

ITEM NO.27

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 9216/2022

(Arising out of impugned final judgment and order dated 26-04-2022 in CRLWP No. 3116/2021 passed by the High Court of Judicature at Bombay)

GAUTAM NAVLAKHA

Petitioner(s)

VERSUS

NATIONAL INVESTIGATION AGENCY & ANR.

Respondent(s)

[TO BE TAKEN UP AS A FIRST CASE.]

(With IA No. 116981/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 116983/2022 - EXEMPTION FROM FILING O.T. and IA No. 116980/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 144836/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 10-11-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. Kapil Sibal, Sr. Adv.
Ms. Nitya Ramakrishnan, Sr. Adv.
Ms. Warisha Farasat, Adv.
Mr. Shadan Farasat, AOR
Mr. Nizam Pasha, Adv.
Ms. Aparajita Jamwal, Adv.
Mr. Raghav Tankha, Adv.
Mr. Shourya Dasgupta, Adv.
Ms. Hrishika Jain, Adv.
Mr. Aman Naqvi, Adv.
Mr. Dhruv Bhatnagar, Adv.
Mr. Bharat Gupta, Adv.

For Respondent(s)

Mr. S. V. Raju, ASG.
Mr. Sairica Raju, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Ashutosh Gadhe, Adv.

Mr. Kanu Agrawal, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Ms. Kirti Dadheech, Adv.

Mr. Shrikant Sonkawade, Adv.

UPON hearing the counsel the Court made the following
O R D E R

By the impugned order, the High Court has turned down the request of the petitioner for placing him under house arrest. He is in custody as an undertrial prisoner.

A chargesheet has been filed against the petitioner by the first respondent on 09.10.2020. No charge has been framed by the Court as things stand. The petitioner, it would appear, stands accused along with 15 others. The chargesheet would reveal that the petitioner has been arraigned under Sections 13, 16, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and Sections 120B, 115, 121, 121A, 124A, 505(1)(b) and 34 of the IPC.

The petitioner has been in custody since 14.04.2020 and he stands housed in the Talaja Jail, Navi Mumbai.

The High Court, in the impugned order, has refused him the facility of house arrest by *inter alia* finding that the case of the petitioner does not fit in any of the criteria which has been laid down by this Court in the decision which is reported in *Gautam Navlakha v. National Investigation Agency* 2021 SCC Online SC 382.

The Court notes that the criteria like age, health condition, antecedents of the accused, nature of the crime, need for other forms of custody and the ability to enforce the terms of house arrest, have been laid down as some of the indicative factors. It is, thereafter, that the Court has found that the case of the petitioner did not fit in with the criteria.

When this case came up, noticing the contention of the petitioner that the petitioner is afflicted with many ailments, the petitioner was referred to Jaslok Hospital, Mumbai, for a medical evaluation.

We have received the medical reports from Jaslok Hospital.

The report dated 07.10.2022 is referred to and it reads:

"MEDICAL REPORT OF MR. GAUTAM NAVLAKHA

Mr. Gautam Navlakha was admitted to Jaslok Hospital under Dr. Girish Vaswani as per order of the Honourable Supreme Court of India. We would like to place on record the report of his present medical status to the Honourable Supreme Court of India.

1) He was detected to have hyponatraemia due to SIADH and was treated for the same with Tolvasca and increasing salt intake.

For this problem he would require to continue increased salt intake 6-8 grams (in diet or in the form of salt capsules) and SOS use of Tolvasca to maintain serum sodium at 135 to 140 level with little fluid restriction up to 1.5-1.7 L/day. Monitoring of the electrolytes would be required at least twice to thrice a week along with readjustment of above therapy according to serum sodium levels under supervision of a doctor on OPD basis. (if sodium is less than 130 and patient is symptomatic he may require

hospitalisation). Monitoring of blood pressure twice a day is recommended.

2) He has been detected to have lumbar and cervical spondylosis for which he was seen by Dr. S. Kothari. He has been advised physiotherapy and use of chair and to avoid sitting on the floor. Also he has been recommended the use of a cot with a reasonably firm mattress to avoid aggravation of pain.

3) His colonoscopy has been done by Dr. Rajesh Sainani and it revealed a rectal polyp. Cold avulsion polypectomy was done. The polyp was sent for histopathology, the report is awaited.

Further line of treatment, if any, for the above would depend on the histopathology report. He is recommended repeat colonoscopy after 1 year. Follow up with histopathology report is recommended.

4) The patient was examined by Dr. Makharia for ENT checkup. The sinus x-ray revealed bilateral sinusitis for which treatment is started. Pure tone audiogram revealed mild bilateral sensorineural hearing loss. Follow up can be done on OPD basis for the above issues.

5) The patient has been examined by Dentist Dr. Ambreen Ali. She has advised scaling of both arches which is already done and no further treatment is required.

6) He was referred to Cardiologist Dr. Kaustubh Vaidya. His ECG 2D echo and CT coronary angiography are done and no evidence of significant coronary artery disease was found.

He has been advised to continue with previous antihypertensives. Regular OPD basis check-up of blood pressures is recommended. He had been advised 45 minutes to 1 hour walking every day.

7) He was examined by Neurologist Dr. Azad Irani and diagnosed to have senile tremors. He has discussed with patient and relatives about the fact that since tremor is transient and not affecting active daily life, it is best to not use any treatment and Mr. Navlakha agrees to it.

8) He was examined by Dr. Phiroze Patel Ophthalmologist. He has early cortical and nuclear Cataract. As he has progressive cataract in both eyes he will need 4-6 monthly regular eye checkup.

Disc/macula/retina are normal.

9) He was referred to Dr. Bahadur Nephrologist for assessment and treatment of hyponatraemia and his advice was followed.

10) He was seen by Dr. Ramchandani (Dermatologist). The impression was xerosis with post inflammatory hyperpigmentation for which treatment is advised and continued on OPD basis.

11) CT Bone Densitometry was done which showed Osteoporosis. He will require Tab. Risedronate. Since his serum Vitamin D level was low he has been advised Vitamin D supplementation. Tab Risedronate would be started after serum Vitamin D levels are more than 25ng/ml.

12) Patient was also evaluated by Dietician and nutritional recommendations are attached. In view of unintentional weight loss the patient would require a PET scan after 3-6 months, if the weight loss continues. In view of weight loss triple H and TB Gold is sent and the report awaited.

13) He is advised to follow up with histopathology TB Gold and triple H reports."

There is another report dated 10.10.2022 and still further another report on 17.10.2022.

On the one hand, it is the case of the petitioner that this is an appropriate case where the Court should place the petitioner under house arrest considering various factors, they include his age. The petitioner is aged about 70 years. Still further, our attention is drawn to the multiple medical problems with which the petitioner is confronted with. Trial of the case is unlikely to take place in the foreseeable future. Even charges have not been framed.

Shri S. V. Raju, learned Additional Solicitor General, stoutly opposes the request for placing the petitioner under house arrest. In the first place, he would point out that the petitioner stands charged with very serious crimes under the UAPA Act and the IPC. The crimes go to the very security of the nation. He took us through some of the materials which have been collected against the petitioner. He fortifies himself by canvassing for the position that some of the records have been retrieved from the computer of the petitioner itself and these amply demonstrate his connection with the crime with which the State has indicted him.

He would further point out that the medical report on which the petitioner relies on may not justify the insisting on the facility of the house arrest being accorded to the petitioner in the facts of this case. In fact, when the matter came up today, learned Additional Solicitor General drew our attention to a feature which is present in this case which should at any rate, warrants a fresh medical evaluation, he contends.

He would point out that Dr. S. Kothari whose opinion we have already referred to while referring to the report dated 07.10.2022 is none other than the brother-in-law of the petitioner (husband of his sister). He would submit that the conduct of the petitioner in this regard may be borne in mind. The petitioner, it is contended, was

pressing for the medical evaluation to be carried out at Jaslok Hospital, fully aware of the fact that Dr. S. Kothari is a senior Doctor (Orthopedic specialty) working in the said hospital. He very vigorously pursues the plea that, therefore, the medical reports are afflicted with the vice of bias and, therefore, the whole of the reports and in particular, no doubt, the recommendations made by Dr. S.Kothari should merit rejection. In the absence of the medical report, there is no case made out at all for ordering house arrest in the facts. Even on the basis of the medical reports, he would submit that it is not as if a case is made out for grant of benefit of house arrest. He would point out the difficulties which arise if house arrest is granted.

On a previous occasion, this Court requested the learned Additional Solicitor General to come forward with restrictions which the respondent would like to be put in place in case this Court is inclined to grant the benefit of house arrest. Today, the learned Additional Solicitor General suggested the following restrictions:

- “(i) Petitioner will be under proper armed escort of one platoon during house arrest so as to at least one section always be available (round the clock). The expenses of armed escort to be paid by petitioner Gautam Navlakha in advance, as per procedure.
- (ii) Petitioner will not use mobile phone and internet.
- (iii) Petitioner will submit local surety.
- (iv) Petitioner will not be allowed to leave the Mumbai.

(v) Petitioner will not be allowed to meet any person except certain family members (of which he will submit list of family members).

(vi) CCTV to be installed from the end of petitioner inside and outside the house and recording of the same to be given to the Hon'ble Court.

(vii) House to be screened prior to his occupancy, no electronic gadgets viz. Phone, Ipad, internet, laptop is permitted inside and with visitors."

He also further said that this Court, if it is inclined to grant house arrest, must incorporate the condition that the petitioner will not talk with any of the witnesses in the case. He will not have any interaction with the media or carry out any illegal activity, if he is placed under house arrest.

He also supported the contention that the presence of Dr. S.Kothari as a member of the team which evaluated the petitioner vitiated the report, with case law.

In response, Mr. Kapil Sibal, learned senior counsel appearing on behalf of the petitioner, would submit that there is no merit in the complaint against the medical reports based on the fact that Dr. S. Kothari is a member of the team which evaluated the petitioner. He would firstly point out that he was one of the 12 Doctors who evaluated the petitioner. The recommendations which had been attributed to Dr. S. Kothari have their foundation in scientific material unearthed through investigations carried out at the hospital which have been, in fact, carried out by other doctors. He took us through those reports.

As far as the conditions are concerned, they are largely acceptable to the petitioner, the exception being the insistence of the respondent that CCTV cameras will be installed inside their house. He does not appear to have any objection to the placing of CCTV cameras outside the room and inside the house but he takes objection to the placing the CCTV camera within room. He points out that the petitioner intends to reside at the following address:

House of Mr. Naresh Patil

BT Ranadive Smruti Bhawan
Agroli, Near Konkan Bhawan
Behind Belapur Railway Station
Belapur
New Mumbai - 400 614

He would submit that he intends to reside in the said address if this Court permits the benefit of house arrest along with his companion whom he describes as Smt. Sahba Husain who is aged about 71 years. He would submit it may constitute an impermissible invasion of the right of privacy of the said companion. The companion, it is assured, will use only a basic mobile phone which will not have the facility of internet and which phone may, no doubt, have the facility to call and also the SMS facility. Most importantly, the learned senior counsel would point out that the petitioner does not have any objection to the surveillance of the phone calls being made.

As far as the use of mobile phones are concerned, we

have noticed from the conditions which have been put forth by the learned Additional Solicitor General that the use of mobile phone by the petitioner or internet and it is further added any communicating device like computer, laptop etc. should not be permitted to be made by the petitioner. Learned Additional Solicitor General, however, would have no objection to the petitioner using the mobile phone which is handed over to him in a day for a period of five minutes by the police personnel but the call should be made in the presence of the police officers.

Having heard learned senior counsel for the parties, we must make the following analysis.

The High Court has proceeded on the basis that the petitioner does not fulfil any of the criteria. The criteria which has been laid down by this Court is to be found at para 151 which reads as follows:

"151. We observe that under Section 167 in appropriate cases it will be open to courts to order house arrest. As to its employment, without being exhaustive, we may indicate criteria like age, health condition and the antecedents of the accused, the nature of crime, the need for other forms of custody and the ability to enforce the terms of the house arrest. We would also indicate under Section 309 also that judicial custody being custody ordered, subject to following the criteria, the courts will be free to employ it in deserving and suitable cases."

As far as the criteria of age is concerned, we are a little mystified as to why the High Court has proceeded on the basis that the petitioner does not fulfill the criteria.

The petitioner is admittedly aged about 70 years. The state of health of the petitioner also cannot be described at any rate as being perfect. Far from it, as we have noticed the multiple health issues with which the petitioner is confronted.

The case of the learned Additional Solicitor General based on the presence of Dr. S. Kothari, the brother-in-law of the petitioner as one of the 12 doctors who examined the petitioner and who has given his recommendations does not appeal to us. Quite apart from the fact that the Doctor in question is a medical professional, his observations are based on investigations which have been carried out by the other Doctors. Therefore, they do not *prima facie*, at least, appeal to us as reasons for rejecting the medical report which, in fact, was based on evidence and contain inputs of the Orthopaedist Dr. S. Kothari.

Therefore, as far as the state of health of the petitioner is concerned also, it appears to be correct that the petitioner may not be unjustified in making the request for placing him under house arrest.

As we have noticed, the chargesheet is filed in the year 2020. Petitioner is one of the 16 accused. Charges have not been framed. It is quite unlikely that the trial will take place or the case will make any progress towards culmination, in the foreseeable future.

The petitioner has been in custody since 2020. There

is another aspect which we must also remind ourselves. The petitioner was placed in house arrest on an earlier occasion. There does not appear to have been any complaint of his conduct while he was under house arrest. This means, *prima facie*, there does not appear to have been any case that he will misuse the facility of house arrest.

It is not in dispute that apart from this case, the petitioner does not have any criminal background at all. The petitioner has also the case that in the year 2011, the services of the petitioner was used by the Government of India as an interlocutor to mediate with the extremists for securing the release of security personnel kidnapped by Maoists.

We would think on a conspectus of the facts that we should allow the petitioner to be placed under house arrest at least to begin with till the next date of hearing from the date on which he is actually placed on house arrest.

Accordingly, it is ordered as follows:

The respondents will carry out the necessary evaluation of the premises which has been indicated by us in the order as the place at which the petitioner can be placed under house arrest. After evaluation is carried out within a period of 48 hours from today and subject to condition which will be indicated hereinafter the petitioner will be placed under house arrest in the address indicated:

House of Mr. Naresh Patil

BT Ranadive Smruti Bhawan
Agroli, Near Konkan Bhawan
Behind Belapur Railway Station
Belapur
New Mumbai - 400 614

This is firstly to be subjected to petitioner depositing a sum of Rs.2,40,000/- (Rupees Two lakhs Forty thousand only) which is explained as the rough estimate which the respondents would claim as the expenses to be borne by the State for making available police personnel to effectively facilitate placing the petitioner under house arrest.

The said amount shall be deposited by way of giving a Demand Draft for the said amount to the Commissioner of Police, Navi Mumbai.

Smt. Sahba Husain alone is allowed to reside with the petitioner.

Besides the companion-Smt. Sahba Husain, the petitioner will have a single house keeping staff.

The respondents will be free to deploy appropriate police personnel to monitor the position so that there is no misuse of the facility of house arrest.

We have already indicated about the expense to the armed escort to be paid. The petitioner will not use mobile phone, internet, computer, laptop or any other communicating device while he is in house arrest. The petitioner will, however, be permitted to use the mobile phone which may be

provided by the police personnel on duty once in a day. The conversation will be permitted only for a period of 10 minutes. The conversation will be allowed in the presence of the police personnel. Otherwise, the petitioner would not use a mobile phone or any other phone including that of the companion.

Coming to the mobile phone to be used by the companion, the mobile phone which the companion of the petitioner can use, if she wishes to use, shall not have internet facility. It shall be, in other words, the basic device which facilitates only the making of a phone call and SMS. We further make it clear that it will be open to the respondents to carry out surveillance and recording of the phone calls being made by the companion. The companion shall not delete the details about phone calls or any message sent by using the SMS facility.

The petitioner will not be allowed to leave Mumbai/Navi Mumbai.

The petitioner will be allowed to meet only two family members, list of whom shall be provided to respondent No. 1 within a period of three days from today. The petitioner will be permitted to meet two family members once a week for three hours.

CCTV cameras will be installed at the expense of the petitioner at the entrance and exit of the residence. The CCTV installed shall be maintained in working condition

throughout and should not in any manner be rendered ineffective for any period of time whatsoever. The entire expense of maintaining it shall be borne by the petitioner. Before the petitioner is allowed to enter into house arrest, the house will be screened so that prior to occupying the house, no electronic gadgets such as phone, I-pad, internet, laptop are there which shall not be permitted inside even when visitors are allowed as per the order we have passed.

The petitioner is permitted to use TV which is not a smart TV or a TV which is internet based. He also will have access to newspapers.

The petitioner will not, in any manner, attempt to influence any of the witnesses in the case.

On an evaluation of the need for doing so, it will be open to the police officers to inspect the premises to ensure that the petitioner does not misuse the facility. On a need basis approach, it will be open to the officers to carry out search/ inspection of the premises. We make it clear that this should not be understood as meaning that such searches will be made which will amount to abuse and which is not justified by the clear need to make such searches. It should not be used to harass the petitioner.

The petitioner is permitted to walk outside, if he wants to, in the company of police personnel, as may be found necessary. The petitioner will not during such walk

engage in any conversation with any person.

The petitioner will also be permitted to have access to one lawyer. The petitioner will be permitted to interact with his lawyer in terms of whatever is permitted as per the jail manual. To facilitate this, the petitioner will forward the names of the lawyers within a period of three days from today to the first respondent.

The petitioner will not have interaction with the media.

We make it clear that this order should not be understood as final pronouncement, needless to say. It is only to remain in force till the next date of hearing whereafter the Court will revisit the issue and decide upon the question as to whether it should be continued.

The question also as to the payment to be made to the police personnel which we have ordered also will remain open for reconsideration.

Needless to say, this order is passed in the facts of this case.

We make it clear that in the event of there arising any medical necessity upon the respondent officers being informed, they will make all arrangements to make available medical facilities at the suitable hospital and the police officers will necessarily cooperate in case the petitioner needs to be taken to a hospital on account of any urgent need that may arise.

In view of the doubts expressed by the learned Additional Solicitor General flowing essentially from the presence of Dr. S. Kothari as one of the members of the team at Jaslok Hospital, we direct that the petitioner be taken for a medical evaluation at K.E.M. Hospital, Mumbai, before the next date of hearing and a report be secured prior to the next date of hearing.

We observe that the petitioner and the companion are expected to scrupulously adhere to all the conditions which have been indicated. Any deviation/misuse shall be viewed seriously and may upon it being brought to the notice to this Court by the respondents may entail immediate cancellation of the facility.

To avail the facility of house arrest, the petitioner will provide local surety for a sum of Rs.2 lakhs (Rupees Two lakhs only) by 14th November, 2022.

List the matter on 13th December, 2022.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
ASSISTANT REGISTRAR