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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th January, 2025

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CRL.A. 799/2023

JOGINDER SINGH @ JOGINDER RANAAppellant

Through: Mr. Nishant Rana, Ms. Rajani, Mr. Manveen Dhanjal, Mr. Adarsh Shandilya, Ms. Zeba Parveen, Mr. Deepak, Mr. Shubham Singh, Mr. Rajvant & Mr. Jatin, Advs.

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr. Rahul Tyagi, SPP with Mr. Jatin, Mr. Amit Rohilla & Mr. Aniket Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

Background:

2. The present appeal has been filed on behalf of the Appellant-Joginder Singh @ Joginder Rana under Section 21 of the National Investigation Agency Act, 2008 (*hereinafter, the 'NIA Act, 2008'*) assailing the impugned order dated 10th May, 2023, passed by the Special Judge (NIA), ASJ-03, Patiala House Courts, New Delhi in **FIR No. RC-39/2022/NIA/DLI** dated 26th August, 2022, registered under Section 120 of the Indian Penal Code, 1860 (*hereinafter, the 'IPC, 1860'*) and Section 17/18/18B of the Unlawful Activities (Prevention) Act, 1967 (*hereinafter, 'UAPA, 1967'*), at the P.S.



NIA, New Delhi. Further, vide the present petition, the Appellant seeks grant of Regular bail.

3. Vide the impugned order the application of the Appellant seeking grant of Regular bail has been dismissed. The relevant portion of the order dated 10th May, 2023 is extracted hereinunder for a ready reference:

“Ld. Counsel for the accused/applicant has further relied upon the judgment of Apex Court in Guddan @ Roop Narayan v. State of Rajasthan. There can hardly be any denial to the legal proposition laid down in that judgment. It is no doubt established legal position that court would grant the relief of bail as a rule and denial of the same would be an exception. However, this general legal proposition cannot be applied in cases involving offence of UA(P) Act where relief of bail would be subject to the provisions of section 43D (5) of UA(P) Act. Therefore, keeping in view the allegations against the accused/applicant mentioned in para 17.75 and 17.76 and taking into consideration the protected witnesses statement and totality of entire evidence, I find that accused has failed to satisfy the threshold laid down in section 43D (5) and therefore, is not entitled for the bail. Bail application is accordingly dismissed.”

4. A brief background of the present case is that a raid was conducted by the National Investigation Agency (‘NIA’) on 12th September, 2022 at the residential premises of the Appellant, being, 438, Laxmi Garden, Yamunanagar, Haryana. During the said raid, the NIA recovered various weapons, ammunition, bank passbooks, mobile phones, etc. The same were seized by the NIA vide seizure memo dated 12th September, 2022. The Appellant was arrested on 1st October, 2022.

5. The Appellant herein then sought bail from the NIA Court. However, vide the impugned order dated 10th May 2023, the Special Judge (NIA), ASJ-



03, Patiala House Courts, New Delhi dismissed the bail application filed on behalf of the Appellant. Hence, the present appeal.

6. Notice was issued in the present appeal on 21st November, 2023. Thereafter, the Court substantially heard the matter on 25th September, 2024, 28th November, 2024 and 15th January, 2025.

7. On the last date of hearing *i.e.* 15th January, 2025 detailed submissions were heard and thereafter the Court had directed as under: -

“1. This hearing has been done through hybrid mode.

2. Both parties have made substantial arguments.

3. Let the Appellant’s Counsel confirm the factum with respect to the current whereabouts of both sons of the Appellant and whether the second son i.e., Surya Pratap @ Noni who is on bail currently, is following up and appearing before the concerned Court regularly or not.

4. Insofar as the National Investigation Agency is concerned, let a clarification be obtained as to what led to the search which was conducted in the Appellant’s premises on 12th September, 2022.

5. The statements of the protected witnesses which have been handed over to the Court today shall for the time being, be kept in safe custody with the Court Master.

6. List on 17th January, 2025 at item no.1.”

8. As per the above order, the NIA was to clarify the reason as to what was the basis of the search conducted in the Appellant’s premises. Further, the Appellant was to clarify the status of the whereabouts of the two sons of the Appellant as also whether the second son of the Appellant, Mr. Surya Pratap@Noni, who is on bail currently, is following up and appearing before the concerned Court or not.



Submissions:

9. Mr. Nishant Rana, Id. Counsel appearing on behalf of the Appellant submits the following:
- i. There is no incriminating evidence against the Appellant. The only reason why the Appellant appears to have been arrested by the NIA is because of the fact that the son of the Appellant is alleged to be part of Lawrence Bishnoi (hereinafter, 'LB') gang. The Appellant is nowhere connected or aware of any of the allegations which have been made against him.
 - ii. The Appellant is portrayed to be a member of the LB gang but he has only two cases against him. Out of the said two cases, one is where the Appellant has been implicated under Section 307 read with Section 120B IPC. In this case, the Appellant has been granted bail. In the second case against the Appellant, the Appellant was convicted under Section 174A IPC, 1860, the period for which has already been undergone. No other case is pending against the Appellant.
 - iii. The present allegations against the Appellant are only raised because the Appellant is the *paurokar* for both his sons, *i.e.* Mr. Virender Pratap @ Kala Rana and Mr. Suraj Pratap @ Noni.
 - iv. The evidence against the Appellant to substantiate the allegations by the NIA are given by Mr. Simranjeet Singh @ Baba and another Mr. Abhisekh @ Panjeta. Both of these witnesses are unreliable as they are accused in another FIR, being **FIR No. 408/2022** dated 13th September 2024. Further, Mr. Abhishek was residing with the Appellant at the residence, when the search was conducted. It is possible that he planted



the weapons and other seized material merely to implicate the Appellant.

- v. The Appellant is 59 years of age and has been unnecessarily implicated in the charge sheet. The search of the Appellant's residence took place between 6:10 am to 8:00 pm on 12th September, 2022. During the search, no video recording was done.
- vi. The trial has not yet started in the present matter. There are more than four hundred witnesses who were to be examined and therefore, the Appellant is entitled to bail.
- vii. The statements of the protected witnesses which are relied upon by the NIA cannot be placed credence upon as they were all recorded post the arrest of the Appellant. Reliance is place on ***Devangana Kalita v. State of Delhi NCT (2021 SCC Online Del 3255)*** to argue that in such circumstances, bail ought to be granted.
- viii. Considering the number of witnesses and the fact that the Appellant has been in custody since 2022 because the trial could not be concluded, is enough to release the Appellant on bail as his right under Article 21 *i.e.*, the right to life and liberty of the Appellant cannot be curtailed in the matter. Reliance is placed upon
 - ***Sheikh Javed Iqbal v. State of Uttar Pradesh (2024 INSC 534)***,
 - ***Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr (2024 SCC Online SC 1693)***,
 - ***Jalaluddin Khan v. Union of India (2024 INSC 604)***,
 - ***Union of India v. K.A. Najeeb [(2021) 3 SCC 713]***, and;
 - ***Vernon v. State of Maharashtra & Anr (2023 INSC 655)***
- ix. Answering the query of the Court made on 15th January, 2025 the Id.



Counsel of the Appellant submitted that the second son of the Appellant, Mr. Suraj Pratap @ Noni is not in touch with his mother who is living in Yamunanagar, Haryana and hence, his whereabouts are not known at the present moment.

10. Mr. Rahul Tyagi, Id. Counsel appearing on behalf of the NIA submits as under:
- i. The Appellant's son-Virender Pratap @ Kala Rana had absconded from India earlier and steps had to be taken by the State agencies to extradite him from Thailand. He is currently in custody. The second son of the Appellant-Surya Pratap @ Noni has been given bail. However, he is still absconding.
 - ii. Substantial amount of cash and weapons have been recovered from the Appellant's residence and search memo/seizure memo is fully admitted. Moreover, the Appellant poses a flight risk as he is a frequent traveller to Thailand and also is involved in sending weapons and money there.
 - iii. Answering the query of the Court made on 15th January, 2025, Mr. Tyagi, Id. Counsel submits that on the basis of the intelligence which was gathered and the confidential information which was received, multiple raids were conducted simultaneously on 12th September, 2022 at various places. A total number of twenty-two raids were conducted on the same date and the seizure was affected accordingly. The Appellant's residence was one such place where the raid was conducted.
 - iv. Reliance has been made upon the search and seizure memo dated 12th September, 2022 as also the statements of various protected witnesses,



namely, PW-407, PW-408, PW-409 and PW-413. It is submitted by Mr. Tyagi, Id. Counsel that the said protected witnesses testimony coupled with the seizure of a large quantity of arms, leads to only one conclusion that the Appellant is also guilty and is unable to prove his innocence. Thus, the rigorous of 43D(5) of the UAPA needs to be applied in the present case.

- v. The second son, Mr. Suraj Pratap@ Noni has taken responsibility for another incident which has occurred in Haryana *i.e.*, a double murder case. Reliance is placed on a statement put up by Noni on his twitter handle.

Analysis:

11. In the present appeal, the Special NIA Court, vide the impugned order, has rejected the prayer for bail made on behalf of the Appellant. The reasoning given by the Court is as under: -

“Having considered the submissions at bar, Accused/applicant in the present case being involved inter alia for offence u/s 18 of UA(P) Act which is covered under Chapter VI of the Act, therefore, for relief of bail accessed/applicant is required to satisfy conditions as provided u/s 43D (5) of the Act. Section 43D of UA(P) Act contemplates that accused of an offence punishable under Chapter IV and V of UA(P) Act shall not be released on bail if, perusal of report u/s 173 Cr.P.C there is a reasonable ground for believing that the accusation against such person is prima facie true. On account of specific bar, bail to accused of offence falling under Chapter IV and VI of Act cannot be granted if evidence against such accused upon prima facie, assessment, satisfy the court that accusation against him is substantive and true. It is not that accused cannot be granted relief of bail in such cases. Bail can be granted



where court on broad assessment of material/evidence etc. find that accusation is without basis and does not appear to be authenticated. Such assessment of evidence for bail would however be not similar to as to be done at stage of charge or at final stage of trial.

Keeping such legal proposition in mind if we examine the case against the accused/applicant, no doubt being matter of record that when raid was conducted on 12.09.2022 at the premises, which as per seizure memo D-18 is shown to be the place belonging to Virender Pratap @ Kala Rana (A-4). In that raid many incriminating evidence including mobile phones, financial documents as well as arms and ammunitions were recovered including 5 pistols including one 09 mm pistol, 100 of cartridges of various bores including 9 mm and 7.62 x 25 mm as well as foreign made cartridges. It is around 18 days of alleged seizure of arms and ammunitions, accused/applicant has been arrested later on 01.10.2022. Even if the recovery of such consignment of arms and ammunitions may not be directly attributable to the accused/applicant, still there is statement of protected witness Y-7 (PW-19) recorded u/s 161 Cr.P.C, wherein witness specifically mentioned about the accused/applicant and stated that accused/applicant Joginder Singh and his son Kala Rana are closely associated with Lawrence Bishnoi, Goldy Brar, Kala Jatheri and they worked together for Harvinder Singh Rinda and Babbar Khalsa International Terrorist Organization in addition to extortion, illegal liquor sale and illegal arms purchase as well as running crime syndicate. Similarly, another protected witness X-3 in his statement recorded u/s 164 Cr.P.C recorded before Ld.MM specifically named accused/applicant Joginder Singh being owner of vehicle no. HR 22 K 7761, in which arms and ammunitions were being transported. That protected witness further stated that under the active connivance and involvement of accused Kala Rana, Surya Pratap as



well as Joginder Singh, arms and ammunitions were being smuggled in illegal manner.

Statement of those two protected witnesses clearly implicate the accused/applicant being part of conspiracy. Therefore, recovery of huge consignment of arms and ammattions from the house where the accused applicant was residing, even if may not be directly attributable to him, still there is statements of protected witnesses clearly establish the involvement of the accused/applicant.

Ld. Counsel for the accused/applicant though submits that immediately on the next date of raid conducted at the house i.e. on 13.09.2022, FIR no. 408/2022 was registered at PS Sadar Yamunanagar, in which accused Abhishek @ Panjeta and Simranjeet Singh Bawa were involved. It is submitted that in that case also there was recovery of arms and ammunitions which accused of that case owned to be their. Ld. Counsel has also referred to disclosure statement of accused Simranjeet Singh and Abhishek @ Panjeta recorded in that case FIR no. 408/2022 of PS Sadar Yamunanagar. Ld. Counsel has also annexed with the bail application, bail orders passed by Ld. ASJ, Yamunanagar.

Having considered those documents though these documents of FIR no. 408/2022 of PS Sadar Yamunanagar being not part of judicial record of this case can hardly be taken into consideration. Moreover, if we go through the FIR no. 408/2022, it would clearly show that upon receipt of secret information, local police arrested Simranjeet Singh @ Bawa alongwith one country made pistol of 0.9 mm which was loaded and there were five live cartridges. Similarly another accused Shubham Saini was arrested by the local police with country made katta of 315 bore with certain live cartridges. Disclosure statement recorded in that case in



itself being inadmissible cannot be taken into consideration moreover, relates to recovery of that case. Therefore, can hardly be of any help or use for alleged recovery in the present case.

*Ld. Counsel for the accused/applicant has further relied upon the judgment of Apex Court in Guddan @ Roop Narayan v. State of Rajasthan. There can hardly be any denial to the legal proposition laid down in that judgment. It is no doubt established legal position that court would grant the relief of bail as a rule and denial of the same would be an exception. However, this general legal proposition cannot be applied in cases involving offence of UA(P) Act where relief of bail would be subject to the provisions of section 43D (5) of UA(P) Act. **Therefore, keeping in view the allegations against the accused/applicant mentioned in para 17.75 and 17.76 and taking into consideration the protected witnesses statement and totality of entire evidence, I find that accused has failed to satisfy the threshold laid down in section 43D (5) and therefore, is not entitled for the bail. Bail application is accordingly dismissed.***

12. A perusal of the above order would show that the NIA Court has been persuaded not to grant bail in this matter considering the large amount of arms and ammunitions which were recovered from the Appellant's premises during the raid on 12th September, 2022.

13. In the present appeal, the Court has heard the submissions of the parties and has considered the material on record.

14. As per the NIA, the entire investigation in this case started when a terrorist organization, Babbar Khalsa International ('BKI') was being activated and certain members of the said organization had joined hands with the LB criminal syndicate. According to the NIA, the BKI was involved in



the various illegal acts in India especially in Punjab and is involved in killings of certain celebrities such as Sidhu Moosewala, in Punjab. The ideological objective of this organisation, as per the NIA, is to revive the Khalistan movement in Punjab.

15. The Appellant has two sons, one is *Virender Pratap@ Kala Rana* and the second is *Surya Pratap@ Noni*. According to the NIA, the elder son Kala Rana had initially absconded from India and extradition proceedings had to be taken in Thailand to bring him to India. He is currently in custody. The second son, Noni, was also involved in various criminal activities. However, he was in judicial custody for some time but thereafter, was released on bail. Presently, as per the facts which have emerged, he is absconding.

16. Coming to the facts of the present case, ***in FIR No.RC-39/2022/NIA/DLI***, information is alleged to have been received by the Special Cell regarding various illegal and unlawful activities. Pursuant to the same, an FIR was registered. It is apprehended that there is a criminal syndicate gang which is part of a larger conspiracy between the BKI and LB who were conspiring to carry out various criminal activities.

17. As part of the investigation in the said case, a raid was conducted at the house of the Appellant on 12th September, 2022. In the said raid, the NIA seized the following goods.

S. No.	Description of the Documents/Articles/Electronics Gadgets	No. of pages /Article	Remarks
1)	CP Plus DVR, Model No.CP-UVR-0401E1S-V3, Serial No No.CP2E050EEPAG08826	01	Found from the DVR stand fitted in the east wall of the south west corner



			bed room on the ground floor.
2)	White colour Samsung Mobile Model GT-19300, SSN No.19300GSMH, IMEI No 353818/05/312351/7	01	Found from table located on the east side of south west comer bed room on the ground floor.
3)	iPhone Silver Colour having IMEI No. 356645080900824.	01	Found from table located on the east side of south west comer bed room on the ground floor.
4)	Samsung Duos dark blue colour phone IMEI No. (1)35401009139244/01 (2) 354011091392448/01 with Vodafone SIM No,89910123000004186587SY.	01	Found from table located on the east side of south west comer bed room on the ground floor.
5)	Samsung Duos white colour phone IMEI No.(1) 354468088261004 (2) 354469088261002 with Airtel SIM No.8991000900730004630U	02	Found from table located on the east side of south west corner bed room on the ground floor.
6)	iPhone Silver white colour having IMEI No.351981061156614.	01	Found from table located on the east side of south west comer bed room on the ground floor.
7)	iPhone Black colour having IMEI No. (1) 356499101510620 (2) 356499101541559 with Airtel 40 SIM No.89910009028311952180.	02	Found from table located on the east side of south west corner bed room on the ground floor.
8)	iPhone silver colour having IMEI No.355674071580909.	01	Found from the wooden wardrobe located on the north side of the



			south west corner bed room in the ground floor.
9)	iPhone white colour in locked condition and cannot be switched off.	01	Found from the wooden wardrobe located on the north side of the south west corner bed room in the ground floor.
10)	Dark Gray colour Samsung Mobile Phone in switched condition and scratches on the left top screen.	01	Found from the wooden wardrobe located on the north side of the south west corner bed room in the ground floor.
11)	Blue colour Samsung Mobile phone Model SM-J415F/DS, IMEI (1) No.353414/10/790596/6 (2) 353415/10/790596/3	01	Found from the wooden wardrobe located on the north side of the south west corner bed room in the ground floor.
12)	Steel Colour HP Pen Drive 64 GB with writings v220w on it.	01	Found from a green colour kit in the north side wooden wardrobe of the south west corner bed room in the ground floor.
13)	Red Colour Pen Drive 16 GB Cruzer blade having a white tag on it.	01	- do-
14)	Red Colour Pen Drive - 16 GB Cruzer blade.	01	- do-
15)	Steel Colour Sony 32 GB Pen drive	01	- do-
16)	Red Colour Pen Drive 32 GB Cruzer blade.	01	- do-
17)	Red Colour Pen Drive 4 GB Cruzer blade.	01	- do -



18)	HDFC Bank passbook with A/c No. 50 100227964985 in the name of Surya Pratap Singh.	01	Found from a white colour kit in the north side wooden wardrobe of the south west
19)	State Bank of India passbook Savings Bank A/ c No.20282207389 in the name of Joginder Singh	01	Found from a white color kit in the north side wooden wardrobe of the south west corner bed room in the ground floor.
20)	Punjab National Bank pass book Savings Bank A/c No.10312010012350 in the name of Neelam Rani	01	- do-
21)	Haryana Grameen Bank Passbook A/c No.82010100003089 in the name of Joginder Singh.	01	- do-
22)	Oriental Bank of Commerce Paasbook A/c No.10312010012350 in the name of Neelam Rani.	01	- do-
23)	Axis Bank Passbook A/c No. 91901 0096250789 in the name of Joginder Singh.	01	- do-
24)	HDFC Bank passbook with A/c No.50100155538459 in the name of Joginder Singh.	01	- do-
25)	Haryana Grameen Bank Passbook A/c No. 8201NG 00000093 in the name of Joginder Singh	01	- do-
26)	Punjab National Bank Savings Fund Pass book with A/c No. 4682000100008942 in the name of Joginder Singh	01	- do-
27)	Oriental Bank of Commerce A/c No.10312010004630 in the name of Joginder Singh.	01	- do-
28)	Oriental Bank of Commerce A/c No.10312010012350 in the name of Neelam	01	- do-



29)	Xerox copy of Aadhar Card of Varinder Pratap Singh having Aadhar No.4927 8738 6586	01	- do -
30)	Eley Grand Prix Cartridge, Eley loaded Smokeless Diamond, Made in great Britain with writings "12 Eley-Kynoch 12" in the metallic part (in a pouch)	09	Found from the drawer of cot located in the south west corner bed room in the ground floor in a brown belt like pouch. This pouch is also packed together
31)	Plastic fibre and metallic made Pistol with magazine (The serial number and make looks tampered). Lengths is 17 CM	01	Found from the head side cupboard of the cot in the south west corner of the bed room in the ground floor.
32)	Live ammunition 9 mm cartridge LOT No. KF 20 in 1 Plastic box (35 each)	70	Found from the head side cupboard of the cot in the south west corner bed room of the ground floor along with item No 31
33)	Live ammunition 9 mm cartridge LOT No. KF 20 in 1 plastic box (30 Nos of cartridge)	30	Found from the head side cupboard of the cot in the north west corner bed room of the first floor.
34)	Live ammunition 7.62 TT PPU Cartridge (found in a VIVO Y21T mobile box)	10	Found inside a white colour VIVO mobile phone Box (IMEI No.(1) 86631805125159 2 (2) 86631805125158



			4) in the head side cub bord of the cot in the south west corner bed room of the first floor.
35)	Dark Blue Redmi Mobile Phone covered with bubble wrap paper and black colour electrical insulation Tape.	01	Found from the downside drawer of the cot located in the south west comer bed room of first floor. The item was opened using a knife to find the contents in the wrapped cover
36)	Black colour iPhone with white colour charger cable wrapped with bubble wrap paper and red and black electrical insulation Tape.	01	-do -
37)	Golden Colour MI Phone with small connecting cable wrapped with bubble wrap paper and black electrical insulation Tape.	01	-do -
38)	Light Blue metallic colour Realme mobile phone wrapped with bubble wrap paper and black electrical insulation Tape.	01	-do -
39)	Dark Blue red.mi mobile phone wrapped with bubble wrap paper and red and black colour electrical insulation Tape.	01	-do - This Dark Blue redmi mobile phone was found along with a dark brown opium like substance in a closed plastic pouch and both were found together wrapped with bubble wrap paper and red and black colour



			electrical insulation Tape.
40)	Dark brown opium like substance in a closed plastic pouch having 23.4 grams as weighed by weighing machine brought by local Police.	01	Found inside item No.39 together in a wrapped condition
41)	2 Nos Blue colour keypad Samsung mobile phone with red black coloured neckband head set wrapped with black colour electrical insulation Tape.	01	Found from the downside drawer of the cot located in the south west corner bed room of first floor. The item was opened using a knife to find the contents in the wrapped cover
42)	One MI Black coloured charger adapter, one ERD charger adapter along with two white colour data cable, one black colour data cable and one head set wrapped with black colour electrical insulation Tape.	01	-do -
43)	One Xiaomi power adapter Black colour, one ERD mobile charger adapter along with and one head set wrapped with black colour electrical insulation Tape.	01	- do -
44)	One metallic and wooden pistol with writing "BERETTA GARDONE TV GAL 765 vi vi PAT, MADE IN ITALY" with two magazines.	01	Found in the drawer under the cot located in the south west corner bed room inside a black coloured back pack bag.
45)	One steel, metallic and fibber pistol (19.5 cm length and Piston 10.5 cm length\ with two magazines.	01	- do -
46)	One steel and plastic fibre pistol (15.5 cm barrel length and 9.5 cm Piston length) with two magazines.	01	- do -



47)	One metallic and wooden made pistol with writing "BERETTA GARDONE TV GAL 765 MM PAT, MADE IN ITALY" with two magazine.	01	- do -
48)	Cartridges "BOULT LONG RANGE Smokeless powder Components from ITALY, MADE IN INDIA" with writing KUVHIMA 12 in the metallic top.	10	- do -
49)	Live ammunition 7.62 x 25 S&B cartridge	12	- do -
50)	Live ammunition KF 32 5 & W.L cartridge.	04	- do -
51)	Live ammunition 7 .65 KF cartridge.	21	- do -
52)	3 Nos Empty Fired (7.62 x 25 S&B) Cases(in a leather pistol pouch)	03	- do -
53)	One Steel, Brass and wooden gun with 48 cm Barrel length and with inscription "312" in brass metal parts on both side along with a small steel chain	01	- do -
54)	A black colour back pack bag without maker name.	01	Found in the drawer under the cot located in the south west corner bed room. The items 44 to 53 were found in this.

18. The said seizure which was effected from the Appellant's home in 438, Laxmi Garden, Yamunanagar, Haryana led to his arrest. The Appellant was arrested on 1st October, 2022.

19. The case of the Appellant is that he was having no knowledge of the goods and articles including the weapons which were seized from his residence. According to him, the same were planted in some manner and the Appellant has been implicated.

20. The question is whether the Appellant is entitled to bail in these facts and whether the conditions under Section 43D(5) UAPA, 1967 are satisfied. Section 43D(5) of the UAPA, 1967 is set out below for a ready reference:



“[43D. Modified application of certain provisions of the Code.

(1)(4)

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.]”

The above provision in the UAPA has been discussed in several decisions by the Supreme Court and this Court, though in varying fact situations. Some of the decisions are discussed hereinbelow.

21. In ***Gurwinder Singh v. State of Punjab and Anr. [(2024) 5 SCC 403]*** the Supreme Court has discussed the scope of Section 43-D (5) of the UAPA, 1967 and observed that, unlike in conventional bail matters, where bail is a rule, and jail is an exception, under the UAPA, 1967 the intention is to make



the '***bail an exception and jail a rule***'. The Supreme Court provided clear guidelines as to the manner in which grant of bail under Section 43D(5) of the UAPA, 1967 is to be considered. The relevant portion of the said decision is extracted below:

*“26. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released'-suggests the intention of the Legislature to make **bail, the exception and jail, the rule**.*

*27. The Courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the Courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in **Zahoor Ahmad Watali** has noticed this difference, where it said:*

"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge



application or framing of charges in relation to offences under the 1967 Act."

28. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

29. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail Court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age,



character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2 Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'.

22. The Id. Counsel for the Appellant has relied on the judgment of ***Devangana Kalita v. State of Delhi NCT (supra)*** to argue that if no offence under section 15/ 17/18 UAPA, 1967 is made out against the Appellant on a *prima facie* appreciation of the subject charge-sheet and the material collected and cited by the prosecution, the additional conditions, limitations and restrictions on grant of bail under section 43D(5) of UAPA, 1967 do not apply. Hence, bail must be decided on the usual and ordinary principles of grant of bail, i.e., the '*triple test*' of assessing the flight risk, evidence tampering and witness intimidation.

23. Reliance is also placed on ***Union of India v K.A. Najeed (supra)*** by the Id. Counsel on behalf of the Appellant to argue that the liberty granted by Part III of the Constitution of India would cover within its protective ambit not only due procedure and fairness but also access to a speedy trial.

24. In ***K.A. Najeed case (supra)*** the Court therein was confronted with a



circumstance wherein, except the Respondent-Accused, the other co-Accused had already undergone trial and was sentenced to imprisonment of not exceeding eight years. The Court therein was considering bail grounded in the anticipation of the impending sentence *i.e.*, the sentence the Respondent would serve in case conviction is made out. The Respondent therein had already served more than five years and considering this and other factors, the Court had granted bail.

25. The present case completely distinguishes itself from the ***K.A. Najeeb*** case. In the present case, the Appellant was arrested on 1st October, 2022 and the chargesheet has been drawn by the NIA on 24th March, 2023. The Appellant has been in custody for approximately 2 years. Moreover, the extent of seizure in the present case, completely distinguishes from the facts in ***K.A. Najeeb (supra)***.

26. Ld. Counsel appearing on behalf of the Appellant has further relied on ***Vernon v. State of Maharashtra & Anr. (supra)***. In the said case, the Court has granted bail to the Appellants therein considering *inter alia* that the witness statements do not refer to any terrorist act alleged to have been committed on behalf of the Accused persons.

27. In the present case however, the NIA has presented the testimonies of protected witnesses being, PW-407, PW-408 and PW-413. The statements of the protected witnesses which have been placed before the Court by the NIA would show that apart from his two sons, the Appellant was also acting as a source of weapons to the gang members of LB.

28. One protected witness, PW-407 who was an inmate with LB in jail has given a statement that LB used to tell his accomplices to coordinate with the Appellant who is the father of Kala Rana for delivery and supply of weapons



to members of his gang. Another protected witness, PW-408 in his statement said that the Appellant, who is the father of Kala Rana had received money sent by his son Kala Rana for Panjeta who would collect it from the Appellant. This witness also stated that weapons could be arranged through the Appellant. PW-413 who was also from Yammunanagar, Haryana had full details of the dispute between the Appellant's family and the local MLA Dilbag Singh. He was also aware of the various physical attacks which had taken place between the Appellant's family and the MLA's family. He stated that he would collect money from the Appellant and his wife Neelam for depositing in the bank. Panjeta had once informed him that weapons of the LB gang were stored at the Appellant's residence.

29. A perusal of the said testimonies leaves the Court with no iota of doubt that granting bail to the Accused at this stage, would be detrimental to the safety and security of the country. The testimonies of these protected witnesses reveal a serious situation and the same cannot be brushed aside.

30. The Id. Counsel on behalf of the Appellant has further relied on the judgment of the Supreme Court in *Sheikh Javen Iqbal v. State of U.P. (supra)* to emphasise the need for speedy trial. The Id. Counsel submits that the present case will be prolonged at the stage of trial due to the large number of witnesses who are yet to be examined.

31. This Court while acknowledging that speedy trial is necessary as a Constitutional prescription, observes that in cases involving anti-national activities and terrorism on an international scale, long incarceration in itself ought not to lead to enlargement on bail when facts show involvement in such activities which can have a national and transnational impact.

32. Thus, insofar as the decisions which have been cited by the Id. Counsel



for the Appellant is concerned, in this Court's opinion, the same would be completely distinguishable in view of the lack of any seizure of such a quantity of weapons in those cases. It cannot be presumed that a person can be innocently in possession of such a large cache of weapons.

33. Moreover, the above judgments relied upon by the Id. Counsel appearing on behalf of the Appellant, have also been considered by this Court in ***Jagtar Singh Johal @ Jaggi v. National Investigation Agency (2024:DHC:7110-DB)*** wherein, while relying on the principles of ***Gurwinder Singh (supra)***, the Court *inter alia* held that Cases involving serious crimes could be of various categories, such as offences relating to laundering of money, offences related to counterfeit currency, terrorist acts, etc. Acts of Terrorism and association with banned organisations which have international networks as also acts against the nation have to be considered as a distinct and more serious category of offences. In such cases, it is imperative for the Court to adjudicate not merely on the facts of one particular FIR but on a larger canvas as such acts can cause immense damage in terms of loss of life. The Court further held that while speedy trial and personal liberty, as in the present case, is necessary as a Constitutional prescription, in cases involving anti national activities, grant of bail ought to be considered with a stricter brush. The relevant portion of the judgment is extracted hereinunder:

“76. Cases involving serious crimes could be of various categories, such as offences relating to laundering of money, offences related to counterfeit currency, terrorist acts, etc. Acts of Terrorism and association with banned organisations which have international networks as also acts against the nation have to be considered as a distinct and more serious category of offences. All offences covered under the UAPA cannot



be treated with the same brush. Even for the purpose of grant of bail, such offences are not to be examined on the basis of mere facts of one particular FIR but on a larger canvas in the overall scheme of the multiple FIRs, if existing, against a particular accused. The damage in terms of loss of life as also the intent behind such attacks i.e., to destabilise the law and order situation as well as to strike terror in the minds of people in or outside India, has to be considered for the purposes of granting bail. Terrorist activities, which have trans-national links, would also fall in a more serious and grave category of cases. Accused, who are involved in such activities, could be working overtly and covertly. The fact that they could be linked through dark networks which are easily not traceable needs to be borne in mind. Investigating agencies face enormous challenges in unearthing evidence in such cases. While speedy trial is necessary as a Constitutional prescription, in cases involving anti-national activities and that too terrorism at an international scale, long incarceration in itself ought not to lead to enlargement on bail when facts show involvement in such activities. In the case of persons associated with terrorist or unlawful organizations having their activities spanning across countries, the consideration for grant of bail in such serious offences ought to be strictly dealt with, as prescribed in the statute(UAPA), on the benchmarks contained in Section 43D(5) of the Act.”

34. A perusal of the seizure memo dated 12th September, 2022 coupled with the articles and goods which have been recovered from the Appellant’s own residence would show that a large cache of weapons such as pistols, wooden guns, etc. as also ammunitions and several expensive mobile phones, were found in the room of the Appellant’s house. The house is stated to be owned by the Appellant’s wife. It was their regular residence. Moreover, the Appellant as also his wife are the *paurokar* for both sons, one of whom, had



in fact absconded to Thailand and extradition proceedings had to be initiated. Though the Appellant claims that he has, in fact, disowned the son, he and his wife still continue to remain the *paurokars* for the older son, Kala Rana. He was also the *paurokar* for the second son, Noni, who has obtained bail and has now absconded. The involvement with such criminal gangs which are involved in transnational killings cannot be ruled out at this stage.

35. In the present case, a large quantum of weapons, expensive mobile phones, ammunitions, etc. were found from the residence of the Appellant as captured in the seizure memo dated 12th September, 2022. In these circumstances, a *prima facie* opinion against the innocence of the Appellant is drawn by the Court as it is not normal or justifiable to find incriminating evidence of this quantity at someone's residence. Moreover, applying the triple test of bail jurisprudence in this case, the Appellant herein has a son who has already absconded from bail to Thailand and had to be extradited back to India. The Appellant is the *paurokar* of his son. Further, the Appellant was convicted in **FIR No. 796/2018**, PS. City Jagadhri, Haryana under Section 174A IPC, 1860 vide judgment dated 25th July, 2023 for being an absconder in **FIR No. 826/2017**. There are also allegations made by the NIA that the Appellant herein has a substantial base in Thailand and the chances of flight risk are quite high. Moreover, the deep-rooted involvement of the entire family leads this Court to believe that the Appellant's propensity to indulge in continued illegal activity and support for LB's gang is also quite high.

36. The inability of the defense to refute these allegations, is enough for this Court, at this stage, to hold that the Appellant does not satisfy the triple test of bail jurisprudence. This view is taken by the Court in the light of the



Gurwinder Singh (supra) wherein it is *inter alia* held that the question of entering the ‘*second test*’ of the inquiry will not arise if the Appellant is unable to pass the ‘*first test*’. In the overall circumstances of the case, the accused will have to show that he successfully passes the ‘*tripod test*’.

37. Moreover, while speedy trial and liberty of an individual are of utmost importance, in cases involving anti-national activities, terrorism, involvement with dreaded gangsters where there is a clear possibility of continued involvement, the considerations of bail cannot be the same. Recently, in the judgment of ***Neeraj Sehrawat @ Neeraj Bawaniya (2025:DHC:176)*** a ld. Single Judge of this Court observed that speedy trial cannot be a ‘free pass’ for every undertrial, demanding that he be enlarged on bail regardless of his criminal antecedents and the nature of offence. The Court must consider the larger interest of society and the same must prevail over the individual right of an undertrial. The relevant portion of the judgment is extracted hereunder:

“23. To reiterate, in the present case, bail is not being denied so as to inflict pre-trial punishment upon the petitioner, but in view of the petitioner’s grave criminal antecedents and demonstrable recidivistic tendencies, as discussed above. It may be said that the right to speedy trial derived from Article 21 of the Constitution of India is not a ‘free-pass’ for every undertrial, demanding that he be enlarged on bail regardless of his criminal antecedents and the nature of the offence. In matters such as this, the larger interests of society must prevail over the individual rights of an undertrial.”

38. The innocence of the Appellant at this stage cannot be said to be *prima facie*, proved under the rigours of Section 43D(5) UAPA, 1967 as both the sons were in custody at the time, when the search was conducted at the Appellant’s house. Therefore, it is implausible for the Court to believe that



such a large quantum of expensive mobile phones and the whole cache of weapons which were found including guns and live cartridges, etc. could have been stored without his knowledge, in his own residence where he and his wife reside.

39. Even if the Court does not take the testimonies of the protected witnesses into consideration, the presence of the Appellant at his residence at the time when the seizure was effected and the fact that both the sons were in judicial custody when the seizure was effected, persuades this Court to reasonably believe at *prima facie* that the allegations against the Appellant are true, which is the standard to be considered under 43D(5) of the UAPA, 1967.

40. Therefore, the opinion of this Court is that the allegations against the Appellant are *prima facie* true and the Appellant is unable to prove his innocence at this stage or is able to give any valid explanation for the presence of the seized goods at his residence.

41. In view thereof, applying all the tests laid down by the Supreme Court in a catena of judgments, this Court is not inclined to grant bail in the present case.

42. The appeal is, accordingly, dismissed and disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 17, 2025

Ch/rks

(corrected & released on 21st January, 2025)