



**REPORTABLE**  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

Judgment reserved on: 30/09/2026

Judgment delivered on: 03/10/2026

Judgment (Full) uploaded on: 03/10/2026

D.B. Criminal Appeal (Db) No. 438/2024

CNR: RJHC020989232024 | URN: CRLAD / 721U / 2024



Isim Ali (A6) Son Of Late Shri Imran Ali, Aged About 34 Years,  
sident Of House No. 525/725, Kishanpol Raza Nagar, Udaipur  
(Kajasthan). (At Present Confined In Judicial Custody In High  
Security Jail, Ajmer)

----Appellant

Versus

National Investigation Agency, (N.I.A.) New Delhi Through Special  
Public Prosecutor.

----Respondent

Connected With

D.B. Criminal Appeal (Db) No. 351/2024

CNR: RJHC020892322024 | URN: CRLAD / 592U / 2024

Muslim Khan Son Of Sher Mohammed, Aged About 43 Years, R/o  
New Awdhi Village Parsola Dhariyabad, District Pratapgarh (Raj).  
(Presently The Accused Confined In High Security Jail, Ajmer).

----Appellant

Versus

National Investigation Agency, (N.I.A.) New Delhi Through Special  
Public Prosecutor.

----Respondent

D.B. Criminal Appeal (Db) No. 436/2024

CNR: RJHC020989042024 | URN: CRLAD / 719U / 2024

Mohsin Khan(A-3) Son Of Shri Mujaffar Khan, Aged About 27 Years,  
Resident Of House No. 18A, Government Press Colony, Raza Nagar,  
Police Station Surajpol, Udaipur (Rajasthan). (At Present Confined In  
Judicial Custody In High Security Jail, Ajmer)

----Appellant

Versus

National Investigation Agency, (N.I.A.) New Delhi Through Special  
Public Prosecutor.



----Respondent

D.B. Criminal Appeal (Db) No. 437/2024  
CNR: RJHC020989102024 | URN: CRLAD / 720U / 2024

Mohammad Mohsin Son Of Shri Mohammad Inslam, Aged About 34 Years, Resident Of Gali No. 4, Vijay Singh Pathik Nagar, Udaipur (Rajasthan). (At Present Confined In Judicial Custody In High Security Jail, Ajmer)

----Appellant

Versus

National Investigation Agency, (N.I.A.) New Delhi Through Special Public Prosecutor.

----Respondent

D.B. Criminal Appeal (Db) No. 439/2024  
CNR: RJHC020988972024 | URN: CRLAD / 722U / 2024

Asif Hussain(A-4) Son Of Shri Mohammad Hussain, Aged About 25 Years, Resident Of House No 245 Mohallahmahawatbari Street Behind Government School Girwa Udaipur (Rajasthan). (At Present Confined In Judicial Custody In High Security Jail, Ajmer)

----Appellant

Versus

National Investigation Agency, (N.I.A.) New Delhi Through Special Public Prosecutor.

----Respondent

- For Appellant(s)

:

Mr. Syed Saadat Ali with  
Mr. Salim Khan  
Mr. Nadeem Qadeer  
Ms. Uzma Ilyas  
Ms. Aafreen Rizvi  
Mr. K.M. Siddiqui  
Mr. Sumit Kumar  
Mr. Anshul Mathur  
Mr. Aatif Aman Khan
- For Respondent(s)

:

Mr. Raja Thakare, Sr. Adv. (ASG) with  
Mr. Sneh Deep Khyalia, Spll. P.P.  
Mr. Rohit Khare  
Mr. Siddharth Sharma  
Mr. Himanshu Choudhary



**DIVISION BENCH**

**HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL  
HON'BLE MR. JUSTICE SAMEER JAIN**

**C.A.V. JUDGMENT**

**By the Court:**

*"Terrorism and deception are weapons not  
of the strong, but of the weak."*

*- Mahatma Gandhi*

‘सहनशीलता, क्षमा, दया को तभी पूजता जग है,  
बल का दर्प चमकता उसके पीछे जब जगमग है।  
क्षमा शोभती उस भुजंग को जिसके पास गरल हो,  
उसको क्या जो दंतहीन, विषरहित, विनीत, सरल हो।’

-रामधारी सिंह ‘दिनकर’

**PREFATORY REMARKS:**

1. The seat of a judge is surrounded by an invisible, yet crushing weight, the weight to protect the rights of the citizens and people of this country which are enshrined under the Constitution of India.
2. Every time a case file is opened in this Court, we are not merely adjudicating a dispute between a prosecution agency and an accused; we are testing the very resilience of our Republic. But the paradigm of bail shifts entirely when the crime in question is not aimed at an individual, but at the very soul of the nation.
3. Terrorism is not merely an assault on a physical body; it is a calculated, theatrical assault on the psychological sovereignty of the country. Its ultimate objective is not just to commit an offence, but the assassination of peace. It seeks to replace the ‘Rule of Law’ with the ‘Rule of Fear’.



संविधान की प्रस्तावना केवल एक दस्तावेज़ के पन्ने नहीं हैं; वे इस  
राष्ट्र की आत्मा की अमर प्रतिज्ञा हैं-

**"We, the People of India, resolve to secure  
Justice, Liberty, Equality, and Fraternity."**

4. But how does a Republic secure fraternity when the very fabric of its society is violently torn by those who wield terror as a weapon? The gavel strikes, not merely to conclude a hearing, but to echo the unyielding resolve of a sovereign Republic.

5. The preambles of the National Investigation Agency Act, 2008 and the Unlawful Activities (Prevention) Act, 1967 are not mere statutory introductions; they are the legislative declarations of a State fighting for its self-preservation. The said preambles remind us that while the Constitution is the ultimate shield for the innocent, it cannot be allowed to become a sanctuary for those who seek to tear apart our social fabric. The law must possess the teeth to bite those who attempt to devour the nation's harmony.

6. The NIA Act, and the UAPA, were not forged in the tranquility of peace. They were born in the crucible of necessity. If we look at the preamble of the NIA Act, its mandate is absolute:

*"to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, and friendly relations with foreign States."*

7. Similarly, the preamble of the UAPA stands as a statutory sentinel, enacted for the more effective prevention of certain unlawful activities of individuals and associations, and for dealing with terrorist activities.



8. The above-mentioned legislation are not ordinary criminal statutes; they are the armor of the State.

9. As we open this case, we must navigate the perilous tightrope between the rights of the accused and the survival of the State. We must examine the anatomy of the crime, not just through the lens of an offence but through the unyielding prism of national security.

### **INTRODUCTION:**

10. The present bunch of D.B. Criminal Appeals has been preferred under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act') challenging the impugned orders dated 09.10.2024 and 12.11.2024 passed by the learned Special Judge (NIA Cases), Jaipur, Rajasthan. By way of the said impugned orders, the Criminal Miscellaneous Bail Applications filed on behalf of the accused-appellants under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) were dismissed.

11. The present appeals arise out of First Information Report bearing No. RC27/2022/NIA/DLI dated 29.06.2022, registered at Police Station NIA, New Delhi, for the alleged commission of offences punishable under Sections 452, 302, 153A, 153B, 295A, and 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 16, 18, and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA').

12. With the consent of the respective counsel, the present bunch of appeals arising out of the same FIR and challenging the





orders rejecting bail, were heard and are being taken up together for final adjudication, as they are interconnected, interlaced, and arise out of the same set of facts and points of law.

**FACTUAL MATRIX OF THE CASE AT HAND:**

13. The genesis of the matter pertains to an incident where one Nupur Sharma, the then spokesperson of a political party, made certain remarks regarding Prophet Mohammad in May 2022 during a television debate and her comments led to widespread agitation and protests across the country.

14. As per the case of the appellants, the deceased, Kanhaiya Lal, subsequently made remarks and forwarded comments relating to Nupur Sharma through a Facebook post late at night on 10.06.2022. The said action allegedly agitated local residents belonging to a particular community in his neighborhood. Consequently, one Nazim lodged an FIR No.71/2022 at Police Station Dhanmandi at 12:34 AM on 11.06.2022. Thereafter, Kanhaiya Lal was arrested in connection with the said FIR and was subsequently released on bail by the learned Trial Court after a span of three days.

15. Sensing a threat to his life, Kanhaiya Lal installed three CCTV cameras outside his shop, '*Suprim Tailors*', on 15.06.2022.

16. It is further alleged that on 16.06.2022, one Kaleem, accompanied by his wife and a newborn baby, came to Kanhaiya Lal's shop on his motorbike and had a verbal altercation with Kanhaiya Lal.



17. The pivotal incident occurred on 28.06.2022. On 29.06.2022 at around 06:31 hours, a formal complaint was lodged by Shri Yash Teli, son of Kanhaiya Lal Teli, at Udaipur, Rajasthan, regarding the brutal murder of his father. The said complaint was initially registered as FIR No.81/2022 at Police Station Dhan Mandi, Udaipur for offences under Sections 452, 302, 153-A, 153-B, 295-A and 34 of the IPC read with Sections 16, 18, and 20 of the UAPA. Subsequently, pursuant to the directions issued by the Ministry of Home Affairs, Government of India, the National Investigation Agency (NIA) re-registered the case on 29.06.2022 and took over the investigation.

18. The facts detailed in the above-mentioned FIR relate to the gruesome and brutal murder of Kanhaiya Lal Teli by two assailants armed with sharp weapons inside his shop located at Bhoot Mahal Maaldas Street, Udaipur. During the said incident, two shop assistants present at the scene were also grievously injured.

19. The assailants conspicuously recorded the act and circulated videos of the gruesome murder on social media with assertions intended to promote enmity on communal grounds and to spread terror across the nation.

20. Upon completing a thorough investigation, the NIA filed a comprehensive charge-sheet. The learned Trial Court framed charges against the accused on 12.01.2024 and 13.02.2024. The present accused-appellants, namely Wasim Ali (A-6, arrested on 05.07.2022), Muslim Khan (A-9, arrested on 10.08.2022), Mohsin Khan (A-3, arrested on 01.07.2022) Mohammad Mohsin (A-5,



arrested on 04.07.2022), and Asif Hussain (A-4, arrested on 01.07.2022), have been in judicial custody since their respective dates of arrest.

21. As per the charge-sheet, the main accused, namely Mohammed Riyaz Attari (A-1) and Mohammed Gos (A-2), stabbed and beheaded Kanhaiya Lal inside his shop in the presence of two workers, namely Raj Kumar Sharma and Ishwar Gaud, recorded the ghastly incident, and subsequently circulated the videos online to instill terror. It is in this background that the appellants preferred bail applications before the learned Special Court, which came to be rejected vide the impugned orders dated 09.10.2024 and 12.11.2024.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

22. Learned counsel for the appellants vigorously canvassed the following grounds in support of the prayer for the grant of bail:

22.1 It was primarily contended that there is no cogent evidence on record to demonstrate that the accused-appellants were present in or around the vicinity of the deceased's shop from 10.06.2022 to 28.06.2022.

22.2 It was further submitted that the accused-appellants were never seen in the vicinity of the shop during the relevant period leading up to the incident.

22.3 Learned counsel emphatically argued that there is no *iota* of evidence on record to suggest that the accused-appellants had





sent any message, voice note, or text on any WhatsApp group that could be construed as hurting the religious faith of any community or promoting enmity.

22.4 It was submitted that the co-accused, namely Farhad Mohammed and Mohammed Javed, have already been granted bail by the learned Trial Court and by this Court, respectively, on the exact same set of charges as framed against the present accused-appellants.

22.5 Learned counsel further relied upon the prolonged period of incarceration, submitting that the appellants have been in custody for over four and a half years. It was argued that the trial will take its own considerable time, given that the prosecution proposes to examine approximately 180 witnesses. Although the charge-sheet was filed on 22.08.2022 and charges were framed in early 2024, the trial is far from conclusion. In regard to the aforesaid submission, reliance was placed upon the authoritative pronouncement of the Hon'ble Supreme Court in **Union of India v. K.A. Najeeb<sup>1</sup>**, to contend that the statutory embargo as enshrined under Section 43D(5) of the UAPA cannot eclipse the fundamental right to a speedy trial guaranteed under Article 21 of the Constitution of India. It was argued that where a timely trial is not possible, the constitutional courts are obligated to enlarge the accused on bail, regardless of the statutory restrictions. Moreover, reliance was placed on the recent judgment passed by the Hon'ble

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<sup>1</sup> (2021) 3 SCC 713





Supreme Court in **Syed Iftikhar Andrabi v. NIA**<sup>2</sup>, which reaffirmed the primacy of Article 21 of the Constitution of India and clarified that the dictum laid down in **K.A. Najeer** (supra) is binding law that cannot be diluted, holding that Section 43D(5) “melts down” in the face of prolonged pre-trial incarceration.

22.6 It was further contended that the disclosure statements of the appellants were recorded in the English language, which they do not comprehend, therefore vitiating the entire recovery carried out as per the provisions enshrined under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'IEA'). It was argued that such statements are also hit by Section 25 of the IEA.

22.7 It was next submitted that the names of the appellants were not reflected in the FIR and that the implication of the appellants is solely based on presumptions, assumptions, and Call Detail Records (CDRs) merely because they are neighbors and were regularly communicating with each other over the years.

22.8 It was lastly submitted that there are no criminal antecedents registered against the accused-appellants and that they are the sole breadwinners of their respective families.

22.9 Reliance in regard to the aforesaid submissions has also been placed upon the ratio dated 17.04.2023 enunciated by the Hon'ble Supreme Court in the case of **Yedala Subba Rao v. Union of India**<sup>3</sup> and it was prayed that the accused-appellants may be released on bail.

2 2026 SCC OnLine SC 881

3 Criminal Appeal No. 1153/2023 (Arising out of SLP (Crl.) No.101/2021)



**SUBMISSIONS ON BEHALF OF THE RESPONDENT (NIA):**

23. *Per contra*, Mr. Raja Thakare, learned Senior Counsel (ASG) appearing on behalf of the NIA, vehemently opposed the present appeals and advanced the following arguments:

23.1 It was submitted that the FIR has been registered under a Special Act-UAPA, and the investigation was meticulously carried out by a specialized agency-NIA. It was next submitted that the accused-appellants played an active, indispensable, and integral role in the commission of the alleged crime.

23.2 It was contended that the evidence on record, including witness statements and investigative material, categorically transpires that a deep-rooted criminal conspiracy was hatched. It was submitted that the unlawful activities were executed in a highly pre-planned and pre-meditated manner, culminating in a brutal murder and a heinous offence against the State.

23.3 It was argued that a brutal murder was committed in broad daylight pursuant to a conspiracy hatched by all the appellants along with the main accused. It was further submitted that the subsequent broadcasting and circulation of videos of the gruesome act through various social media platforms was a calculated move with the sole aim and object to instill fear, terrorize the common conscience of the society, and strike terror in the nation at large.

23.4 It was urged that the said incident was deliberately given a communal colour with the malicious intention to create a deep divide in the social fabric between two predominant communities



of the country, disrupt the communal tranquility of the State at large, and project an international flavor to the terror act.

23.5 Learned Senior Counsel relied upon the statutory embargo as enshrined under Section 43D(5) and (6) of the UAPA, 1967, and further relied upon the ratio laid down by the Hon'ble Supreme Court in **National Investigation Agency v. Zahoor Ahmad Shah Watali**<sup>4</sup> and it was argued that as per the said dictum, the Court is not required to conduct a mini-trial or weigh the evidence meticulously at the bail stage. The Court must look at the material provided by the investigative agency at its face value, and if it discloses reasonable grounds for believing the accusation to be *prima facie* true, bail must be rejected. It was contended that the standard of scrutiny is even narrower post the framing of charges.

23.6 Addressing the argument of delay *qua* the conduct of trial, the learned Senior Counsel submitted that on the request of the State, the trial is being conducted on a day-to-day basis expeditiously. However, the said request had vehemently been objected to by the appellants, thereby making the appellants themselves attributable to the alleged delay.

23.7 Learned ASG clarified that the list of witnesses has been considerably shaved down from 180 to 89, and nearly 30 material witnesses have already been examined, therefore, the ratio laid down by the Hon'ble Supreme Court in **K.A. Najeeb** (supra) is not attracted to the present case, as the trial is progressing rapidly.

4 (2019) 5 SCC 1



23.8 Distinguishing the case of the present accused-appellants from the co-accused who were granted bail, it was submitted that the active role of every appellant is distinct and well-documented in the charge-sheet. The co-accused who were granted bail stand on a completely different set of factual matrices as those of the present appellants as one of the co-accused was minor and he was granted the concession of bail on the ground of juvenility.

23.9 It was emphasized that the statements, call details, video recordings, and recovery of weapons from the accused-appellants constitute concrete, tangible evidence supporting the prosecution's case of a heinous terrorist act, and therefore, it was prayed that the present batch of appeals may be dismissed.

#### **ANALYSIS AND FINDINGS:**

24. We have given our anxious consideration to the rival submissions advanced by learned counsel for the respective parties, meticulously scanned the records of the present appeal, and carefully perused the judgments cited by both sides at the Bar.

25. The core issue before this Court is whether the appellants are entitled to the concession of regular bail under the stringent provisions of Section 21(4) of the NIA Act read with Section 43D(5) of the UAPA, particularly in light of their prolonged incarceration.

26. Before dealing with the aforesaid issue, it is of the vital importance to examine the provisions enshrined under Section



43D(5) and (6) of the UAPA, the relevant extracts of the same are reproduced as under:

*"43D. Modified application of certain provisions of the Code.*

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*(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...."*

*(emphasis supplied)*

27. The statutory framework as laid down by the legislation under Section 43D(5) has been dealt with in detail by the Hon'ble Supreme Court in **Gulfisha Fatima v. State (Govt. of NCT of Delhi)**<sup>5</sup>. The relevant extract of the said dictum is reproduced as under:-

**"3. STATUTORY FRAMEWORK OF SECTION 43D(5) AND THE SCOPE OF JUDICIAL INQUIRY AT THE BAIL STAGE**

*64. The issues arising before this Court at the stage of consideration of bail engage multiple facets of law, including the nature of the statutory framework, the limits of judicial scrutiny at the pre-trial stage, and the manner in which allegations under a special enactment are required to be assessed. In order to address these aspects in a structured and principled*



manner, it becomes necessary to examine the scheme of the Unlawful Activities (Prevention) Act, 1967, and in particular the scope and content of Section 43D(5), which regulates the exercise of judicial discretion in such matters. An understanding of this framework provides the necessary foundation for evaluating the material placed on record and the role attributed to each accused in accordance with law.

65. The Unlawful Activities (Prevention) Act, 1967, is a special statute enacted to address forms of criminal conduct which, by their very nature, transcend ordinary breaches of penal law and implicate the sovereignty, integrity, and security of the State. Parliament, in framing the Act and in subsequently strengthening its provisions, has proceeded on the legislative understanding that such offences are rarely confined to isolated acts, but are more often the culmination of organised, sustained, and conspiratorial activity unfolding over time.

66. The statutory scheme of the Act reflects this understanding. Chapters IV and VI do not confine criminal liability to the final execution of a terrorist act alone. They extend culpability to preparatory conduct, facilitation, abetment, and conspiracy, recognising that the threat sought to be addressed by the statute often materialises long before any overt act of violence is committed. The law thus proceeds on a process-based conception of criminality rather than an event-based one.

67. It is within this legislative backdrop that Section 43D(5) assumes significance. The provision constitutes a conscious departure from the general principles governing the grant of bail under the Code of Criminal Procedure. Parliament has imposed a calibrated restriction on the power of courts to grant bail in respect of offences under Chapters IV and VI, reflecting its assessment that the ordinary presumption in favour of pre-trial liberty requires modification where allegations pertain to activities threatening the foundations of the State.

68. At the same time, Section 43D(5) does not exclude judicial scrutiny. Nor does it mandate denial of bail by default. The restriction operates only upon the Court being satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true. The provision thus preserves the judicial



function, while carefully defining its contours at the pre-trial stage.

69. This Court has, on several occasions, examined the scope and application of Section 43D(5) in diverse factual settings. Decisions such as **National Investigation Agency v. Zahoor Ahmad Shah Watali**, **Vernon v. State of Maharashtra**, **Shoma Kanti Sen v. State of Maharashtra**, **Athar Parwez v. Union of India**, and **Jalaluddin Khan v. Union of India** disclose a consistent judicial approach to the provision, notwithstanding variations in factual context. The present analysis seeks not to restate those authorities individually, but to distil the governing principles that emerge from them and to apply those principles in a structured and coherent manner.

70. The expression "prima facie true", which lies at the heart of Section 43D(5), does not invite a detailed examination of evidence, nor does it require the Court to assess the probability of conviction. Equally, it does not reduce the judicial role to a mechanical acceptance of the prosecution's assertions. The statutory standard contemplates a threshold inquiry of limited but real content.

71. At this stage, the Court is required to examine whether the material relied upon by the prosecution, taken at face value and without rebuttal, discloses the essential ingredients of the offences alleged against the accused. The inquiry is one of statutory plausibility, not evidentiary sufficiency. The Court tests the allegations against the legal ingredients of the offence, not against possible defences or competing factual narratives.

72. The discipline imposed by Section 43D(5) necessarily circumscribes the nature of judicial scrutiny permissible at the bail stage. The Court is not called upon to weigh the probative value of evidence, to assess its admissibility, or to determine whether the prosecution version will ultimately withstand trial. Any exercise approximating a mini-trial at this stage would transgress the statutory boundary deliberately drawn by Parliament.

73. Such premature adjudication is not merely procedurally inappropriate; it carries institutional consequences. It risks prejudging issues reserved for trial, distorting the adversarial process, and undermining the legislative intent underlying the



special bail regime. Section 43D(5) therefore demands judicial restraint, not judicial abstention, at the pre-trial stage.

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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...."*

*(emphasis supplied)*

28. Upon the careful consideration of the aforesaid provisions, we are of the considered view that Section 43D(5) of the UAPA places a statutory embargo on the grant of bail if the Court, on a perusal of the charge-sheet, is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie true*.

29. Upon the assiduous perusal of the judgments cited at the Bar by the respective parties, we are of the view that jurisprudence surrounding Section 43D(5) is governed by two vital pillars laid down by the Hon'ble Supreme Court and they are as follows:

29.1 **The *Prima Facie True* Test:** In **NIA v. Zahoor Ahmad Shah Watali** (supra), the Hon'ble Supreme Court categorically clarified that the degree of satisfaction required at the bail stage is only to assess whether the accusations are *prima facie true* based on broad probabilities. It is further held that the Court cannot evaluate the admissibility, reliability, or weigh the evidence as if conducting a mini-trial. The prosecution material must be accepted at face value. Moreover, as correctly pointed out by the learned ASG, since charges have already been framed in the present case, the material has already crossed a preliminary judicial filter, thereby elevating the threshold for the accused. The relevant extracts of the ratio laid down by the Hon'ble Supreme Court in **Zahoor Ahmad Shah Watali** (supra) is reproduced hereunder:



"26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.

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46. In *Niranjan Singh Karam Singh Punjabi (supra)*, the Court essentially considered the scope and ambit of the enquiry by the trial court at the stage of "discharge". In that context, the Court made observations in paras 6 and 8 of the said judgment which must be understood accordingly. In the present case, however, we are called upon to consider the prayer for bail in the



context of the purport of the proviso to Section 43-D(5) of the 1967 Act which mandates that the accused person involved in the commission of offence referable to Chapters IV and VI of the 1967 Act shall not be released on bail or on bond. However, the Court may release such accused on bail only if it is of the opinion, on perusal of the case diary and/or the report made under Section 173 of CrPC that there are "no reasonable grounds" for believing that the accusation against such person is prima facie true. Conversely, if in the opinion of the Court, there are reasonable grounds for believing that the accusation against such person is prima facie true, the question of granting bail would not arise as the bar under the first part of the proviso of no bail in such cases would operate..."

(emphasis supplied)

## 29.2 The Article 21 Safeguard:

न्याय के इस कक्ष में, अक्सर हमारे सामने दो अत्यंत पवित्र सिद्धांतों का टकराव होता है। एक ओर है भारतीय संविधान का अनुच्छेद 21 व्यक्तिगत स्वतंत्रता (Personal Liberty) की धड़कन। और दूसरी ओर है एक संप्रभु राष्ट्र की सुरक्षा और अखंडता। सामान्य आपराधिक न्याय प्रणाली का स्वर्ण नियम कहता है: "Bail is the rule, jail is an exception."

Learned counsel for the appellants have relied on the dictum enunciated by the Hon'ble Supreme Court in **K.A. Najeeb** (supra), wherein a three-judge bench categorically held that the statutory restriction under Section 43D(5) cannot render the constitutional guarantee of personal liberty as enshrined under Article 21 of the Constitution of India illusory. The Hon'ble Court held that the rigors of Section 43D(5) 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. The said principle was recently reaffirmed by the Hon'ble Supreme Court with formidable clarity in **Syed Iftikhar Andrabi** (supra) wherein the Hon'ble



Supreme Court categorically stated that the ratio encapsulated in **K.A. Najeeb** (supra) is a binding law entitled to the protection of *stare decisis* and the same cannot be circumvented or diluted. It is further reiterated and clarified that anti-terror legislation cannot create a parallel constitutional order where liberty stands suspended indefinitely, and that the dictum enunciated in the case of **Zahoor Ahmed Shah Watali** (supra) cannot be used as a universal anti-bail trump card to justify endless pre-trial detention of the accused.

30. However, by way of the dictum encapsulated by the Hon'ble Supreme Court in **Gulfisha Fatima** (supra), it has been held that Article 21 of the Constitution of India is of seminal importance but where the Parliament in the special statute conditioned the grant of bail upon the satisfaction of a defined statutory threshold, a constitutional court cannot treat such constraint as voidable. The relevant extract of the aforesaid dictum is reproduced as under:-

*"428. The position of law that emerges may be stated with clarity. The right to personal liberty enshrined under Article 21 is of seminal importance, and prolonged pre-trial incarceration is a matter of serious constitutional concern. At the same time, where Parliament has, in the context of a special statute, conditioned the grant of bail upon the satisfaction of a defined statutory threshold, a constitutional court cannot treat such restraint as avoidable. Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, represents a legislative judgment that offences alleged to implicate the security of the State warrant a distinct bail regime. The constitutional role of the Court, therefore, is neither to mechanically enforce the statutory embargo nor to neutralise it by invocation of liberty as straight-jacket formula, but to apply it with disciplined scrutiny. Where the prosecution material, taken at face value, discloses reasonable grounds for believing the accusation to be prima facie true, the*



statutory restraint must ordinarily operate. Where it does not, liberty must prevail. Article 21 thus commands the manner of application of the statute; it does not dissolve the statutory condition itself.

429. It is in this constitutional and statutory framework that the individual appeals have been examined based on facts obtained. The Court has consciously avoided a collective or uniform approach. Each appellant has been assessed on the basis of the role attributed, the nature of material relied upon, and the stage of the proceedings, strictly within the limited compass of adjudication for grant of bail..."

(emphasis supplied)

**APPLICABILITY OF THE JURISPRUDENCE LAID DOWN BY THE HON'BLE SUPREME COURT TO THE PRESENT FACTS:**

31. For better adjudication of the present bunch of appeals and the core issue formulated herein, this Court must balance the statutory mandate as enshrined under Section 43D (5) of the UAPA against the constitutional safeguards as enshrined under Article 21 of the Constitution of India, keeping in mind the specific facts of the present case. In the present bunch of appeals, we observe the following significant considerations:

i. The NIA has completed a detailed and comprehensive investigation, filed the charge-sheet, and the learned Trial Court has already framed charges against the accused-appellants. This establishes that upon a *prima facie* evaluation, there exists sufficient material to proceed against the appellants, and therefore, the foundational test laid down by the Hon'ble Supreme Court in **Zahoor Ahmad Shah Watali** (supra) is squarely met at this stage.



ii. The nature of the crime alleged against the present accused-appellants is not an ordinary offence; it is a calculated act of terror designed to strike fear into the populace at large. The prosecution has alleged a deep-rooted, organized criminal conspiracy involving a group of persons, including the appellants, who allegedly played active and specific roles in facilitating the crime. A conspiracy of this nature is often established by circumstantial material, tacit understandings, and electronic records (CDRs), which the prosecution has placed on record.

iii. While the learned counsel appearing on behalf of the accused-appellants have cited the judgment passed by the Hon'ble Supreme Court in **K.A. Najeeb** (supra) and **Syed Iftikhar Andrabi** (supra) regarding prolonged incarceration of approximately four and a half years, we must view this in the context of the trial's progress. Unlike cases where the trial has not even commenced or where hundreds of witnesses remain untouched, the learned ASG has demonstrated that the trial in the present case is proceeding at a rapid pace on a day-to-day basis. The said material fact has also been corroborated by the fact that the prosecution has reduced its witness list significantly, and approximately 30 primary witnesses have already been examined, and therefore, it cannot be said that the trial is entirely stalled or that there is no likelihood of trial being completed within a reasonable time. We are of the considered view that the factual matrix involved in the present case is distinguishable from the extreme delay that warranted the invocation of the Article 21 of the Constitution "melt down" principle as encapsulated by the



Hon'ble Supreme Court in **K.A. Najeel** (supra) and **Syed Iftikhar Andrabi** (supra), and therefore, the said dicta are not applicable to the present case.

iv. A *prima facie* consideration, which is neither perfunctory nor adjudicatory, requires the Court to examine whether the prosecution material, taken at face value, discloses the essential statutory ingredients of the alleged offences. Upon perusal of the detailed charge-sheet placed on record by the respondent-NIA, we find that the accusations against the appellants regarding their participation in the conspiracy are *prima facie* made out.

v. We are conscious of the fact that the inquiry at the bail stage must be accused-specific. However, it is a well-settled proposition of law that the stage of bail does not require or permit the evaluation of defenses, such as the language of the disclosure statements as contended by the learned counsel appearing on behalf of the appellant, the weighing of evidence, or the conducting of a mini-trial regarding the admissibility of electronic evidence, as these issues are strictly reserved for the learned Trial Court to examine during the course of trial.

32. Coming to the facts emerging from the present bunch of appeals, we are of the view that the brutal murder by entering the shop of the deceased-victim in broad daylight, coupled with the recording and dissemination of the act of such a grave and heinous nature to create communal disharmony and terror, strikes at the very foundation of the State. Criminal conspiracy for such an organized terror activity has a profound and devastating impact



on society at large, far exceeding that of an individual, ordinary crime. In such matters, falling within the statutory framework of the UAPA, and relying upon the above-discussed precedents laid down by the Hon'ble Supreme Court, we are of the considered view that the grant of bail must deviate from the ordinary rule, and a strict approach must be adopted unless the rigors of Section 43D(5) are successfully dislodged by the accused, which the accused-appellants have failed to do in the present instance.

### **CONCLUSION:**

33. Considering the overall facts and circumstances of the present case, and without commenting upon the final merits of the evidence which is subject to trial, we find that the gravity of the offence, the specific roles attributed to the appellants in the larger criminal conspiracy, and the heinous nature of the terrorist act disentitle the accused-appellants to the benefits of bail, at this stage, as it is observed that trial is progressing actively and at a rapid pace, negating the sole ground of delay urged by the learned counsel for the appellants as enshrined under Article 21 of the Constitution of India.

34. Consequently, we are not inclined to allow the present appeals preferred by the appellants under Section 21(4) of the NIA Act. The impugned orders dated 12.11.2024 and 09.10.2024 passed by the learned Trial Court dismissing the bail applications qua the accused-appellants are hereby sustained and affirmed.

35. Accordingly, the present batch of D.B. Criminal Appeals stands **dismissed**.



36. It is, however, made clear that any observations made hereinabove are solely for the purpose of deciding the present bail appeals and shall not be construed as an expression of opinion on the merits of the case during the trial. The learned Trial Court shall proceed with the trial uninfluenced by the observations made hereinabove.

(SAMEER JAIN),J

(SANJAY K. AGRAWAL),CJ

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