



Sessions Case No. 57/2023

(Old Sess.C.No. 99/2019)

State X Surendra Gadling & ors.

MHGA13-000143-2023

ORDER BELOW EXH. 166

(Passed on 06.10.2025)

1. The accused Surendra Pundlik Gadling stands charged in this Special Case under various provisions of the Unlawful Activities (Prevention) Act, 1967, along with allied offences under the Indian Penal Code. The case has been pending since 2019. A discharge application moved by the accused under Section 227 of the Code of Criminal Procedure, 1973, marked as Exh. 166, has been pending adjudication since 30th November 2022, a delay spanning nearly three years that causes this Court considerable disquiet. **(This court has taken charge of this court on 22nd July 2025 and found more than 200 undertrials cases and several bail applications were pending, which were decided on priority.)**
2. Today's proceedings were scheduled specifically to hear the accused and the learned Special Public Prosecutor on a preliminary but significant question: whether the accused ought to be physically produced before this Court for purposes of arguing his discharge application. The accused, who happens to

be an advocate by profession, has expressed his desire to argue the discharge application in person rather than through engaged counsel. The Investigating Officer has filed a say at Exh. 228 opposing such physical production, citing security considerations.

3. The genesis of today's hearing lies in the accused's repeated requests for physical production to enable him to present arguments on his discharge application personally. This Court, conscious of both the gravity of charges and the accused's professional background, deemed it appropriate to hear the parties specifically on this limited issue before proceeding to the substantive hearing of the discharge application.
4. The accused, appearing through video conference, has made his submissions with considerable earnestness. However, I must record at the outset that the technological medium through which we attempted to conduct today's proceedings proved far from satisfactory. The video conference connection was disrupted on multiple occasions, by my count, no less than four or five times during a span of approximately 35 to 40 minutes. The audio quality fluctuated significantly, rendering portions of the accused's submissions inaudible or barely comprehensible. This Court

found itself repeatedly requesting the accused to repeat his points, an exercise both frustrating for the speaker and unsatisfactory for the listener.

5. The substance of the accused's submissions, insofar as this Court could gather despite the technical impediments, may be summarized thus:

5.1. The charges against him are of an extremely serious nature, falling as they do under the UAPA Act and other grave provisions. The discharge application, consequently, requires detailed and nuanced argumentation spanning multiple aspects of law and fact.

5.2. He has meticulously prepared for the discharge arguments by reference to voluminous documents forming part of the case record-documents filed both by the prosecution and the defence. Effective presentation of his case necessitates ready reference to these materials, which is severely hampered in the video conference format.

5.3. The physical setup at the jail end is wholly inadequate for conducting substantive legal arguments. He described being confined to a room measuring approximately 20 feet by 20 feet, within which eight

video conference cabins have been installed adjacently. When he attempts to make his submissions in a voice sufficiently audible for this Court to hear clearly, his voice inevitably disturbs proceedings in the neighbouring cabins. He illustrated this point by referring to an incident during today's hearing itself, where a constable interrupted him twice or thrice, complaining that his voice was causing disturbance to other video conference proceedings being conducted simultaneously.

5.4. Given the nature of legal arguments, he intends to advance on the discharge application-arguments that will necessarily be detailed and would require sustained attention and dialogue with the Court and such presentation is simply not feasible in the prevailing circumstances at the jail end of the video conference.

5.5. He has drawn this Court's attention to the recent pronouncement of the Hon'ble Supreme Court in *Sunita Devi vs. State of Bihar, reported in 2024 ALL SCR (Cri) 1297*, wherein their Lordships have clearly enunciated that physical production of an accused before the trial court is the rule, while production through video conference is merely an exception to be

resorted to in appropriate circumstances. He submits that in a case of this gravity, involving allegations under UAPA, where his liberty has been curtailed for over six years and where a discharge application has remained pending for nearly three years, the circumstances warrant application of the rule rather than continued reliance on the exception.

5.6. It is his emphatic submission that he has not been physically produced before this Court since 2019, a period exceeding six years. While video conference may serve adequately for certain routine or procedural hearings, substantive arguments on a discharge application, which is the accused's first substantive opportunity to contest the very framing of charges, cannot be relegated to a technologically mediated format that is demonstrably inadequate before this court.

6. The learned Special Public Prosecutor, Shri N.M. Bhandekar, has opposed the accused's oral application with equal vigour. His submissions warrant careful consideration:

6.1. The offences alleged against the accused are of a grave and serious nature, falling under the provisions of the UAPA Act. The accused is alleged to have been involved

in Naxalite activities, activities that pose a serious threat to national security and public order.

- 6.2. If the accused is physically produced before this Court from Talaja Central Prison, there exists a credible apprehension regarding security. The learned SPP specifically articulates two distinct security concerns: first, a potential threat to the life of the accused himself from rival factions or elements hostile to him; and second, a threat to the escort police party that would be responsible for his production and safe custody during transit. The learned SPP suggests that Naxalite elements might attempt to target either the accused or the police escort during such transit.
- 6.3. Though, today video conference facility was interrupted frequently, it may be regular and functional on next date, the Court ought not to expose either the accused or the police machinery to such potential security risks merely to facilitate the accused's preference for physical appearance.
- 6.4. The learned SPP prays that the prayer for physical production be rejected and that the accused be directed to argue his discharge application through video

conference, with liberty to engage counsel of his choice if he so desires.

7. In reply, accused submitted that the submission of threat to the life of applicant and escort is false and without any substance. He further submits that around three times he was released on temporary bail during this period, and he has stayed at Nagpur during this period and did not experience any threat to him. He prayed to direct his physical production before court to argue the discharge application.
8. Before embarking upon a legal analysis, it is necessary to consider certain undisputed facts that have emerged during today's proceedings:
 - 8.1. The accused has been in continuous custody since 2019, a period now spanning over six years. There is no dispute that during this entire period, he has not been physically produced before this Court even once after remand before charge-sheet.
 - 8.2. The discharge application at Exhibit 166 was filed on or about 30th November 2022 and remains pending for nearly three years, an inordinate delay that reflects poorly on the administration of justice and cannot be justified by reference to case load alone.

8.3. The accused is, by profession, an advocate. He possesses legal training and expertise. While this does not confer upon him any special privilege, it does mean that his desire to argue his own case is not merely the preference of a layperson but the considered choice of a legal professional who believes he can best present his own defence.

8.4. The video conference infrastructure, as experienced during today's proceedings, is far from ideal. This Court personally witnessed the frequent disconnections, the poor audio quality, and the general unsatisfactory nature of the communication medium.

8.5. The accused's description of the physical setup at the jail end, that is eight cabins crammed into a limited space, has not been contradicted by the prosecution. The inherent inadequacy of such an arrangement for conducting detailed legal arguments is self-evident.

8.6. While the learned SPP has raised security concerns, no specific intelligence input or concrete threat perception has been placed on record. The apprehension appears to be based on the general nature of charges rather than any particularized threat assessment. It is also not disputed that accused was released on temporary bail for

around three occasions between this period and reside at Nagpur during that period.

9. The question before this Court, though arising in the context of an oral prayer, raises issues of considerable constitutional and legal significance. It requires this Court to consider the interplay of several fundamental principles.
10. Article 21 of the Constitution of India guarantees the right to life and personal liberty. It is now well-settled, through an expansive body of jurisprudence, that Article 21 encompasses the right to a fair trial. As observed and reiterated by the Hon'ble Supreme Court in several cases that, the deprivation of life or personal liberty must meet the twin test of procedure established by law and the procedure must be fair, just, and reasonable.
11. A fair trial necessarily includes the right of an accused to defend himself effectively. This right is multifaceted. While primarily it encompasses the right to engage counsel of one's choice, it also includes, in appropriate circumstances, the right to argue one's case in person. Section 303 of the Code of Criminal Procedure specifically provides that an accused has right to be defended by a pleader/lawyer of his choice. When an accused happens to be legally trained and expresses a bona fide desire to argue his case personally,

courts must afford serious consideration to such request unless there exist compelling reasons to deny it.

12. The discharge application under Section 227 CrPC represents a important stage in a criminal trial. At this stage, the Court is required to consider whether, on the basis of material placed before it, there exist grounds for presuming that the accused has committed the offence. While this is not the stage for appreciation of evidence in the manner of a trial, it nevertheless requires the Court to apply its judicial mind to the materials on record.
13. The Hon'ble Supreme Court in *State of Bihar vs. Ramesh Singh [(1977) 4 SCC 39]* laid down the test to be applied at the discharge stage. Their Lordships held that the Judge while considering the question of framing charges has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case against the accused has been made out. For an accused facing serious charges under UAPA, the discharge application represents the first meaningful opportunity to contest the legal sufficiency of the material gathered during investigation. The importance of this stage can hardly be overstated.
14. The advent of video conference technology in judicial proceedings has been a welcome development, particularly

in the context of managing caseloads and avoiding unnecessary delays. However, technology is a tool, not an end in itself. It must serve the ends of justice, not become an impediment to it.

15. The Hon'ble Supreme Court in **Sunita Devi vs. State of Bihar** (2024 ALL SCR (Cri) 1297), to which the accused has referred, has provided authoritative guidance on this precise issue. In that matter, their Lordships were concerned with a situation where an accused had not been produced physically for an extended period, and all proceedings were being conducted via video conference. The Supreme Court unequivocally held that, physical production of the accused before the trial court is the rule and production through video conferencing is an exception.
16. So, it can be gathered from said citation that while video conferencing serves a useful purpose in certain situations, such as routine hearings, remand proceedings, or where production involves extraordinary security considerations, it cannot become a permanent substitute for physical production, particularly at crucial stages of trial.
17. The ratio in ***Sunita Devi (supra)*** is directly applicable to the present case. This Court is not dealing with a routine remand hearing or a procedural formality. The discharge

application represents a substantive and critical stage where the accused seeks to persuade the Court that charges ought not to be framed against him. The allegations against him carry serious consequences - both in terms of legal penal sanctions and societal stigma. The accused has expressed a considered desire to argue his case personally. He has identified specific difficulties in doing so through video conference. In such circumstances, the principle laid down in *Sunita Devi(supra)* mandates that physical production be treated as the rule.

18. This Court is not unmindful of the security concerns raised by the learned Special Public Prosecutor. In cases involving charges under UAPA, particularly those connected with Naxalite activities, security considerations cannot be dismissed as fanciful or exaggerated. The State has a legitimate interest in ensuring the safety of the accused in custody and the security of personnel responsible for his custody and transit.
19. However, security concerns cannot be invoked in abstract or formulaic terms. They must be based on credible threat perception or specific intelligence inputs. When the State cites security concerns to restrict the rights of an accused, such concerns must be demonstrable and specific, not merely inferential from the nature of charges.

20. In the present case, the learned SPP's apprehensions regarding security are noted. However, these apprehensions remain at the level of possibility rather than concrete threat. No specific intelligence input has been placed before this Court. No instance of any attempt to harm the accused or target police escorts in this case has been brought to my notice. Further, accused was on interim bail for three times, in that period also no instances or attempt to harm the accused are brought to my notice. The apprehension appears to be derived solely from the nature of charges rather than from any particularized threat assessment.
21. More importantly, if security concerns were to be treated as sufficient ground to permanently deny physical production, it would create a troubling precedent. Virtually every case under UAPA or similar special statutes could then be conducted entirely through video conference, merely by invoking security concerns. Such an approach would effectively nullify the principle enunciated in *Sunita Devi (supra)* and would be contrary to the constitutional mandate of fair trial.
22. The State has considerable resources and expertise in managing security during production of high-risk accused persons. Transit security protocols, armed escorts, route

planning, and other security measures are routinely employed for production of accused persons in sensitive cases. Unless there exists a specific and credible threat that cannot be adequately addressed through such measures, security concerns should not become a permanent bar to physical production.

23. In the present case, having weighed the security concerns against the accused's right to defend himself effectively, I am of the opinion that the balance tilts in favour of physical production. The security concerns, while noted, are not of such extraordinary nature or backed by such specific intelligence as would justify permanent denial of physical production, particularly at this important stage of discharge arguments.

24. Drawing together the various threads of analysis, I arrive at the following conclusions:

24.1. The discharge application represents an important stage in the proceedings where the accused has the right to be heard effectively and comprehensively. This is his first substantive opportunity to contest the very framing of charges.

24.2. The principle enunciated by the Hon'ble Supreme Court in *Sunita Devi vs. State of Bihar* is directly applicable:- physical production is the rule, video

conference is the exception. In the present case, circumstances call for application of the rule rather than continued reliance on the exception.

24.3. The video conference infrastructure, as evidenced during today's proceedings, is demonstrably inadequate for conducting detailed substantive arguments on the discharge application. The technical difficulties encountered and the physical setup at the jail end create impediments that effectively hamper the accused's ability to present his case properly.

24.4. The accused, being an advocate by profession, has exercised his right under Section 303 Cr.P.C. to argue his case personally. This is a right that deserves to be facilitated, not obstructed, particularly when the accused has identified specific difficulties in exercising this right through video conference.

24.5. The accused has been in custody since 2019 and has not been physically produced before this Court even once during this six-year period. The discharge application itself has been pending for nearly three years. In these circumstances, to deny physical production for purposes of arguing the discharge

application would compound the injustice already caused by inordinate delay.

24.6. While security concerns raised by the prosecution are noted and cannot be dismissed, they are not backed by specific intelligence or particularized threat assessment. They remain at the level of general apprehension derived from the nature of charges. Such concerns, while legitimate, can be addressed through appropriate security protocols without permanently denying physical production.

24.7. The principles of fair trial enshrined in Article 21 of the Constitution require that an accused be afforded every reasonable opportunity to defend himself effectively. In the present case, physical production for purposes of arguing the discharge application is a reasonable requirement that serves the ends of justice and does not pose security concerns of such extraordinary nature as to justify its denial.

24.8. In reaching this conclusion, I am conscious that my order must balance multiple considerations - the rights of the accused, the concerns of the prosecution, the security of all concerned, and the broader requirements of fair trial and justice. Having attempted to strike that balance carefully, I am

satisfied that the oral prayer of the accused deserves to be allowed.

25. Considering the foregoing discussion and reasoning, I proceed to pass the following order:

ORDER

1. The oral prayer by the accused Surendra Pundlik Gadling seeking physical production before this Court for purposes of arguing his discharge application at Exh.166 is hereby allowed.
2. The Superintendent, Taloja Central Prison, Navi Mumbai, is directed to produce the accused Surendra Pundlik Gadling before this Court in person on 28th October 2025 for hearing on the discharge application at Exh. 166.
3. The prison authorities shall make all necessary arrangements for the safe custody and production of the accused on the said date. Adequate security arrangements shall be made to ensure the safety of the accused and the escort party during transit and while the accused is present in the court premises.
4. The Investigating Officer and the State shall extend full cooperation to the prison authorities in making necessary security arrangements.

5. It is made clear that this order is limited to facilitating hearing on the discharge application and does not, in any manner, express any view on the merits of the said discharge application, which shall be decided on its own merits after hearing both sides.
6. Given the history of this matter and the pendency of the discharge application for nearly three years, this Court expects that the hearing scheduled for 28th October 2025 shall proceed without any unnecessary adjournments. Both parties are directed to come fully prepared.
7. A copy of this order shall be furnished to the Superintendent, Taloja Central Prison, the Investigating Officer, and the learned Special Public Prosecutor for necessary compliance.
8. Matter stands adjourned to 28th October 2025 (There is a Diwali Holidays from 18.10.2025 to 26.10.2025).

Aheri.
Date – 06/10/2025.

(Prakash R. Kadam)
Special Judge (UAP Act),
Aheri.

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ORDER BELOW EXH. 166

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CERTIFICATE

I certify that this order P.D.F. uploaded is a true and correct copy of original signed order.

Name of Court : Special Judge (UAP Act), Aheri.

Name of Steno (Gr.-1) : Shri. R.B. Chandekar.