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Bombay High Court hearing the bail application of Gautam Navlakha in Bhima Koregaon case.

Senior Advocate Kapil Sibal @KapilSibal appearing.

Sibal narrating the case background since August 2018.

Sibal mentions that the Delhi High Court had initially stayed the transit remand of Gautam Navlakha from Delhi to Mumbai and he continued to be house arrest.

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#BhimaKoregaon

Sibal : On October 1, 2018, the Delhi High Court quashed the arrest and remand of Navlakha. By that time, he had spend 34 days in custody under house arrest.

https://t.co/vHIFzVek65

Sibal : On April 14 this year, Navlakha surrendered in Delhi before NIA after his bail applications were dismissed by Bombay High Court and the Supreme Court.

@KapilSibal

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Sibal : He has cumulatively spend 93 days in custody. The application for extension of time was filed on June 29, which is the 110th day.
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Sibal : The only question to be considered is whether the 34 days which Navlakha spend in custody in 2018 before his remand was quashed should be counted or not.

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Sibal : The argument of the other side is that it was no custody. Arrest and custody are different. He was under custody even when he was under house arrest. His freedom and movement were restricted under house arrest.

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Sibal : If the 34 days are counted, the NIAs application is beyond 90 days and their application is not maintainable. So Navlakha is entitled to default bail.

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Sibal refers to the recent judgment of Supreme Court in "M Ravindran v Director of Revenue Intelligence".

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https://t.co/u2nq0cl0xC

ASG SV Raju now making submissions on behalf of the NIA @NIA_India

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ASG SV Raju says there was no "custody" when Navlakha was arrested in Delhi in 2018. There was only arrest and no 'custody'.

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ASG SV Raju : Delhi High Court held on October 1, 2018 that the arrest was illegal and non-est and quashed the consequential remand order.

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ASG SV Raju : In view of the Delhi High Court judgment, there is no arrest or remand.

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ASG SV Raju : The petitioner had filed a writ petition in High Court to quash the FIR which was dismissed. The SLP against it was not entertained.
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ASG SV Raju : He later applied for anticipatory bail. That is because the earlier arrest was quashed as illegal.
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ASG SV Raju : The Supreme Court had given him an option- either file regular bail or anticipatory bail. He(Navlakha) filed anticipatory bail. This means, according to him, there was no arrest before. Otherwise he would have filed regular bail.

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ASG SV Raju : Right till the Supreme Court, his anticipatory bail applications were rejected. He was arrested on April 14 and remanded on April 15. His actual arrest is not 28 August, 2018 but April 15, 2020. Because earlier arrest was held to be "non-est" in the eye of law.

ASG SV Raju : Look from other angle. If he was arrested on August 28, 2018, he should have been enlarged on bail. He was a free man till April 2020. He was neither on bail nor on custody.

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Justice Shinde says the bench will reserve orders.

ASG SV Raju says he wants to cite some more judgments and says he is ready to come back in the evening.
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Justice Shinde asks Sibal : What do you say?

Sibal : The matter has to finish today. Taking it at 5 PM may not be appropriate. We can file written submissions.

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Sibal : Illegal arrest does not make the custody non existent - that is the only point. I can file written submissions.

ASG : I want to make submissions.

Sibal : This is not fair.

ASG : I am only saying 4.30 today.

J Shinde : This is a part-heard matter.

ASG : I won't take much time. I just want to cite few judgments.

Justice Shinde : Okay we will keep it at 4.30. But we can't assure if it will be taken.

Sibal : If it is not taken up at 4.30, we will file written submissions. This can't go to January.

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Justice Shinde says the case will be taken at 4.30.

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The bench takes up the case of Gautam Navlakha seeking default bail.

ASG SV Raju makes submissions. The issue is short - whether the period of 90 days is to be computed from Aug 28, 2018 or April 15, 2020, he says.

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Justice Shinde : We are aware of the issue and background. We kept the case at evening because you said you wanted to cite some judgments.
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ASG Raju refers to judgment 'Chaganti Satyanarayan & Ors vs State Of Andhra Pradesh(1986)' to cite that 'the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed"

Period of 90 days has to be calculated only from the date of remand and not from the date of arrest - ASG Raju submits based on the above judgment.

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Date of production before the Magistrate is relevant for the computation of 90 days and not the date of arrest : ASG SV Raju.
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When Navlakha was under house arrest, he was not produced before the Magistrate. There was no remand order. That period has to be excluded. If that is included, it will lead to anomalous results : ASG SV Raju.

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ASG SV Raju : A person who is under arrest cannot file anticipatory bail application. He has filed such applications.

Justice Shinde : You argued this point in morning. We have noted that.

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ASG SV Raju : Section 167 CrPC will not apply if the arrest is illegal. Delhi HC held that arrest of Navlakha in 2018 was illegal. So 167 is not applicable. 167 stipulates legal arrest and custody.

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ASG SV Raju : After making anticipatory bail application, he is estopped...

Justice Shinde interrupts : Mr. Raju, you made this point about anticipatory bail just 3 minutes back.

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ASG SV Raju : There cannot be a gap in the custody period. It is unheard of. Period from 01.10.2018 to 14.04.2020 is not included in his computation of custody period.

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Nitya Ramakrishnan making reply to ASG Raju's submissions.

'Chaganti judgment' states the period will be computed from date of production. Navlakha was in custody from Aug 28 based on transit remand order.
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Nitya : When an arrest is quashed on technical grounds, and the person is re-arrested on the same offence, the initial period of custody will also be counted. The fact that he spent time in custody cannot be washed away.

Nitya : It is not the nature of custody but the factum of custody which is relevant for computing the time.

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The bench concludes arguments and reserves judgment. Parties directed to submit written submissions by December 23.

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