



2026:DHC:8585-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CNR No. DLHC010524852024

+ CRL.A. 761/2024

MOHD SHAHZAD KAMAL

.....Appellant

Through: Mr. Jawahar Raja, Mr. Archit Krishna, Ms. Tamanna Pankaj, Ms. Aditi Saraswat, Mr. Nitai Hinduja, Mr. Ashutosh Shukla Mr. Ishan Goel and Mr. Harshil Jain, Advs.

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr. Rahul Tyagi, SPP for NIA with Mr. Jatin, Ms. Neha Tiwari, Mr. Abhay Pratap Semwal and Mr. Avinash Kumar, Advs. with DSP Mr. Abhinav Kajla, CIO (NIA) and Insp. Lalit Sharma, AIO, NIA

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 21(4) of the National Investigation Agency, 2008 [hereinafter referred to as 'NIA Act'], challenging the order dated 29.05.2024 passed by the learned



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Additional Sessions Judge-03, Special Court (NIA), New Delhi in NIA Case No. 03/2019 titled **National Investigation Agency v. Mufti Sohail & Ors.**, arising out of RC No. 38/2018/NIA/DLI dated 20.12.2018, and seeking grant of bail in the above-mentioned RC.

Case of the prosecution:

2. The case of the prosecution against the appellant in the above RC, wherein he has been arrayed as accused No. 18, is as under:-

1. A-18 (Non FIR named accused)	
i) Name with Parentage	Mohd. Shahzad Kamal @ Shahjad Kamal @ Kari Sahab @ Tamater DOB:- 11.10.1992 Aadhar Card no. 4852 8388 8283 Emergency Certificate EC No. X0821099 S/o Mohd. Arif Kamal (Hereinafter also referred as 'A-18')
ii) Address (Present and Permanent)	Permanent Address: R/o Village- Athasaini-3, PS- Garhmukteshwar, Hapur, Uttar Pradesh-245207
iii) Role in Crime (in brief)	• (A-18) was part of conspiracy since its initial stage along with (A-1), (A-5) and (A-6) and was given responsibility to arrange funds for terror acts of the group. • A-18 is instrumental in arranging and providing fund for furtherance of terror acts of Harkat-Ul-Harb-E-Islam affiliated to a proscribed organization ISIS. • The investigation has substantiated that A-18 knowingly facilitated waging of war against Government of India by concealing the design of the group.
iv) Arrested/on bail/not arrested/absconding	Arrested on 31 st of August 2021.



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		<i>Presently in Judicial Custody and lodged in Central Jail, Tihar.</i>
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17. Facts against Mohd. Shahzad Kamal (A-18):

I. Accused Mohd. Shahzad Kamal (A-18) along with other co-accused Mufti Mohd. Suhail (A-1), Md. Saqib @ Saqib Iftekhhar (A-5) and Muhammad Absar @ Moulvi Absar (A-6) entered into a criminal conspiracy to commit terrorist acts and wilfully abetted in providing funds for jihadi activities of Harkat-Ul-Harb-E-Islam, a terrorist gang affiliated to a proscribed organisation, ISIS and that he was an active member of ISIS affiliated terrorist gang "Harkat-Ul-Harb-E-Islam".

II. Investigation reveals that accused A-18 provided funds on multiple occasions (from February, 2017 till January, 2019) to accused Mohd. Absar (A-6) in order to fund the terrorist activities of the terrorist gang.

III. Further investigation reveals that A-18 was in constant touch with accused Md. Saqib @ Saqib Iftekhhar (A-5) through Facebook and WhatsApp, and there are retrieved conversations between them discussing about funds to be transferred or provided by A-18 for Jihadi purpose. The phone number of A-18 was found saved in the mobile phone of A-5 as 'Shahzad Bhai Arb'. It is also revealed from the retrieved chats that A-18 besides sending money for Jihad, was also supporting 'Tehreek-e-Azadi Jammu Kashmir' and was totally radicalized with the ideology of Jihad and of terrorist gang 'Harkat-Ul-Harb-E-



Islam' affiliated to ISIS.

IV. CDR Report and ILD hit of telephone numbers also corroborate connectivity between A-6 and A-18."

"17.1 Evidences against Mohd: Shahzad Kamal (A-18):

Substantiation through evidence against accused Mohd. Shahzad Kamal (A18) has been done under following headings:-

I. A-18 was having full knowledge of conspiracy of terrorist gang Harkat-ul-Harb-E-Islam affiliated to ISIS and arranged funds for furtherance of activities of the gang.

a. Cyber Examination Report-VI: (marked as D-210 in Charge Sheet) Chats recovered u/s 27 IEA from Facebook and WhatsApp from the device of Mufti Saqib Iftikhar (A-5), clearly shows that A-18 was radicalized and knows the depth of the conspiracy. He has also provided funds for violent jihad clearly mentioned in chats. Some incriminating contents of A-18 and A-5 are as under:-

- CERT-In's report, Page No. 4138, date 10/17/2018 4:38:03 PM: Shahzad has sent a voice message "PTT- 20181017-WA0029.opus". in which he says **"Indian are Buzdil"**.
- CERT-In's report, Page No 414: 10/18/2018 6:15:50 PM: Translation of Shahzad's message says **"Fifty seven thousand nine hundred rupees"**, also he has mentioned **"57900"**
- CERT-In's report, Page No date 10/19/2018 2:03:18 AM: Translation of Saqib's message says **"Hazrat Balance has arrived"** **"57900"**.
- CERT-In's report, Page No: 10/19/2018 3:22:36 AM: Translation of Shahzad's message says **"50000 to Baba, 4000 to Ammi jaan, 1000 to you, 900 to Maulana Absar, 2000 Jihad par Subullah"**



- CERT-In's report, Page No 16897 date 12/19/2018 3:05:11 AM: Shahzad has sent an audio message "PTT-20181219-WA0004.opus". The audio says **"Allah Es Beche Ko Mujahid Banaye Zalimo ka Katil Karne Wala Banaye"**.
 - CERT-In's report, Chat-654.txt, Page no: 3822 Sr no. 268: Chat participant namely "Mufti Riyaz ks" (919797203362). Application used for sharing messages is WhatsApp. **WhatsApp number used by Saqib (918700316459)**
 - CERT-IN's report, Page No 3823 date 10/9/2018 9:56:27 AM: Translation of Saqib's message **"Please give Zubair Bhutto's number I got out of my mobile"**.
 - CERT-In's report, Page No 3824 date 10/20/2018 1:15:02 AM **Riyaz has messaged "Ma haar giya, Ma majboor hoo, Ma apna vada poora Na kar saka, agar aap meri jaga hoti aap be aisa karti hamiri halat hi aise hai. Maloom Nahi hai ajant kon hai aur apna kon hai, is liye aap hazrat maaf kariye."**
- b. Incriminating radicalising material regarding violent Jihad was recovered from chats of A-18:-
- CERT-In's report, Page No 16840 date 10/23/2018 4:52:23 AM: Translation of Shahzad's message says "Kaushab Kalam is occupied by Pak occupied Kashmir, **Maulana Mohammad Masood Azhar Sahib's** latest message of Kashmir *Offer Mujahidin Jeep Mohammad".
 - CERT-In's report, Page No date 16847 date 10/26/2018 1:59:08 PM: Shahzad's message says **"Bayan Mout ki tayyari Mufti Abdur Raouf Asgar 35:50"**. One of his contacts in Kashmir. He was also communicated through WhatsApp with another accused of the same case RC-38/2018/NIA/DLI, namely **Mohd. Gufran**, who has sent him a message in support of Taliban.
 - CERT-In's report, Page No 16850 date 10/29/2018 5:52:05 PM: Message sent by



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Shahzad, which has mention of ***Tehreek-e-Azadi Jammu Kashmir***
<https://t.me/TehreekEAzaadi>

- CERT-In's report, Page No 16865 date 11/7/2018 6:06:49 AM: Shahzad has sent a document namely "**Aye- Musalman-Behan.pdf**"
- CERT-In's report, Page No 16896 date 12/19/2018 3:02:28 AM: Saqib has sent an audio message "PTT- 20181219-WA0003 opus". It has mention of lashkar and mujahid.
- CERT-In's report, Page No 26425: Gufran has sent message to Saqib, in support of Taliban.

Conclusion on the involvement of Mohd. Shahzad Kamal (A-18): the investigation has substantiated the A-18 have the knowledge of entire conspiracy hatched by members of ISIS affiliated terrorist gang Harkat-ul- Harb-E-Islam and that he entered into the said conspiracy. A-18 was in constant communication with A-5 and A-6 through mobile phone and social media. During a communication, A-18 congratulates A-5 on the occasion of first male child birth of A-5 through audio message that "**Allah Es Beche Ko Mujahid Banaye... Zalimoka Katil Karne Wala Banaye**" which shows his radicalization level connectivity with members of ISIS affiliated terrorist gang Harkat-ul-Harb-E-Islam.

b. **Disclosure Memo dated 24.01.2019 of accused Mohd Absar (A-6)** regarding disclosure of collection of funds from one Mohd. Shahzad Kamal, presently working in a company namely Saleh al Sudesh in Saudi Arabia, son of Arif Kamal. (Marked as D-88)

c. **Recovery of Cash Rs. 30,000/- On Voluntary Disclosure by Md. Absar (A- 6): Recovery of Funds at the Voluntary Disclosure by Absar (A-6): (u/s 27 of Indian**



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Evidence Act): Subsequent upon arrest of Md. Absar (A-6), an amount of Rs 30,000/- was recovered on disclosure of A-6 which was sent by A-18. This substantiates the fact that the Harkat Ul. Harb-e-Islam terror group affiliated to ISIS, received an amount of Rs. 30,000/- (Thirty Thousand) sent by A-18 Mohd. Shahzad Kamal from Saudi Arabia which was intended to be used for the purpose of terrorist activities. **Disclosure is marked as D-88 and Recovery Memo of Cash 30,000/- is marked as D-89 in Charge sheet.**

d. **PW-18** has substantiate that on two occasions Rs. 10,000/- & 5,000/- in cash were provided to A-6 on behalf of A-18 as per the direction of his brother Md. Afzal who is working in Saudi Arabia.

II. CDR Analysis substantiates the inter-connectivity and ILD hit in respect of Mohd. Shahzad Kamal's number +966583324577 in respect of Mohd. Absar (A-6) and A-18.

18. Charge: A-18 Mohd. Shahzad Kamal @Shahjad Kamal @Kari Sahab @Tamater resident of Village -Athasaini-3, PS-Garhmukteshwar, Hapur, Uttar Pradesh-245207 is charges under section 121 of IPC and 17, 18, 39 and 40 of UA(P) Act, 1967.”

3. From the reading of the above allegations against the appellant, it would be evident that the case of the respondent against the appellant herein is first based on the assertion that the appellant/A-18, having full knowledge of the conspiracy of the terrorist gang Harkat-Ul-Harb-E-Islam affiliated to ISIS organisation, had arranged funds for the furtherance of its terrorist activities. In this regard, the respondent/prosecution relies upon the Facebook and WhatsApp chats recovered from a device seized from Mohd. Saqib Iftekhhar (A-5)



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mentioned in the charge-sheet, as also on the other material alleged to have been recovered from the chats of A-18, the appellant herein. The case of the prosecution is further based on the alleged disclosure statement of a co-accused, namely, Mohammad Absar @ Maulana Absar (A-6); recovery of cash of Rs. 30,000/- on voluntary disclosure by Mohammad Absar @ Maulana Absar (A-6); and the statements of Mohd. Afkaar/PW-36, originally cited as PW-18 in the charge-sheet, as also the Protected Witness 'D', now PW-37, and Mohd. Habib cited as PW-17, who is yet to be examined in the trial.

Submissions of the learned counsel for the appellant:

4. The learned counsel for the appellant submits that in the above RC, the appellant was arrested on 31.08.2021. He is 34 years old and has no criminal antecedents. He submits that out of a total of 161 witnesses cited by the prosecution, presently the statement of PW-42 is being recorded and, therefore, in spite of the appellant having undergone 5 years of custody, there is no chance of the trial ending any time soon. He submits that no delay in the trial has been caused due to reasons attributable to the appellant and, only on the ground of delay in conclusion of the trial, the appellant is entitled to be released on bail. In support, he has placed reliance on the judgment of the Supreme Court, *inter alia*, in ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)***, 2026 SCC OnLine SC 10.

5. He further submits that, as far as the allegations of the prosecution based on the incriminating chats alleged to be between Mohd. Saqib Iftekhhar (A-5) and the appellant are concerned, there is no evidence on record to show that these chats were indeed exchanged



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by A-5 with the appellant herein. There is no proof on record to connect the other phone or device with which A-5 was exchanging these messages to the appellant.

6. He further submits that, even otherwise, there is no incriminating material in these chats which would justify the prolonged incarceration of the appellant during the pendency of the trial.

7. He submits that bail already stands granted to A-5/*Mohd. Saqib Iftekar* by a judgment of this Court in ***Mohammad Saqib @ Saqib Iftekar v. National Investigation Agency***, 2026:DHC:7763-DB.

8. As far as the alleged disclosure of A-6/*Mohd. Absar* and the recovery of the amount from him is concerned, the learned counsel for the appellant has submitted that the same being an alleged statement of a co-accused, also does not justify the prolonged incarceration of the appellant in custody.

9. On the statement of PW-36/*Mohd. Afsaar* (originally cited by the prosecution as PW-18 in the charge-sheet), he submits that there are various discrepancies in his statement before the Court, which clearly show that this witness is not reliable and that his testimony should not be relied upon against the appellant.

10. As regards the Protected Witness 'D', examined as PW-37, he submits that, apart from the fact that his statement is based on mere hearsay, as A-6 had told him that 'Shahzad' used to send money for the purpose of *jihad*, there is no identification of the appellant being the said 'Shahzad' r/o Atsani referred to in his statement.

11. With regard to the testimony of PW-17 cited in the charge-



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sheet, that is, *Mohd. Habib*, the learned counsel for the appellant submits that, apart from the fact that there is no clear date as to when this witness will be examined before the learned Trial Court, even otherwise, his statement recorded under Section 161 of the Code of Criminal Procedure, 1973 [hereinafter referred to as '*Cr.P.C*'] does not disclose any incriminating fact against the appellant. It, at best, shows that the appellant used to send money and some items to his family and friends in India from Saudi Arabia, where he was working for gain. He submits that, therefore, there is no evidence against the appellant and his prolonged incarceration in custody.

12. On the objection of the learned Special Public Prosecutor [hereinafter referred to as '*SPP*'] that the statements of the witnesses recorded before the learned Trial Court post the Impugned Order rejecting bail should not be relied upon or made the basis of adjudication before this Court, the learned counsel for the appellant places reliance on the judgment of the Supreme Court in ***Shoma Kanti Sen v. State of Maharashtra and Another***, 2024 SCC OnLine SC 498, to submit that, as this appeal has been pending for a long period of time and, in fact, was adjourned to await the recording of the evidence of the material witnesses against the appellant, as reflected in the orders dated 08.01.2026 and 07.04.2026 of this Court, the above objection has no merit.

Submissions of the learned SPP:

13. On the other hand, the learned SPP appearing for the respondent submits that, as the appellant is relying upon the evidence recorded before the learned Trial Court post the rejection of his bail by an order



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which is in appeal before this Court, this Court should not consider the said statements and rather direct the appellant to approach the learned Trial Court again for seeking bail. He submits that the present appeal should be considered only on the material that was before the learned Trial Court at the time of the passing of the Impugned Order. He submits that the judgment of the Supreme Court in ***Shoma Kanti Sen*** (supra) shall have no application to the facts of the present case, as it was based on the peculiar facts of the said case.

14. He further submits that, at this stage, the appellant cannot ask for a meticulous examination of the evidence recorded before the learned Trial Court. He submits that this is a function assigned to the learned Trial Court once the entire evidence has come on record. He submits that, therefore, this Court should not, by examining the statements of witnesses presently recorded, express an opinion on the merits of the case of the prosecution against the appellant. At this stage, as charges stand framed against the appellant, in fact, the appellant should be held to have not satisfied the test of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred to as 'UAPA'], thereby disentitling him to be released on bail.

15. On the question of delay in the trial, he submits that, as the present case involves a large conspiracy with a number of accused, delay alone cannot be a ground to release the appellant on bail. He submits that the appellant was not a peripheral player in the conspiracy, but the key participant in the same as he was the person who was providing funds for the terrorist activities. He submits that the appellant has played an active role in the conspiracy to wage a war



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against the country by providing funds to the separatist organisation with full knowledge of its activities and foundations. He submits that the learned Trial Court is expeditiously moving ahead with the trial and no delay can be attributed to the respondent/prosecution. He submits that, therefore, the present appeal is entitled to be dismissed.

Analysis & findings:

16. We have considered the submissions made by the learned counsels for the parties and perused the record of the learned Trial Court.

17. At the outset, we would note that the appellant has been in custody since 31.08.2021, that is, for a period of more than 5 years. The trial is not likely to end any time soon, with only the statement of PW-42 being recorded out of a total of 161 witnesses cited by the respondent/prosecution. Some of the co-accused have already been granted bail by us, including accused No. 5, Mufti Saqib Iftekar, with whom the appellant is alleged to have exchanged some incriminating chats.

18. Even otherwise, to a pointed query put by us to the learned SPP as to whether there is any evidence to show that the number with which A-5 was exchanging these chats belonged to the appellant, he has stated that this would be proved from the statements of the witnesses and the material against A-5. Therefore, presently we do not see any positive evidence of the incriminating chats having originated from the appellant or being addressed to him. In any case, this is a matter on which conclusion can be reached only when the entire evidence is led by the prosecution.



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19. On the allegation that the appellant was funding the separatist organisation, namely, Harkat-Ul-Harb-E-Islam, we have examined the statement of PW-36/Mohd. Afsaar, as also the Protected Witness 'D'/PW-37, who already stands examined before the learned Trial Court. We have also examined the statement under Section 161 of the Cr.P.C. of PW-17 cited in the charge-sheet, that is, Mohd Habib. We are not giving a complete account of their statements as it may influence the learned Trial Court in the trial. Suffice it to say, having perused their statements, we do not find it to be a case where the appellant should be directed to remain in custody while the trial is not likely to end any time soon.

20. We are also guided by the principle laid down by the Supreme Court in **Gulfisha Fatima** (supra), as explained by the later judgments in **Syed Iftikhar Andrabi v. National Investigation Agency, Jammu**, 2026 SCC OnLine SC 881 and **Tasleem Ahmed v. State Govt. of NCT of Delhi**, 2026 SCC OnLine SC 1707, which we took note of in **Khuram Parvez v. National Investigation Agency**, 2026:DHC:5092-DB, observing as under:-

*“52. In **K.A. Najeeb** (supra), the Supreme Court considering the balance to be achieved between the Fundamental Right of an accused for a speedy trial vis-à-vis the restrictions imposed under Section 43D(5) of the UAPA on release of the accused on bail, held that these restrictions do not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. It held that whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail, however, these restrictions will melt*



down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. It was further held that Section 43D(5) of UAPA is comparatively less stringent than Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, where the court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail. Instead, Section 43D(5) of the UAPA merely provides another possible ground for the court to refuse bail, in addition to the well-settled considerations like gravity of offence, etc.. We quote from the judgment as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges



levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.”

53. The above judgment and various others of the Supreme Court were considered by the Supreme Court in **Gulfisha** (supra), and the Supreme Court framed the question to be considered as “in prosecution under the UAPA, when delay and prolonged



incarceration are invoked as grounds for bail, what is the principled approach by which a constitutional court is to examine such a plea.”

54. In answer to the above question, the Supreme Court held as under:

“30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

31. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair. The expression “procedure established by law” reflects that balance. The UAPA, as a special statute enacted to address offences alleged to affect the security of the State and the stability of civic life, represents a legislative judgment as to the conditions under which bail may be granted at the pre-trial stage. Section 43D(5) of UAPA embodies the exercise of that judgment.

*32. In **Union of India v. K.A. Najeer**, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where*



the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.

33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

34. The constitutional inquiry into delay is not an inquiry into guilt. It is an inquiry into whether continued detention remains constitutionally permissible in the circumstances of the case. That inquiry is necessarily contextual. Context includes the nature of the allegation, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to delay, and the risks attendant upon release. Delay cannot be detached from these considerations and treated as a solitary determinant.

35. The proper constitutional question, therefore, is not whether Article 21 is superior to Section 43D (5). The proper question is how Article 21 is to be applied where Parliament has expressly conditioned the grant of bail in relation to offences alleged to implicate national security. The law does not contemplate an either-or approach. Nor does it



contemplate an unstructured blending of statutory and constitutional considerations. What is required is disciplined judicial scrutiny that gives due regard to both.

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101. It is well recognised that Article 21 rights, though not absolute, require the State and the Court to justify continued custody with reference to the specific individual before it. Treating all accused identically irrespective of their roles would risk transforming pre-trial detention into a punitive mechanism divorced from individual circumstances. The constitutional mandate demands a differentiated inquiry: where prolonged custody disproportionately burdens those whose roles are limited, the balance between individual liberty and collective security may call for conditional release, while the same balance may tilt differently for those alleged to have orchestrated the offence.”

55. The Supreme Court also examined the principles governing the scope of judicial inquiry under Section 43D(5) of the UAPA at the bail stage, and held as under:

“**80.** From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. **First**, the provision embodies a deliberate legislative departure from ordinary bail jurisprudence, premised upon the distinctive nature of offences under Chapters IV and VI of the Act. **Second**, the expression “prima facie true” mandates a threshold judicial inquiry which is neither perfunctory nor adjudicatory, requiring the Court to examine whether the prosecution



material, taken at face value, discloses the essential statutory ingredients of the alleged offence. **Third**, the inquiry is necessarily accused-specific, directed to the role and attribution qua the individual, and does not admit of collective or undifferentiated treatment merely because allegations arise from a common transaction or conspiracy. **Fourth**, the bail stage under Section 43D(5) is not a forum for evaluating defences, weighing evidence, or conducting a mini-trial; judicial restraint at this stage is not an abdication of duty but a fulfilment of the statutory mandate. These propositions, read together, define the contours of judicial power and responsibility under the provision.

81. The correct application of Section 43D(5), therefore, requires the Court to undertake a structured inquiry confined to the following:

- i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;
- ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and
- iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full-fledged trial.

82. Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where



they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.”

56. The correctness of the above judgment, insofar as interplay between Article 21 of the Constitution of India and Section 43D(5) of the UAPA is concerned, has been doubted by the Supreme Court in **Syed Iftikhar Andrabi v. National Investigation Agency, Jammu**, 2026 INSC 503. It explained **K.A. Najeeb** (supra), as under:

“31. In K.A. Najeeb, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will ‘melt down’ where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was



conscious of the fact that the charges levelled against the accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

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35. The often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, we have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case."

57. Further, while highlighting the low conviction rate in UAPA, the Supreme Court opined that:-

"42.3. Thus, from the aforesaid figures, it is evident that the country-wide



percentage of conviction under the UAP Act for the five years comprising the period 2019-23 hovers between 2% to 6%. In other words, there is 94% to 98% possibility of acquittal in such cases in the country. When it comes to the Union Territory of Jammu and Kashmir, the percentage of conviction is abysmal, to say the least. For the aforesaid period, the annual rate of conviction is always less than 1%. It means that at the end of the trial, there is 99% possibility of acquittal in such cases. With these kind of statistics staring at our face, the question is, should we continue the detention of the appellant or defer the consideration to a later stage, simply because the charges are serious?”

58. We must also note that this issue concerning the interplay between Article 21 of the Constitution and Section 43D(5) of the UAPA Act, has now been referred to a larger Bench in **Tasleem Ahmed v. State Govt. of NCT of Delhi** (order dated 22.05.2026 passed by the Supreme Court in SLP (Crl.) 2867/2026). In the said order, the Supreme Court has observed that delay cannot be the sole ground for releasing the accused on bail and that the inquiry into delay is contextual and must take into account the nature of the allegations, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to the delay, the role attributed to the accused, the prima facie material, the availability of intermediate safeguards, and the risks attendant upon release. It has further observed as under: -

“20. We are also conscious that an unqualified reading of the proposition that lapse of time by itself must compel bail in every case under the UAPA may have serious consequences. Such an approach may leave little room for courts to examine the nature of



allegations, centrality of role, protected witnesses, risk of intimidation, possibility of reactivation of networks, nature of delay and whether such delay is attributable to the accused himself/herself, public order concerns and national security implications. On the other hand, an equally unqualified insistence on Section 43D(5) without regard to prolonged incarceration would imperil Article 21. The Constitution does not command either extreme. It is this precise issue that may warrant attention of the appropriate bench dealing with the issues.

21. The question, therefore, is not whether Article 21 survives Section 43D(5). It undoubtedly does. The true question is how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life.

22. We clarify that nothing in this order is intended to whittle down, dilute, read narrowly, or detract from the authority of K.A. Najeeb. ...”

59. In the said order, after having referred the issue to the larger Bench, the Supreme Court still went on to consider the case of the appellant therein for bail and, taking into account the substantial period of incarceration already undergone by the appellant therein, released the appellant on interim bail for a period of 6 months.

*60. In **Union Territory of Ladakh and Ors. v. Jammu and Kashmir National Conference and Anr.**, (2024) 18 SCC 643, the Supreme Court has also held that merely because a*



question of law is referred to a larger Bench, the High Court must not refrain from considering the matter before it in accordance with the law binding on it. It has opined as under:

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Co. Ltd. v. Pranay Sethi*. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”*

21. As far as the objection of the learned SPP that the statements of the witnesses recorded subsequent to the Impugned Order of the learned Trial Court should not be considered by this Court, we may only note that, with the consent of the parties, the hearing of the appeal was being adjourned so that the statements of these witnesses



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could be recorded. Out of three important witnesses against the appellant, the statements of two witnesses have already been recorded, while for the third, as he is not residing in the country, the prosecution is unable to give a fixed schedule as to when his statement would be recorded. In ***Shoma Kanti Sen*** (supra), the Supreme Court, faced with a similar objection of the prosecution, has held as under:-

“13. The factual position which forms the background of the present appellant's plea for bail is, however, different from that in which the aforesaid judgments were delivered. The appellant before us, at each stage, had applied for bail before the Court which, at that point of time, had regular jurisdiction to consider her application. It was because of supervening circumstances the NIA entered into the picture and then issued the second supplementary chargesheet. The Division Bench, being an appellate forum, has the jurisdiction to look into the facts which may arise subsequent to the order of bail passed by the Court of regular jurisdiction. The order by which the Single Judge, hearing the bail application under Section 439 of the 1973 Code, placed the matter before the Division Bench (in essence, giving the said application the form or character of an appeal under Section 21(2) of the 2008 Act), had not been assailed by any of the parties. We also do not find any error in such a direction having been issued by the Single Judge of the High Court exercising jurisdiction under Section 439 of the 1973 Code. It was the same investigation which was continued by the NIA, based on the same FIR. Only the investigating agency had changed. Just because the second supplementary chargesheet had been issued by the NIA after disposal of the bail application by the Sessions Court, it was not the only legal course available to the High Court to remand the matter to the Special Court for examining the



second supplementary chargesheet at the first instance. As an Appellate Forum, in the facts of the given case, it was well within the jurisdiction of the High Court exercising its power under Section 21(2) of the 2008 Act, to examine the second supplementary chargesheet as well, while sitting in appeal over the order of rejection of bail by the regular Sessions Court upon considering the first two chargesheets.

14. Now, the question arises as to whether the course adopted by the High Court ought to be invalidated by us simply because another course, which is suggested by the appellant, could also be adopted by the High Court. In our view, under ordinary circumstances, we might not have had interfered with the High Court's judgment and order which is under appeal before us. The course adopted by the High Court was a permissible course. We, however, must take into account that the High Court had passed the aforesaid order when the appellant, a lady, was in detention for over four and a half years. At present, the appellant has been in detention for almost six years, her age is over 66 years and charges have not yet been framed. The appellant has also moved an application before us, registered as CRL MP No. 166531 of 2023, in which various ailments from which she suffers have been cited and prayer is made for bail on medical grounds as well.

15. Having taken these factors into account, we do not think it would be in the interest of justice to remand the matter to the Special Court constituted under the 2008 Act at this stage. We are taking this view as in our opinion, it would not have been beyond jurisdiction of the High Court Division Bench, even in exercise of appellate power under Section 21(2) of the 2008 Act, to examine the second supplementary chargesheet as well. For these reasons, we decline to accept the preliminary objection raised by Mr. Nataraj and shall proceed to



consider here, the appellant's plea for bail on merit. Now that we have given leave to the appellant in her petition for special leave to appeal, the same appellate jurisdiction which vested in the High Court will vest in us as well and in exercise of such appellate jurisdiction, we shall consider the appellant's prayer for bail, which was not considered by the High Court on merit.

16. It was also urged by Mr. Nataraj that in the appeal-petition, the appellant has only asked for setting aside the impugned judgment and order. No specific prayer for bail has been made. But in our opinion, the plea for bail in the context of the present appeal is implicit. The petition which was transferred to the Division Bench carried prayer of the appellant for being released on bail and argument advanced by Mr. Grover, learned senior counsel appearing for the appellant is that the High Court itself ought to have granted bail to the appellant on the basis of available materials. Moreover, the appellant in the appeal-petition has also asked for bail as interim relief. Since the appeal, in substance, is against the judgment by which prayer for bail was refused, merely based on the manner of framing of reliefs or prayers in the subject-petition, the actual relief sought by the appellant would not stand eclipsed.

17. Mr. Nataraj had also contended that the NIA must be permitted to contest the bail plea of the appellant before the first Court of bail on the basis of materials disclosed in the second supplementary charge-sheet, because the prosecution would also be entitled to a right of appeal. His submission is that such right of appeal would stand lost if the High Court itself had examined the second supplementary charge-sheet and decided the question of bail in favour of the appellant-accused. These are cogent arguments, but we must not lose sight of the fact that we are concerned here with the question of liberty of a pre-trial detainee, who is a senior citizen, in



custody for almost six years, against whom charges are yet to be framed. The question of losing right of an appellate forum would have greater significance in substantive proceedings but on the question of bail, in a proceeding where the detenue herself has volunteered to forego an appellate forum by arqing before us her case for bail, the approach of this Court would be to address the question on merit, rather than to send it back to the Court of first instance for examining the materials available against the appellant.”

(Emphasis supplied)

22. From the above, it is apparent that there is no embargo on this Court, as an Appellate Court, to consider the facts and events which may arise subsequent to the order passed by the learned Trial Court. As noted hereinabove, the present appeal has been pending adjudication before this Court for more than two years, and it is imperative to note that the hearing of this appeal was adjourned at a few instances so that the evidence of the relevant witnesses could be recorded by the learned Trial Court. To now relegate the appellant back to the learned Trial Court, in our view, would defeat the ends of justice. We, therefore, do not find any merit in the objection of the learned SPP and have proceeded to examine the statements of such witnesses.

23. Given the above factors, the impugned order passed by the learned Trial Court cannot be sustained and is accordingly set aside. The appellant is directed to be released on bail in the above RC on the following conditions:-

- a. The appellant shall execute a personal bond in the sum of



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Rs.50,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court;

b. The appellant shall surrender his passport, if any, before the learned Trial Court. If he does not hold a passport, an affidavit to that effect shall be filed before the learned Trial Court;

c. The appellant shall not leave the country without prior permission of the learned Trial Court. Any application seeking permission to travel shall disclose the destination, duration, purpose of travel and complete contact details during such travel;

d. The appellant shall not leave his native place i.e., District Hapur, except to travel to Delhi to attend his Trial or to report at the NIA Office as part of his bail conditions;

e. The appellant shall only use one mobile phone and/or landline number during the course of the trial, which shall always be kept in the switch-on mode;

f. The appellant shall furnish his current residential address, the mobile/landline number and his e-mail address to the Investigating Officer and to the learned Trial Court. He shall not change his residence or contact particulars without giving at least seven days' prior intimation to the Investigating Officer and the learned Trial Court;

g. The appellant shall appear before the learned Trial Court on each date of hearing, unless exempted by the learned Trial Court from such appearance;



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- h. The appellant shall not exhibit any conduct that has the effect of delaying the proceedings;
- i. The appellant shall not directly or indirectly contact, influence, threaten or communicate with any prosecution witness, protected witness, complainant, person acquainted with the facts of the case or the co-accused or their family members;
- j. The appellant shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
- k. The appellant shall not make any public statement, including through print, electronic media or social media, touching upon the merits of the case, the evidence, the witnesses or the pending trial;
- l. The appellant shall not participate in any activity which may prejudice public order or the integrity of the trial;
- m. The appellant shall not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise;
- n. The appellant shall report to the concerned NIA BRANCH OFFICE, once every fortnight, or at such interval as may be directed by the learned Trial Court. The Branch Office shall maintain a separate register of attendance with respect to the appellant.

24. In the event of breach of any condition, it shall be open to the prosecution to seek cancellation of bail before the appropriate court.



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25. The appeal is disposed of in the above terms.
26. It is made clear that the observations made herein shall not be construed as an observation on the merits of the case, as the same have been made only for the purpose of consideration of bail.
27. A copy of this judgment be sent to the learned Trial Court as also to the concerned Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

OCTOBER 1, 2026/rv/as