that in order to gain sympathy of this Court to seek extension of the temporary bail, the accused has tried to tarnish the image of N.I.A. The learned A.S.G further submitted that writ petition seeking bail is not maintainable. The learned A.S.G submitted that as per the

provisions of U.A (P) Act, the accused would be required to make an application for bail before the Special Court.

11. In order to appreciate the rival submissions, we have minutely perused the record and proceeding. We have also perused the judgment and order dated 22nd February, 2021 passed by the Division Bench in the earlier round of litigation. At the outset, it is necessary to state that while deciding the proceedings, the facts brought on record after the decision of the Division Bench in the earlier part of the litigation dated 22nd February, 2021 would be required to be taken into consideration. The Division Bench in the earlier round of the proceedings based on the evidence produced on record was inclined to grant temporary bail for a period of six months to the accused on health ground. It is the case of the accused that there is no change in his health condition and, therefore, he is required to be released on bail during pendency of the trial. Some of the issues arising for decision in this proceeding are identical to the issues arose before earlier Division Bench. Earlier Division Bench has recorded a finding on those issues. While addressing the issue of maintainability of writ petition without first approaching to the Special Court for bail, the Division Bench made following observations in paragraph No.48 of the its judgment dated 22nd February, 2021. Paragraph 48 reads thus;

“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”.

12. In our view, this finding would be applicable while deciding this proceeding. Based on this finding, the submissions advanced by the learned A.S.G on the point of maintainability of the writ petition under Article 226 of the Constitution of India seeking a bail cannot be sustained.

13. The Division Bench of this Court made candid observations on the point of health conditions of the accused and the conditions in Talaja Central Jail. Paragraph No.75 would be relevant for our purpose. The same reads thus;

“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 Taloja Central Prison is not adequately equipped to take care of the undertrial, given his advanced age and various health conditions”.

14. Similarly, the observations in paragraph 79 would be relevant. It reads thus;

“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 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”.

15. Earlier Division Bench on the basis of the medical history of the accused, his health conditions and the lack of the facilities at Taloja Jail was convinced to accept the prayer made by the accused. However, despite having recorded this finding based on the evidence, the Division Bench was not prepared to grant bail to the accused for unlimited period. The relevant conclusion on this point is at paragraph No.88. It reads thus;

“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 he is fit for discharge, such findings cannot lead to the conclusion that the undertrial can be sent back to the Talaja 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”.

16. It is to be noted that the above conclusion has been arrived at on the basis of the facts established on record at that time and the

same have been explicitly set out in paragraphs 89 to 91. Paragraphs 89 to 91 are reproduced below. The same read as under;

“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 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 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”.*

17. It is apparent that despite having concluded in favour of the accused to grant him bail, the Division Bench was not prepared to enlarge him for unlimited period during pendency of the trial obviously, for the reasons recorded in paragraphs 89,90 and 91. It is to be noted that the findings recorded by the Division Bench in

favour of the accused as well as against the accused to enlarge him on bail for a limited period are required to be reconciled. In our opinion, if the same are reconciled, it would show that despite having come across the delicate health condition, ailments and comorbidities of the accused, the Division Bench was not inclined to release him on bail for unlimited period. In our view, if these two aspects are reconciled then the same in every possible way and manner would support the submissions advanced by the learned A.S.G. It is pertinent to mention that seriousness of the crime has remained same. The allegations levelled against the accused about his involvement in commission of crime has remained unchanged. The observations with regard to *prima facie* view of the evidence to support the complicity of the accused in the commission of a crime have not changed. It is seen on perusal of the case of the prosecution and the evidence which has been referred in the pleadings that the accused is a part of the large conspiracy. The object of conspiracy has been explicitly stated in the reply of NIA. In this background, the change in the situation sought to be asserted by the accused after the order dated 22nd February, 2021 needs to be appreciated.

18. At this stage, it is necessary to make a mention of the developments during pendency of the Interim Application No.2018 of 2021. This application has been made for extension of bail granted by the Division Bench on 22nd February, 2021 and seeking modification of clause 92 (c) of the said order. This Court vide order dated 18th November, 2021 recorded submissions advanced by the learned Senior Advocate appearing for the accused and the

submissions of the learned Advocate Mr. Sandesh Patil for NIA. This Court directed the NIA to get the accused examined at Nanavati Hospital as regards his present medical condition. The direction was given to the In-charge of Nanavati Hospital to submit report with clear opinion to this Court as regards medical condition of the accused. In our considered opinion, while appreciating the submissions advanced by the learned Senior Advocate raising doubt about the credibility of the opinion and report received from Nanavati Hospital, the circumstances which led to the passing of this order need to be borne in mind. A perusal of the record would show that by 29th November, 2021, the accused was not examined. This Court again issued direction to NIA that accused be examined immediately and the report be submitted. Nanavati Hospital is a private Super Specialty Hospital. During pendency of the earlier bail application and even after granting bail to the accused, he had preferred Nanavati Hospital for treatment. It is further pertinent to mention that no doubt was raised about reliability of the Medical Officers at Nanavati Hospital on behalf of the accused. It seems that entire blame game started on receipt of the report and opinion. A perusal of the order dated 20th December, 2021 would show that on 17th December, 2021 summary opinion from Nanavati Hospital was placed on record recording that vital parameters of the accused are within normal range. The learned Senior Advocate for the accused submitted that medical reports were not placed before the Court with opinion and, therefore, on his request, NIA was directed to place the medical reports on record. As directed by this Court, the medical

reports and the record has been placed on record. In order to crystallize the issue, it would be appropriate to reproduce clinical summary of the accused dated 15th December, 2021. It is as follows;

CLINICAL SUMMARY OF MR. VARVARA RAO

“This is regarding Mr. Varvara Rao, 82 year old gentleman who came for follow up on 01-12-2021, has been evaluated by multiple consultants. Currently, he has minor symptoms such as lack of sleep and slight exhaustion. His vitals parameters are in normal range, however, blood pressure was found to be on the slightly higher side by cardiologist and hence the dose of Tab. Cilacar has been increased from five milligrams to ten milligrams. The remaining clinical examination reveals no significant abnormalities. Patient wears abdominal belt, because he underwent a recent hernia repair for which he is in regular follow up with surgeon at some other hospital. Cardiac, ENT, Psychiatric, Urological and Neurological evaluations have been done. He requires no active management or change in medications at this point of time. Hence, he has been asked to continue with his regular medications and follow up as necessary. His neurological examination has been done by Neurologist and as per his clinical evaluation patient is cognitively normal. His headaches have resolved completely. He is able to do all his activities of daily

living. Overall his neurological functions are normal except for mild slowness of activities and some handwriting difficulty. His memory functions are intact and he does not have any headaches at present. He had undergone an F-DOPA PET scan which is normal. Patient has not been started on any medications, except SOS Tablet Enxoflam for headaches if needed”.

19. The accused has filed a detailed affidavit on production of this clinical summary and the opinion and medical examination papers. Sum and substance of the affidavit is that the medical opinion and the medical papers are manipulated at the instance of NIA. At the same time, based on some of the clinical examination/observations, the learned Senior Advocate submitted that the record clearly indicates that the accused is case of early Parkinson. The accused in his affidavit filed to deal with the medical opinion and reports has tried to demonstrate that based on the opinion and the reports, it is not possible to accept the case of NIA that there has been improvement in his health. It is stated that in the background of the facts brought on record, conclusion can be reached that his health is incompatible with the environment of Taloja Jail. In our opinion, the submissions advanced by the learned Senior Advocate raising doubt about the clinical summary/ opinion and medical papers is ill-founded. On going through the record, we have not come across iota of material to conclude that all the expert Medical Officers who have examined the accused have acted under the influence of NIA. The

Doctors who have examined the accused for the concerned ailments happen to be experts/specialists in that branch of medicine. It is stated in the affidavit that at the time of examination of the accused, he was not given an opportunity to place on record the problems and difficulties faced by him. In our opinion, it cannot be countenanced at all in the backdrop of the candid medical opinion which is based on the thorough medical examination by the Specialists. It is a matter of record that the clinical opinion is against the accused. It does not suit to the purpose of the accused. Therefore, it is but natural for the accused to find the ways and means to wriggle out of this report. The accused has, therefore, blamed the Doctors and NIA Officials. In our view, this cannot be accepted. On analysis of the clinical summary and the medical record, we are fully convinced that the Doctors have given their independent opinion based on the examination of the accused. Clinical summary, therefore, cannot be discarded.

20. The clinical summary based on the medical reports is *prima facie* against the accused. The accused by filing affidavit made an attempt to explain the medical opinion and the reports and bring home his point that even the findings from the medical opinion and reports indicate that there is no improvement in his health condition and he is not fit to be sent back to Taloja Jail. A perusal of his affidavit would show that analysis of the clinical summary and the reports has been made his own way. Based on the analysis, an opinion/conclusion has been arrived at by the accused in his

affidavit. It is trite law that opinion of the expert deserves due weightage. The Court cannot sit in appeal over it and analyse the same and draw a particular conclusion. It is to be noted at this stage that Division Bench in the earlier round of litigation has reiterated this legal position. The Division Bench considered the report dated 27th January, 2021 from Nanavati Hospital wherein it was stated that under trial was fit for discharge. The Division Bench has observed in the facts situation prevailing then that though the report indicates otherwise, report of the expert has to be appreciated in the context of health condition of the accused as is evident from the entire set of medical papers on record. In our considered opinion, therefore, the opinion formed by the accused about his health condition sought to be substituted for the opinion based on clinical summary and medical reports submitted from Nanavati Hospital cannot be accepted.

21. The case of the accused, clinical summary dated 15th December, 2021 and the finding of the earlier Division Bench with regard to the seriousness and severity of the crime need to be appreciated together. The clinical summary would clearly indicate that majority of his health problems have been taken care of due to the treatment. In the teeth of his clinical summary, the submissions advanced by the learned Senior Advocate that there is no change in the health condition of the accused post order dated 22nd February, 2021 cannot be accepted. Seriousness and severity of the crime would remain till such time the accused is pronounced not guilty of the crime alleged to have been committed by him. Role attributed to

the accused is serious. He is one of the main conspirators. Therefore, in our opinion, on the medical ground the accused is not entitled to get bail. The learned Senior Advocate submitted that if the accused is sent back to Taloja Jail then for want of proper medical aid, chances of his survival would be minimal. It is seen on perusal of the reply of NIA that there is no comment on this point. State is also party. State is also silent about it. In our opinion, there may be deficiencies. However, silence on the part of the State could not be a ground to extend benefit to the accused. The Court can take cognizance of the deficiencies pointed out and issue necessary directions to take steps to remove the deficiencies. In our opinion, this issue cannot be left unattended. As and when the same is brought to the notice of a Court, the Court has to take strict view of the matter. If the strict view of the matter is not taken and appropriate directions are not issued to rectify the deficiencies, all the under trial prisoners would make a grievance of the same and apply for bail. In our opinion, instead of setting another precedent, it would be just and proper to set a precedent by issuing appropriate directions to all concerned by making those concerned accountable for lapses and deficiencies in future.

22. Learned Senior Advocate has relied on number of judgments to substantiate his contention to grant the prayer made in the writ petitions as well as in the Interim Applications. We have perused the judgments. It is to be noted that all the judgments were cited before the earlier Division Bench and the same have been considered. It is to be noted that on the basis of the proposition of law laid down in

the judgments, the Division Bench was not inclined to grant bail to the accused for unlimited period. In view of the law laid down in the judgments relied on and appreciation of the same by the earlier Division Bench, we are of the opinion that the same would be of no help to the case of the accused to support his prayer for bail.

23. The accused has been in judicial custody. His custody is regulated by the Special Court. The accused either personally or through his Advocate can bring to the notice of the Special Court the lapses on the part of the jail Administration. The accused can seek direction from the Special Court to the Jail administration to protect all his constitutional rights guaranteed under Article 21 of the Constitution of India as an under trial prisoner. It seems that nothing of this sort has been done before the Special Judge. It is also stated that trial would take its own time. It is submitted that there is no certainty on this aspect. In our view, this statement is made without ascertaining the factual position. It is not the case of the accused that either he or any of the co-accused has made an application before the Special Judge for expediting the trial and there was no positive response from the Special Judge. Special NIA Court has been established for trying such cases. Such cases by their nature itself deserve priority. The accused who are under trials are not without weapons. The accused can make grievance before the Special Court about delay in the matter. As and when such grievance is made, the Special Court is bound to take note of it and conduct the trial expeditiously. In our view, this cannot be the ground to

enlarge the accused on bail. On this aspect, the grievance can be addressed by issuing appropriate directions to the Presiding officer of the Special Court as well as to the Inspector General of the prison, State of Maharashtra.

24. In view of the statements made by the accused in the application, we expect that the learned Presiding Officer of the Special Court shall see that the trial is expedited and the hearing is conducted on day today basis as mandated by the provisions of section 309 of the Code of Criminal Procedure. The accused persons and the NIA prosecutor would be at liberty to make an application before Special Judge to commence the trial at the earliest. The grievance made either by accused or NIA on this count cannot be entertained without making a request to Special Judge to expedite the trial. It is further made clear that all the accused and the prosecution shall extend co-operation to the learned Presiding Officer of the Special Court. The learned Presiding officer shall make a note in the record of non co-operation either from the accused or from the prosecution.

25. It is now necessary to deal with the submissions made by the learned Senior Advocate on the point that there are no basic medical facilities available in Taloja Jail. In this respect, we may usefully refer the provisions of Sections 13, 14 and 15 of the Prisons Act, 1894 and the Maharashtra Prisons (Prison Hospital) Rules, 1970. As per section 5 of the Prisons Act, 1894, Inspector General is the In-charge

of the prisons in Maharashtra. It is the duty of the Inspector General to ensure the compliance of the provisions of the Prisons Act, 1894 and Rules framed under the said Act.

26. We have perused the provisions of the Maharashtra Prisons (Prison Hospital) Rules, 1970. A perusal of the rules would show that a complete mechanism has been provided in these rules to take care of the grievance made by the learned Senior Advocate. The rules are in place. The submissions would show that there is no proper implementation of the rules. In our view, on this aspect, some corrective measures can be adopted. In our view, if the corrective measures are adopted then the grievance made by the accused in this case as well as the prisons all over Maharashtra could be taken care of. It is the duty of the Inspector General prison to ensure compliance of the prisons Act and Rules. Inspector General being at the realm of affairs would be held accountable for non compliance and lapses in future. It would, therefore, be necessary to issue certain directions to Inspector General prisons State of Maharashtra.

27. We direct the Inspector General of the Prisons Maharashtra to collect the information from Taloja Central prison in particular and all prisons in Maharashtra in general about appointment of the Medical Officers, nursing and other staff and other facilities and provisions required to be made available as per The Maharashtra Prisons (Prison Hospital) Rules, 1970. We also direct the Inspector

General Prison Maharashtra to give his candid opinion on these aspects. Similarly, the Inspector General Prison Maharashtra shall submit his report with regard to the steps taken by him so far to ensure the compliance of the Maharashtra Prisons (Prison Hospital) Rules, 1970. We direct the Inspector General Prison Maharashtra to ensure that henceforth there should not be scope for the prisoners to make grievance about lack of medical facilities and timely medical aid. The same shall be made available and provided strictly in terms of the Maharashtra Prisons (Prison Hospital) Rules, 1970. The Inspector General Prison Maharashtra shall submit his report to this Court on or before 30th April, 2022.

28. The Principal District Judges of every District are required to pay periodical visits to the prisons. Similarly, the Principal District Judges are appraised about all the affairs of the prisons in the monthly meeting. The Principal District Judges are required to pay sufficient attention to such issues. The Principal District Judges shall ensure that the provisions of the Maharashtra Prisons (Prison Hospital) Rules 1970 are complied with in letter and spirit.

29. The application made by the accused for extension of bail is pending. It has come on record that he has undergone surgery for Umbilical Hernia during this period of temporary bail. It has come on record that he is required to undergo a Cataract surgery. The Doctor from Nanavati Hospital has opined that the Cataract surgery is necessary. On going through the record, we are satisfied that save

and except, Cataract surgery, no other problem has been found to be serious to accept the submissions for granting regular bail to the accused. We are, therefore, not inclined to grant prayer for bail. We are also not inclined to modify the condition 92 (c) of the order dated 22nd February, 2021 for the same reason. Health condition of the accused is considerably improved. However, since he is required to undergo a Cataract surgery, we deem it appropriate to extend the temporary bail for a period of three months only from today. It is made clear that this extension has been granted on humanitarian ground and the terms and conditions set out in paragraph 92 of the order dated 22nd February, 2021.

30. In view of the aforesaid observations, following order is expedient;

: **ORDER** :

[a] Criminal Writ Petition No.461 of 2022 and Criminal Writ Petition No.6319 of 2021 stand dismissed;

[b] Interim Application No.2779 of 2021 is rejected;

[c] In view of the peculiar facts, temporary bail granted to the accused vide judgment dated 22nd February, 2021 in Criminal Appeal No.52 of 2021 a/w Criminal Writ Petition No.63 of 2021 a/w Criminal Writ Petition No.64 of 2021 is extended for further period of three months from today, on the terms and conditions set out in paragraphs No.92 of the judgment. On completion of period of three months, the

accused shall surrender to the Jail Authorities without fail. Interim Application No.2018 of 2021 is disposed of accordingly;

[d] Inspector General of Prisons Maharashtra is directed to collect information from Taloja Central Prison in particular and all prisons in Maharashtra in general about appointment of Medical Officers, Nursing and other staff and other facilities and provisions required to be made available as per the provisions of The Maharashtra Prisons (Prison Hospital) Rules, 1970;

[e] The Inspector General Prison Maharashtra shall submit his report prepared on the basis of information and relevant record to this Court on or before 30th April, 2022 for issuing further directions;

[f] The Inspector General Prison Maharashtra is directed to ensure the strict compliance of the provisions of Maharashtra Prisons (Prison Hospital) Rules, 1970 and shall see that on this count no grievance is made by the prisoners;

[g] The Presiding Officer of NIA Court is requested to expedite hearing of the trial and conduct the same on day today basis as mandated by the provisions of section 309 of the Code of Criminal Procedure;

[h] The Principal District Judges in Maharashtra are requested to pay attention to this aspect at the time of periodical visits to prison and ensure that the provisions of the Maharashtra Prisons (Prison Hospital) Rules, 1970 are complied with in letter and spirit;

[i] The Registrar (Judicial) shall forward copy of this order to the Inspector General of Prisons, State of Maharashtra, Presiding Officer of Special NIA Court, Mumbai and to all the Principal District Judges in Maharashtra;

[j] All the accused and the prosecution shall extend co-operation to the learned Presiding Officer of the Special Court;

[k] The learned Presiding Officer shall make a note in record of non co-operation either from the accused or from the prosecution.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]