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

Reserved on: 16.10.2026
Pronounced on: 30.10.2026
Uploaded on: 30.10.2026

\# **CNR No. DLHC010464202023**
\+ CRL.A. 954/2023
IRFAN TARIQ ANTOO .....Appellant
Through: Ms.Deeksha Dwivedi, Mr.Fahad M. Khan, Mr.Nilesh Jain and Mr.Paras N. Singh, Advs.

versus

STATE (NCT OF DELHI) .....Respondent
Through: Mr.Amit Tiwari, SPP with Ms.Ayushi Srivastava, Mr.Arpan Narwal, Mr.Ujjwal Tyagi and Mr.Kushagra Malik, Advs. for 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 by the appellant under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as, 'NIA Act') read with Section 43D (5) of the Unlawful Activities Prevention Act, 1967 (hereinafter referred to as, 'UAPA'), assailing the order dated 07.08.2023 passed by the learned Additional Sessions

Signature Not Verified
Digitally Signed By:REYMON VASHIST
Signing Date:30.10.2026 19:23:10

Judge-03, New Delhi, Patiala House Courts (hereinafter referred to as, the 'Trial Court') in NIA Case No. 2/2022 titled ***"NIA v. Tariq Ahmad Dar & Ors."*** arising out of RC No. 29/2021/NIA/DLI, whereby the learned Trial Court rejected the bail application filed by the appellant herein.

2. The appellant herein has been arrayed as accused no. 24 in the above trial.

3. The learned Trial Court, while rejecting his application for release on bail, held that the Disclosure Statement of the appellant dated 28.12.2021 (D-162) cannot *prima facie* be held to be inadmissible, as the prosecution was relying upon the consequent discovery of a fact in the form of recovery of bullets of AK-47 from witness X-12. The learned Trial Court further considered the statements of witness X-12, X-1, PW-244 (Arif Qayoom Khuroo), PW-265 (Sheikh Irfan) and PW-266 (Yasir Ahmed Sheikh), and held that the veracity of the statements of these witnesses and the facts stated by them could only be examined later in the trial and, therefore, at that stage, the appellant is not entitled to be released on bail in light of the restriction contained in Section 43D (5) of the UAPA. We quote from the order of the learned Trial Court as under:

> *"23. No doubt veracity of statement of these witnesses and facts stated by them can be well examined later in the trial but in the light of Section 43D(5) of UA(P) Act, this court is of the view that statements of these witnesses indicate that allegations against the accused are prima facie genuine. Judgments of Apex Court in Thwaha Fasal vs. Union of India (supra) as relied upon, can be of no help for the accused/ applicant in this case because*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

there is evidence regarding handing over of hand grenades, concealing of bullets of AK-47 etc. clearly showing overt act of the accused towards furthering the cause/object of terrorist organizations. Similarly, judgment of J&K High Court in Waheed ur Rehman Parra vs. UT of J&K (supra), is completely on different factual and legal context. Thus for the reasons so stated, bail application of accused/ applicant stands declined."

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

4. The learned counsel for the appellant, at the outset, submits that though by an order dated 30.07.2024 passed by the learned Trial Court subsequent to the impugned order, charge under Sections 120B/121A of the Indian Penal Code, 1860 (hereinafter referred to as, 'IPC') and Section 18 of the UAPA has been framed against the appellant herein, the appellant stands discharged of offences under Sections 20, 38, 39 of the UAPA and Section 25(1A) of the Arms Act, 1959. She submits that the said order on charge would not affect the right of the appellant to be released on bail, inasmuch as there has been a considerable delay in the conclusion of the trial. The appellant stood arrested on 16.12.2021, and though almost 5 years of custody period has been undergone, presently out of the 356 witnesses cited by the prosecution, only 21 witnesses have been examined. Placing reliance on the judgments of the Supreme Court in ***Union of India v. K.A. Najeeb,*** (2021) 3 SCC 713; ***Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr.***, (2024) 9 SCC 813; and ***Sheikh Javed Iqbal v. State of Uttar Pradesh***, (2024) 8 SCC 293; and of this Court in ***Mohd. Hakim v. State (NCT of Delhi),*** 2021 SCC OnLine Del 4623, she

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

submits that the appellant is entitled to be granted bail as his prolonged incarceration in custody is in violation of his Fundamental Rights guaranteed under Article 21 of the Constitution of India.

5. She further submits that even otherwise, no case is made out against the appellant. She submits that the alleged disclosure statement of the appellant cannot be relied upon as no subsequent discovery of fact was made thereby. In support, she places reliance on the judgment of the Supreme Court in ***Yedala Subba Rao & Anr. v. Union of India***, (2023) 6 SCC 65.

6. She submits that the star witness of the prosecution was X-1, who had deposed about the appellant allegedly handing over grenades to him for giving them to a co-accused, Rashid Muzafar Ganai (accused no. 22). The said witness stands examined before the learned Trial Court as PW-2. Taking us through the testimony of the said witness, the learned counsel submits that the said witness is clearly unreliable and was deposing under the influence of the National Investigation Agency (hereinafter referred to as, 'NIA') to save himself from prosecution. She submits that the said witness was, at best, an accomplice and, therefore, his statement has to find corroboration in material particulars, as provided under Section 133 read with Illustration (b) to Section 114 of the Indian Evidence Act, 1872. She submits that no independent corroboration of the statement of this witness *qua* the appellant is either pointed out anywhere in the chargesheet nor has come in the evidence.

7. She submits that an offence of conspiracy cannot be established on the basis of mere suspicion and surmises, unsupported by cogent

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

and acceptable evidence. In support, she places reliance on the judgments of the Supreme Court in ***Central Bureau of Investigation, Hyderabad v. K. Narayana Rao***, (2012) 9 SCC 512; and ***P.K. Narayanan v. State of Kerala***, (1995) 1 SCC 142.

8. She submits that even if the allegation regarding the handing over grenades is to be accepted, the same cannot constitute an offence under Section 18 of the UAPA. In support, she places reliance on the judgment of the Supreme Court in ***Shoma Kanti Sen v. State of Maharashtra & Anr.,*** (2024) 6 SCC 591.

9. As far as the witness X-12 is concerned, it is the case of the NIA that the appellant handed over 15 rounds of bullets to X-12, which were later recovered from X-12, as recorded in the seizure memo (D-142). The learned counsel states that the said recovery cannot be fastened on the appellant, inasmuch as X-12 states that the said bullets were handed over by her, on her own, and not pursuant to any pointing out by the appellant. She submits that the alleged recovery was effected from a third party 24 days after the alleged disclosure statement was given by the appellant, with no chain of custody linking the recovery to any pointing out by the appellant himself.

10. As far as PW-244 (Arif Qayoom Khuroo) is concerned, she submits that the said witness is, again, a self-confessed accomplice who claims to have knowingly generated fake SIM cards at the request of the appellant. Yet, he is being made a witness against the appellant. She submits that his statement also remains uncorroborated, as the prosecution has neither disclosed any mobile number for which these

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

SIM Cards were given nor any Customer Application Forms (CAFs) for these numbers have been filed on record.

11. In respect of PW-265 (Sheikh Irfan) and PW-266 (Yasir Ahmed Sheikh), she submits that their testimony, apart from being wholly unworthy of acceptance, is even otherwise based on hearsay. She submits that there is no evidence on record to show that the car was given by them to the appellant or that it was used in any manner for any terrorist activity. Their allegations are only based on what they heard and not on what they saw.

12. On the data retrieved from the appellant's phone, she submits that the same has again not been corroborated by showing that the mobile numbers with which the appellant had made contact were linked to any terrorist organisation or to any terrorist activity. Such material remains uncorroborated and does not, by itself, establish active participation of the appellant in terrorist activities or show a nexus between him and the terrorist act.

13. Placing reliance on the judgments of the Supreme Court in ***Kehar Singh & Ors. v. State (Delhi Administration)***, (1988) 3 SCC 609; and ***State of Kerala v. P. Sugathan & Anr.***, (2000) 8 SCC 203, she submits that the concurrence of parties to a conspiracy cannot be inferred merely from a group of irrelevant facts artfully arranged so as to give an appearance of coherence.

14. She submits that many of the co-accused persons have been granted bail, not only by the learned Trial Court but also by this Court and the Supreme Court. The charges against these co-accused persons were almost similar and, therefore, the appellant is entitled to bail on

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

the ground of parity.

15. She further submits that the appellant has been suffering from various health issues, for which again the appellant is entitled to be released on bail.

SUBMISSIONS OF THE LEARNED SPP FOR THE RESPONDENT:

16. On the other hand, the learned SPP appearing for the respondent-NIA submits that charges have already been framed against the appellant by the learned Trial Court *vide* order dated 30.07.2024. He submits that the appellant was a radicalised recruiter-cum-associate for the proscribed terrorist organisations Al-Badr and Hizbul Mujahideen (HM). The appellant, along with co-accused Umar Ayoub Bhat (accused no. 20) and Rashid Muzafar Ganai (accused no. 22), was in contact with Pakistan-based handlers of HM, its frontal organisation- TRF and the absconding co-accused, namely, Imtiyaz Kundoo (accused no. 2). The appellant functioned as a handler in the movement of arms and ammunition and in the channelising of terror funds. He kept live grenades and supplied the same to the co-accused persons; gave shelter to active terrorists at his shop; possessed live AK-47 bullets and handed them over for safe custody to another person; and received and channelized terror funds at the direction of the absconding co-accused Imtiyaz Kundoo (accused no. 2). He submits that considering these circumstances, the learned Trial Court rightly rejected the bail application of the appellant, and the impugned order warrants no interference from this Court.

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

17. He submits that the subsequent facts, including the statement of PW-2 (X-1) recorded by the learned Trial Court, should not be considered by this Court, as not only would this involve appreciation of evidence but also because such subsequent facts should not be considered in an appeal.

18. Placing reliance on the judgments of the Supreme Court in ***Gurwinder Singh v. State of Punjab & Anr.***, (2024) 5 SCC 403 and, ***NIA v. Zahoor Ahmad Shah Watali***, (2019) 5 SCC 1, and on the provisions of Section 43D (5) of the UAPA, he submits that no ground for grant of bail has been made out by the appellant. He submits that even considering the witness testimonies and recoveries at the instance of the appellant, no ground for bail is made out.

19. He submits that for the co-accused Suhail Ahmad Thokar (accused no. 25), the Supreme Court in its order dated 15.05.2024 passed in SLP (Crl.) No.83/2024, titled "***Suhail Ahmad Thokar v. National Investigation Agency***", directed the learned Trial Court to examine the material witnesses for the concerned accused expeditiously and to ensure that the protected witnesses are examined first. He submits that, since Special Courts have started functioning for NIA trials, the prosecution shall make all earnest efforts to ensure that the material witnesses *qua* the appellant are examined without avoidable delay. He submits that, therefore, the ground of delay in trial no longer survives.

20. He submits that having regard to the evidence on record and given the antecedents of the appellant, who has two other cases registered against him at Police Station Sopore, that is, FIR

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

No.20/2018 under Sections 13 and 20 of the UAPA and FIR No.08/2018 under Sections 147, 148, 149, 336 and 307 of the Jammu and Kashmir State Ranbir Penal Code, 1989, both relating to his involvement in terrorist support activities and his association with cadres of terrorist organisations, the appellant is not entitled to be released on bail.

ANALYSIS AND FINDINGS:

21. We have considered the submissions made by the learned counsels for the parties.

22. At the outset, we would note the allegations made in the chargesheet against the appellant, generally as also specifically. These are reproduced hereinbelow:

> ***"16.1*** *A reliable information was received regarding hatching of conspiracy, both physically and in cyberspace and planning to undertake violent terrorist acts in Jammu & Kashmir (J&K) and other parts of India, including New Delhi, by the cadres of various proscribed terrorist organisations like Lashkar-e-Taiba (LeT), Jaish-e-Mohammad (JeM), Hizb-ul-Mujahideen (HM), Al-Badr and similar other outfits through their affiliates such as the Resistance Front (TRF), People Against Fascist Forces (PAFF), Mujahideen Gazwatul Hind (MGH) etc. It was also learnt that the proscribed terrorist organizations in cohorts with their handlers and Commanders based in Pakistan and their Over Ground Workers in India were also indulging in radicalization of impressionable local youth for the purpose of recruiting and training them in handling of arms, ammunition and explosives. During the same period in a number of violent terrorist acts a number of innocent civilians and security personnel were*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

killed unleashing a reign of terror in the valley of Kashmir. It was also learnt that the members of proscribed terror organisation LeT/JeM/HM/Al-Badr and their affiliates such as TRF/PAFF/MGH etc. have conspired to commit such terrorist acts, recruited local youth to become members of terrorist organisations and collected arms/ ammunitions and further the members of the above said proscribed organisations have conspired to wage war against the Government of India by way of executing targeted killings.

16.2 *Considering the gravity of the offence, Central Government in exercise of the powers conferred under sub-section 5 of section 6 read with section 8 of the National Investigation Agency Act, 2008 vide Ministry of Home Affairs, New Delhi CTCR Division order no. 11011/65/2021/NIA dated 10.10.2021, directed National Investigation Agency to take up investigation of the case and accordingly, an FIR was registered as Case No. RC-29/2021/NIA/DLI dated 10.10.2021 under sections 120B, 121A, 122 and 123 of IPC and sections 18,18A, 18B, 20, 38 and 39 of UA (P) Act, 1967.*

16.3 *After registration of the FIR in NIA, during the course of investigation, twenty eight (28) accused persons were arrested. The arrested/ absconding accused persons were found to be members of various proscribed terrorist organizations like Hizbul Mujahideen (HM), Lashkar- e-Toiba (LeT), Tehrik-ul-Mujahideen (TuM), Al-Badar and their affiliates/ frontal organisations such as The Resistance Front (TRF), People Against Fascist Forces (PAFF), Mujahideen Gazwatul Hind (MGH), United Liberation Front Jammu & Kashmir (ULFJK), Kashmir Janbaaz Force (MJF), Intelligence Mujahideen etc. The aforesaid accused persons were actively working as hybrid cadres and were involved in radicalizing, recruiting, providing logistics support and terror funding in order to enhance*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

terrorist activities across the valley as well in other part of India especially New Delhi.

xxxx

17.18 *Investigation has brought on record that A-2 on directions of A-1, directly conspired with arrested accused persons A-3, A-5, A-6, A-8, A-17, A-20, A-22, A-23 and A-24 to assist active cadres associated with proscribed terrorist organizations and their newly formed frontal organizations, whereas the other arrested accused persons A-4, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-18, A-20, A-21, A-25, A-26 and A-27, acting as hybrid cadres or lone wolf operators, got associated with online propaganda groups floated by various Pakistan based handlers of proscribed terrorist organizations on directions of A-1, A-2 and other commanders of the 'United Jihad Council'. Due care was taken by A-1 and A-2 to ensure that all the other terrorists in this conspiracy did not know much about each other so that even if one of these was arrested, security agencies could not identify and locate other conspirators involved in the larger conspiracy.*

xxxx

17.41 *During the investigation it has also been revealed that the accused Rashid Muzaffar Ganaie (A-23) and co-accused lrfan Tariq Antoo (A-24) were also in contact with a number of Pakistan based handlers of frontal organization, TRF and other handlers of proscribed terrorist organization Hizbul Mujahideen. On the instance of the accused lrfan Tariq Antoo (A-24), Rashid Muzaffar Ganaie (A-22) had kept live Grenades at his shop, where the active terrorist cadres used to take shelter. Later, the accused lrfan Tariq Antoo (A-24) handed over these Grenades to one terrorist of terror outfit, AI-Badr.*

xxxx

17.43 *Investigation also revealed that the accused Umar Ayoub Bhat (A-20) was directly connected and receiving directions from the co-accused lmitiyaz Kundoo @ Fayaz Sopore*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

(A-2). On the directions of Pakistan based handler and accused lmitiyaz Kundoo @ Fayaz Sopore (A-2), accused lrfan Tariq Antoo (A-24) and accused Umar Ayoub Bhat (A-20), received and facilitated / channelized funds to various persons associated with them in order to strengthen the network and also distributed funds to the families of killed / slained militants.

xxxx

17.44 *Investigation has also brought on record that the accused lrfan Tariq Antoo (A-24) was the recruitor cum associate of co-accused Umar Ayoub Bhat (A-20) and Rashid Muzaffar Ganaie (A-22) was directly in contact with lmitiyaz Kundoo @ Fayaz Sopore (A-2). On directions of A-2, the accused lrfan Tariq Antoo (A-24) was in contact with several active cadres of proscribed terrorist organizations. Investigation has also brought on record that the accused lrfan Tariq Antoo (A-24) was in possession with live bullets of AK-47 which were given to him by one HM terrorist namely lmtiyaz, (now killed) which he further handed over to one of his close ally for safe custody. The said bullets were recovered and seized during the course of investigation.*

xxxx

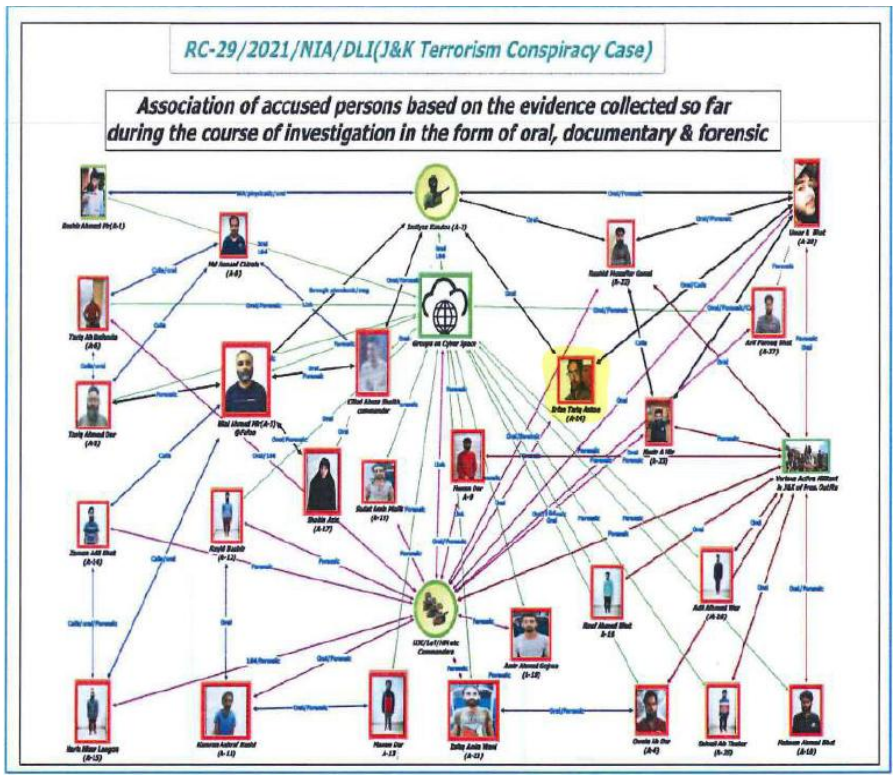
17.96 CDR Interconnectivity amongst accused persons A-1 to A-27/suspects established association based on the eveidence emerged:

During the course of investigation it has been established that most of the times accused persons were associated through various medium i.e VOIP medium and calls but they all are connected through various phone numbers. The retrived chats/ VOIP calls/ GSM calls/lawfull intercepted calls clearly indicates about their associations. All the accused persons were using secure communication methods to avoid detection.

17.97 *The evidence emerged during investigation in the form statements, CDR data, Chats retrived through seized mobile*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

phones shows that all the accused persons are associated with each other and enterned into conspiracy both physically as well as in cyber space in order to undertake targeted attacks in the valley for furtherance of operation of proscribed terrorist outifts operating under the names of various frontal organziations like TRF, ULF J&K, Kashmir Fight, Kashmir janbaaz Force (KJF) etc.



xxxx

17.120 Role and activities of/ offences established against Irfan Tariq Antoo (A-24) *Accused Irfan Tariq Antoo (A-24) knowingly entered and become part of the conspiracy with active terrorist commanders in the Kashmir Valley along with other co-accused persons to strengthen and facilitating the network of various terrorist organisation. The accused Irfan Tariq Antoo (A-24) was actively working as an OGW for the terrorist organisation. The accused Irfan Tariq Antoo*

Signature Not Verified
Digitally Signed By:REYMON VASHIST
Signing Date:30.10.2026 19:23:10

(A-24) was also involved in harbouring/transporting, raising and channelizing the terror funds to the active terrorist of banned terrorist outfits. Therefore, as per the averments made hereinabove/ in the pre-paragraphs, it is established that the accused lrfan Tariq Antoo (A-24) criminally conspired with co-accused persons and others and in pursuance of the larger conspiracy and indulged himself in the criminal conspiracy.

xxxx

18. CHARGE:

18.1 *In the instant case, there is sufficient evidence in the form of oral and documentary evidence including digital evidence that establishes beyond any reasonable doubt that the accused persons had entered into criminal conspiracy with the co accused persons and known & unknown persons and also raised funds by illegal means to extend support to the banned organization LeT, HM and others. The conspiracy got unearthed by way of the arrest of accused persons in the instant case and discovery of the various fact & material. The evidence on record led to the arrest of accused A-1 to A-27 (except A-7) and A-20 (Chargesheet is being filed in JJB Board, Kingsway Camp New Delhi) being part of the conspiracy and extending support to the banned terrorist organisation by way of spreading propaganda, assisting active cadres of proscribed terror outfit in J&K and other parts of India especially in New Delhi.*

18.2 *Hence, the accused persons are liable for prosecution under the following sections of Law:-*

S.No.	***Accused Name***	***Sections of Law***
xxxx	***xxxxx***	***xxxxx***
22.	*Irfan Tariq Antoo (A-24)S/o Tariq Ahmad Antoo R/o Kralteng, Sopore, Baramulla, J&K*	*Under Sections 120B & 121A of IPC and Sections 18, 20, 38 & 39 of UP(P) Act and Section 25(1A) of Arms Act*

Signature Not Verified
Digitally Signed By:REYMON VASHIST
Signing Date:30.10.2026 19:23:10

23. Section 43D (5) of the UAPA contains a special prohibition/restriction on the grant of bail to an accused. It provides that an accused shall not be released on bail if the Court is of the opinion that there are reasonable grounds for believing that the allegations against him are *prima facie* true. The said provision reads as under:

> *"**43D. Modified application of certain provisions of the Code.-***
>
> *xxxx*
>
> *(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."*

24. In the present case, after the passing of the impugned order, charges under Sections 120B and 121A of the IPC and Section 18 of the UAPA already stand framed against the appellant by the order dated 30.07.2024 passed by the learned Trial Court. The statement of one of the important witnesses, that is, PW-2 (X-1) also stands recorded on 16.12.2024 before the learned Trial Court.

25. In ***Shoma Kanti Sen*** (supra), the Supreme Court held that the

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

Appellate Court can also consider the material that comes into existence post the order passed by the learned Trial Court. We quote from the said judgment of the Supreme Court as under:

> *"14. 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 NIA entered into the picture and then issued the second supplementary charge-sheet. 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 NIA, based on the same FIR. Only the investigating agency had changed.* ***Just because the second supplementary charge-sheet 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 charge-sheet 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 charge-***

Signature Not Verified
Digitally Signed By:REYMON VASHIST
Signing Date:30.10.2026 19:23:10

sheet as well, while sitting in appeal over the order of rejection of bail by the regular Sessions Court upon considering the first two charge-sheets.

15. 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.*

16. ***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 charge-sheet 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*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

the appellant's prayer for bail, which was not considered by the High Court on merit.

xxxx

18. ***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 detenue, 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 arguing 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)

26. We are also aware that in our own judgment in ***Mohd Shahzad Kamal v. National Investigation Agency,*** 2026:DHC:8585-DB, we considered the subsequent testimony of a witness recorded before the learned Trial Court and granted bail to the accused therein, namely, Mohd Shahzad Kamal. However, in the present case, we are of the opinion that the effect of the order framing charge against the appellant, as also of the testimony of PW-2 (X-1), should first be

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

considered by the learned Trial Court. We reach this conclusion because PW-2 (X-1) has deposed about the supply of a bag containing grenades. He states that this bag containing grenades was given to him by the appellant herein. He also states that he knows the appellant well. In this regard, in fact, a suggestion was put to him that he knows the appellant as they met for the first time in the year 2018 at Police Station Sopore in connection with a stone-pelting case.

27. As observed by us hereinabove, the effect of the testimony of PW-2 (X-1) and how much reliance can be placed on the same by the learned Trial Court, are matters to be considered by the learned Trial Court. The learned Trial Court also has the benefit of the other evidence that has already come on record, *albeit* against other co-accused persons.

28. The primary plank on which the appellant seeks bail is the delay in the proceedings of the trial. The learned counsel for the appellant has emphasised that though the appellant has been in custody since 16.12.2021, out of 356 witnesses cited only 21 witnesses have been examined so far by the learned Trial Court.

29. The impugned order had been passed by the learned Trial Court on 07.08.2023, by which time, the period the appellant had undergone in custody was less than two years. However, much water has flown since then. While the statements of 21 witnesses stand recorded by the learned Trial Court, including that of PW-2 (X-1), the fact remains that a large number of witnesses are yet to depose before the learned Trial Court. As guided by ***K.A. Najeeb*** (supra), while we do find merit in the submission of the learned counsel for the appellant that there is

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

a considerable delay in conclusion of the trial and that the long period of incarceration of the appellant during trial may violate his Fundamental Rights guaranteed under Article 21 of the Constitution of India, at the same time, the reasons for such delay and whether for such delay alone, the appellant should, at this stage, be released on bail or whether the other material witness against the appellant can be examined expeditiously by the learned Trial Court, are matters to be considered by the learned Trial Court at the first instance. This is particularly so in view of the testimonies of witnesses yet to be recorded, including another protected witness, that is, X-12, who is claimed to have kept live cartridges of an AK-47 Rifle with her on the calling of the appellant, PW-244 (Arif Qayoom Khuroo), who is alleged to have given SIM cards to the appellant and even delivered money on his asking, and PW-265 (Sheikh Irfan) and PW-266 (Yasir Ahmed Sheikh), who are stated to have given the appellant the vehicle belonging to PW-265 (Sheikh Irfan), which is alleged to have been used in a terrorist activity. The learned Trial Court shall have to consider if the statement of these witnesses can be recorded expeditiously and whether there is any chance of the appellant influencing them in case he is released on bail.

30. In this regard, we are alive and cognizant of the fact that on account of delay in the trial, we have granted bail to some other co-accused, however, the case of each accused has to be considered on its own merits, including the issue whether such accused can influence the trial in case he/she is released on bail.

31. The appellant also seeks to urge his ill-health as a ground to be

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10

enlarged on bail. However, this was not a ground contended before the learned Trial Court.

32. For the aforesaid reasons, we dispose of the present appeal, granting liberty to the appellant to again approach the learned Trial Court with an application seeking bail. If such an application is filed by the appellant, the same shall be considered by the learned Trial Court without being influenced by any observations made by it in the impugned order or by us in the present judgment. The learned Trial Court shall consider the subsequent developments in the trial and the effect thereof on the continued incarceration of the appellant pending trial.

33. For the sake of clarity, we reiterate that we have not considered the case of the prosecution and the testimonies which the cited witnesses have given or may eventually give in the trial. These shall be considered by the learned Trial Court if an application for seeking bail is filed by the appellant before it. Any such application, if filed, must be decided by the learned Trial Court expeditiously.

34. There shall be no order as to costs.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

OCTOBER 30, 2026/ns/Yg

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:30.10.2026
19:23:10