



2025:DHC:6618-DB



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

*Reserved on: 11.07.2025*  
*Pronounced on: 08.08.2025*

+ CRL.A. 262/2021

SYED AHMAD SHAKEEL .....Appellant

Through: Mr. Jawahar Raja and Ms. Aditi  
Saraswat, Advs.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. Vikramjit Banerjee, ASG  
with Mr. Akshai Malik, SPP  
and Mr. Khawar Saleem, Adv.  
with Mr. Pankaj Aggarwal,  
DSP, NIA.

+ CRL.A. 1023/2024

SHAHID YUSUF .....Appellant

Through: Mr. Jawahar Raja and Ms. Aditi  
Saraswat, Advs.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. Vikramjit Banerjee, ASG  
with Mr. Akshai Malik, SPP  
and Mr. Khawar Saleem, Adv.  
with Mr. Pankaj Aggarwal,  
DSP, NIA.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**



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## **J U D G M E N T**

### **SHALINDER KAUR, J.**

1. The present criminal appeals arise out of NIA Case No. RC-06/2011/NIA/DLI, which originated from FIR No. 04/2011 dated 16.01.2011, registered at the Special Cell, Delhi Police, Lodhi Colony, under Section 120B of the Indian Penal Code, 1806 ('IPC') and Section 17 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA'). These appeals involve similar factual and legal issues and are, thus being adjudicated collectively through the present common judgment.

2. This case triggered from an investigation when the Special Cell of the Delhi Police received information from a source indicating that funds originating from Pakistan were being routed to Jammu & Kashmir through hawala channels operating *via* Delhi, for the purpose of funding terrorist and secessionist activities in Jammu and Kashmir. On basis of the same, FIR No. 04/2011 was registered.

3. Acting upon the said information, certain telephone numbers were placed under surveillance. Upon analysis of the intercepted communications and the inputs received from sources, it emerged that there was a conspiracy to raise and transfer funds to the State of Jammu and Kashmir through hawala transactions for the purpose of funding terrorist activities.

4. The investigation revealed that one Maqbool Pandit (A-5), a member of the proscribed terrorist organisation Hizb-ul-Mujahideen,



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based in Pakistan, was involved in transmitting substantial amounts of money to secessionist elements and terrorists operating in Jammu & Kashmir.

5. During the course of the investigation, a joint team comprising officials from the Special Cell of the Delhi Police and the Jammu & Kashmir Police laid a trap at Bemina Bypass Chowk, Srinagar, on 22.01.2011, which resulted in the apprehension of four accused persons, namely, i) Ghulam Mohd. Bhat @ Abdul Rehman (A-1), ii) Mohd. Sidiq Ganai @ Lala (A-2), iii) Ghulam Jeelani Liloo @ Salim @ Ghulam Jeelani Sofi (A-3), and iv) Farooq Ahmed Dagga @ Rahi (A-4). From the possession of the aforementioned accused persons, a total sum of Rs. 21,20,000/-, mobile phone sets, SIM cards, and other incriminating material were recovered. The investigation unearthed a deeper criminal conspiracy involving various individuals engaged in the collection and disbursement of funds to separatist leaders, members of Hizb-ul-Mujahideen, and other terrorist groups. These funds, received from Pakistan through hawala channels, were meant for the promotion of terrorist activities in Jammu & Kashmir. Consequently, Sections 18 and 20 of the UAPA were also added to the aforementioned FIR No. 04/2011.

6. Thereafter, the Ministry of Home Affairs (MHA), Government of India, *vide* letter No. 1-11011/23/2011-IS-IV dated 15.04.2011, transferred the investigation to the National Investigation Agency ('NIA'). Accordingly, the case was re-registered as RC-06/2011/NIA/DLI (Delhi Hawala Channel Funding Terror in Jammu



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& Kashmir) on 25.04.2011 under Section 120B of the IPC and Sections 17, 18, and 20 of the UAPA.

7. Upon conclusion of the investigation, the NIA filed a Charge-Sheet on 20.07.2011 against four accused persons, namely Ghulam Mohammad Bhat @ Abdul Rehman (A-1), Mohammad Sidiq Ganai @ Lala (A-2), Ghulam Jeelani Liloo @ Salim @ Ghulam Jeelani Sofi (A3), and Farooq Ahmad Dagga @ Rahi (A-4), for offences under Sections 13, 17, 18, and 20 of the UAPA.

8. A first supplementary Charge-Sheet dated 22.12.2011 was filed against the accused Mohd. Maqbool Pandit (A-5) and Aijaz Ahmad Bhat @ Aijaz Maqbool Bhat (A-6), terrorists of Hizb-ul-Mujahideen, who were absconding and have been declared proclaimed offenders.

9. On 03.03.2012, Charges were framed against the co-accused A-1 to A-4 by the learned Special Court, NIA, Patiala House Courts, New Delhi.

10. Subsequently, on 28.05.2018, the co-accused A-2, A-3, and A-4 pleaded guilty to offences under Sections 13, 17, 18, and 20 of the UAPA, and *vide* Order dated 04.06.2018, were sentenced to the period already undergone by them in custody, which was 7 years and 4 months, along with a fine of Rs. 2000/-.

11. However, the investigation continued and further revealed that, as part of a larger criminal conspiracy, to raise and send funds to the State of Jammu & Kashmir for carrying out terrorist activities, the appellant Shahid Yousuf (A-7) and the appellant Syed Ahmad Shakeel (A-8), both sons of Mohammad Yousuf Shah @ Syed Salahuddin, the



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self-styled supreme commander of Hizb-ul-Mujahideen, a proscribed terrorist organization, and resident of House No. 34, Zumzum Colony, Ram Bagh, Police Station Sadar Gir, Jammu & Kashmir, willfully received and collected money from Aijaz Ahmad Bhat @ Aijaz Maqbool Bhat (A-6) on different occasions. During the course of investigations, the disclosure statements of the appellants, as well as evidence of their receipt of terror funds from Aijaz Ahmad Bhat @ Aijaz Maqbool Bhat (A-6), were recorded.

12. The prosecution maintains that the evidence gathered during the course of investigation establishes that both the accused, A-5 and A-6, are members of the proscribed terrorist organisation Hizb-ul-Mujahideen and were actively involved in a larger conspiracy to raise funds for the said terrorist outfit. Accordingly, the accused Shahid Yousuf (A-7) was arrested on 24.10.2017, and the appellant, Syed Ahmad Shakeel (A-8) was arrested on 30.08.2018 in RC-06/2011/NIA/DLI.

13. On the basis of the evidence collected during the investigation, a second supplementary Charge Sheet dated 20.04.2018 was filed against the appellant- Shahid Yusuf (A-7), under Sections 13, 17, 18, 20, 21, 38, and 40 of the UAPA and Section 120 B of the IPC.

14. A third supplementary Charge Sheet was filed on 20.11.2018 under Sections 17, 18, and 38 of the UAPA and Section 120B of the IPC against the appellant- Syed Ahmad Shakeel (A-8).

15. *Vide* Order dated 09.02.2021, the trial of A-7 and A-8 was bifurcated, leading to the registration of a separate case as RC-



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02/2021/NIA/DLI, titled *State (NIA) v. Shahid Yousuf & Syed Ahmad Shakeel*.

16. Both the appellants filed bail applications seeking regular bail. The appellant-Syed Ahmad Shakeel (A-8) filed his bail application on 20.05.2021, which was dismissed by the learned Special Court, NIA, *vide* Order dated 09.07.2021. The appellant-Shahid Yousuf (A-7) filed a second bail application before the learned Special Judge on 16.01.2024, which was dismissed *vide* Order dated 31.08.2024.

17. Aggrieved by the non-grant of Regular Bail, the appellants filed the present criminal appeals. They have also preferred separate appeals against the framing of Charges, bearing Criminal Appeal Nos. 201/2021 and 199/2021, which are stated to be pending adjudication.

18. To appreciate the arguments advanced on behalf of the parties, it is necessary to examine the role of each of the appellants as described by the prosecution.

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19. The prosecution alleges that between 2009 and 2010, the appellant, Syed Ahmad Shakeel (A-8), received terror funds amounting to Rs. 2,74,444/- in six installments *via* Western Union from the co-accused A-6, with whom he was in touch on telephone and who was allegedly an active member of Hizb-ul-Mujahideen. These funds were purportedly received using multiple identity documents, including the appellant's office ID and voter ID.

20. Additionally, suspicious cash deposits of Rs. 4.15 lakhs were allegedly found in the appellant's bank accounts held with the J&K



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Bank, SKIMS Branch, Soura. The appellant is stated to have failed to account for these deposits during the investigation.

21. The NIA contends that the said funds originated at the behest of his father, Mohammad Yousuf Shah @ Syed Salahuddin, the self-styled Supreme Commander of Hizb-ul-Mujahideen, and were routed *via* operatives based in Pakistan, Saudi Arabia, and other Islamic countries.

22. In support of the above accusations, the prosecution has relied upon documents D-144 to D-148 and D-154, comprising letters from Western Union Money Transfer; D-192 to D-200, being documents pertaining to the identity of the accused, his handwriting, and unaccounted deposits in his bank account; and D-191 and D-192, which are the confessional statements of the appellant relating to his involvement in raising, receiving, and collecting funds from the leadership and active cadres of Hizb-ul-Mujahideen, and his association therewith.

**SUBMISSIONS ON BEHALF OF THE APPELLANT (A-8)**

23. Mr. Jawahar Raja, the learned counsel for the appellant, submitted that the appellant- Syed Ahmad Shakeel has been in custody since 30.08.2018. He has been falsely implicated and wrongly incarcerated in the present case for nearly 6 years and 11 months without the conclusion of the trial. He submitted that such prolonged detention, without any likelihood of early conclusion of proceedings, is inherently violative of the appellant's fundamental right under Article 21 of the Constitution of India.



24. He submitted that the Charges under Sections 17, 18 and 38 of the UAPA and Section 120B of the IPC were framed against the appellant on 17.02.2020. Out of a total number of 201 witnesses cited by the prosecution, 17 witnesses have been dropped, 32 witnesses have been examined till date, and 152 witnesses are yet to be examined. The learned counsel urged that in such a situation, where the possibility of the trial concluding in the near future cannot be visualized, the long period of incarceration suffered by the appellant amounts to a denial of his right to a speedy trial. Thus, on this ground alone, the appellant is entitled to regular bail.

25. Mr. Jawahar Raja further submitted that, apart from the above, the prosecution has miserably failed to place on record sufficient evidence to support the serious allegations against the appellant.

26. The learned counsel submitted that co-accused A-2 to A-4, who had been charged with more serious offences, including Sections 13 and 20 of the UAPA, both of which have not been invoked against the appellant. They pleaded guilty and were sentenced to approximately 7 years and 4 months of imprisonment. More so, A-1, upon conclusion of the trial, was convicted under Sections 13 and 18 of the UAPA and was sentenced to undergo a custody period of twelve and a half years only. The appellant, despite facing comparatively less grave Charges, has already undergone a substantial term of custody of around 7 years and yet remains an under-trial.

27. It was submitted that A-2 to A-4 were actively involved in hawala operations to transfer funds to Jammu & Kashmir using





impoverished intermediaries. By contrast, the only allegation against the appellant is that he received Rs. 2,74,744/- in six installments from co-accused A-6 through Western Union Money Transfer, which the appellant categorically denies. The prosecution, he submitted, has failed to demonstrate any nexus between the appellant and any specific terrorist act, or any material to establish the requisite intent under Sections 17, 18, or 38 of the UAPA.

28. The learned counsel submitted that the appellant has clean antecedents, having served as a Senior Lab Technician in the Department of Microbiology, Sher-e-Kashmir Institute of Medical Sciences (SKIMS), Soura, since 1989. There have been no disciplinary complaints against him, nor does he have any criminal history. The prosecution's attempt to taint him only because of he being the son of Mohammad Yousuf Shah @ Syed Salahuddin, is wholly unjustified and impermissible.

29. It was contended that neither the FIR dated 25.04.2011 nor the initial Charge-Sheets mentioned the name of the appellant. His name surfaced only in 2018, and he was not even asked to join the investigation for over 7 years after the registration of the FIR. Unlike the other co-accused, there exist no call records, money trails, or testimonial linkages between the appellant and the absconding co-accused Maqbool Pandit (A-5) or Aijaz Ahmad Bhat (A-6).

30. The learned counsel submitted that the reliance of the NIA on Section 106 of the Indian Evidence Act, 1872, is misplaced, as Section 106 does not absolve the prosecution of its initial burden to establish a



*prima facie* case. In the absence of evidence proving a nexus with a terrorist act under Sections 15, 17, or 18 of the UAPA, the burden does not shift to the appellant. Reliance was placed on the decision of the Supreme Court in *Anees v. State Govt. of NCT of Delhi*, 2024 INSC 368.

31. The learned counsel submitted that the prosecution's allegation that the appellant is a flight risk, is amiss, as the appellant has duly responded to all the notices issued to him by the NIA. A Non-Bailable Warrant was issued against him only when he failed to respond to three notices to join the investigations. On one occasion, the notice was received two days late, which was duly endorsed on the notice itself. On another occasion, due to medical incapacity, he could not appear, which was communicated to the NIA along with documentary proof.

32. The learned counsel further submitted that the appellant's continued incarceration is causing serious hardship to his family. His wife suffers from multiple health conditions, including Chronic Idiopathic Thrombocytopenic Purpura, Chronic liver disease with Steatosis Grade S3, diabetes, and Bilateral Knee Arthropathy with osteoarthritis. His daughter is afflicted with Cervical Spondylosis, PCOD, and a psychiatric disorder, while his son suffers from a gastrointestinal disorder. He submits that the learned Special Court failed to consider the medical records of his family members, which were produced before it, while declining his regular bail.



33. Lastly, it was urged that the mere framing of Charges does not disentitle an accused from being granted bail, especially when the conditions under Section 43D (5) of the UAPA are not attracted.

34. In view of the above, the learned counsel prayed that the appeal be allowed, the Impugned Order dated 09.07.2021 rejecting the appellant's bail application be set aside, and the appellant be enlarged on regular bail.

35. In support of his contentions, the learned counsel has relied upon the following decisions:

- i. ***Vernon v. State of Maharashtra & Anr.***, 2023 SCC OnLine SC 885;
- ii. ***Thawaha Fasal v. Union of India***, 2021 SCC OnLine SC 1000;
- iii. ***Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra & Anr.***, (2005) 5 SCC 294;
- iv. ***NIA v. Zahoor Ahmed Shah Watali***, (2019) 5 SCC 1;
- v. ***Anter Singh v. State of Rajasthan***, (2004) 10 SCC 657;
- vi. ***Gurwinder Singh v. State of Punjab & Anr.***, 2024 SCC OnLine SC 109;
- vii. ***Union of India v. K.A.Najeeb***, (2021) 3 SCC 713;
- viii. ***Ashim @ Asim Kumar Haranath Kumar Bhattacharya v. NIA***, (2022) 1 SCC 695;



- ix. ***Jahir Hak v. State of Rajasthan***, (2022) SCC OnLine SC 441;
- x. ***Mohd Muslim @ Hussain v. State of NCT of Delhi***, (2023) SCC OnLine SC 352;
- xi. ***Yedela Subba Rao & Anr. v. Union of India***, (2023) 6 SCC 65;
- xii. ***Baidyanath Prasad Srivastava v. State of Bihar***, 1968 SCC OnLine SC 255;
- xiii. ***Kashi Ram & Ors. v State of MP***, (2002) 1 SCC 71;
- xiv. ***State NCT of Delhi v Navjyot Sandhu***, (2005) 11 SCC 600.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

36. Mr. Banerjee, the learned Additional Solicitor General (ASG), appearing on behalf of the NIA, while seeking dismissal of the appeal, strongly submitted that the appellant has been arrayed as an accused in a well-organized and transnational conspiracy involving hawala funding to support terrorism in Jammu & Kashmir, orchestrated under the aegis of the proscribed terrorist organization Hizb-ul-Mujahideen.

37. It was submitted that the appellant, Syed Ahmed Shakeel, is the son of Mohammad Yousuf Shah @ Syed Salahuddin, the self-styled commander-in-chief of Hizb-ul-Mujahideen and one of the most wanted terrorists, whose activities have been declared inimical to the sovereignty and integrity of India.



38. The learned ASG submitted that the appellant is alleged to have received large sums, amounting to Rs. 2,74,744/-, in six instalments through Western Union Money Transfers from absconding co-accused A-6, who was acting under the directions of the Hizb-ul-Mujahideen leadership. These transactions were made at the behest of the appellant's father.

39. He submitted that although the appellant was duly summoned to join the investigation, he failed to appear on 05.05.2018, 27.06.2018, and 29.06.2018. His continued absence reflected a deliberate attempt to evade interrogation by the NIA, thereby indicating a guilty mind and criminal intent. Consequently, a Non-Bailable Warrant was issued against him by the learned Special Court (NIA) on 06.07.2018, pursuant to which he was arrested on 30.08.2018.

40. The learned ASG contended that there is ample evidence on record in the form of Call Detail Records (CDRs), financial transaction records, confessional statements, and testimonies of witnesses, linking the appellant with other co-accused and the larger criminal conspiracy. The receipt of hawala money by the appellant directly connects him to the Hizb-ul-Mujahideen funding channel.

41. He submitted that the prosecution has established a *prima facie* case against the appellant under Sections 17 and 18 of the UAPA, which deal with raising funds for terrorist acts and involvement in conspiracy to commit terrorist acts. These offences are of a grave nature and attract the embargo on bail under Section 43D(5) of the UAPA.



42. It was further submitted that the investigation revealed that the appellant is part of a wider network for mobilizing and transmitting funds from abroad to finance terrorism in India. The role of the appellant is not in isolation but rather deeply entwined with the objectives of a banned terrorist organization.

43. The learned ASG submitted that the appellant's claim of having no connection with the other co-accused- A-6, is false. He submitted that the involvement of the appellant has surfaced through careful digital and documentary analysis of transactions, money trails, and witness depositions. Specific witnesses have testified regarding the financial trail linking the appellant to Hizb-ul-Mujahideen operatives.

44. With respect to the contention that the accused A-2 to A-4 were convicted for more serious offences and awarded lesser sentences or that the co-accused A-1 was awarded a sentence of 12 and half years only, it was submitted that their conviction followed either a plea of guilt after full disclosure of their roles or upon conviction, which stands on a different footing. The appellant, he submits, in contrast, continues to deny his involvement, and the trial against him is proceeding independently.

45. It was submitted that the appellant's reliance on his medical/family circumstances is a general ground and cannot be a consideration when national security is involved. There is no evidence to suggest that the appellant's continued incarceration is endangering his family's lives or well-being in an exceptional manner.



46. The learned ASG, while acknowledging the appellant's right to a speedy trial, submitted that 30 witnesses will be dropped from the prosecution's witness list and that the trial may conclude by the end of the year, provided the case is heard four days a week by the learned Trial Court.

47. Lastly, the learned ASG emphasized that the burden to explain the source of the funds received, lies with the appellant. He submits that as a government servant, a higher standards of probity applies to the appellant. He submits that the invocation of Section 106 of the Indian Evidence Act, 1872, in the present case is justified, as the facts relating to the transactions are within the special knowledge of the appellant.

48. In view of the above, the respondent prayed for the dismissal of the appeal, contending that the appellant's continued detention is justified under law and on the facts of the case, and that the embargo under Section 43D (5) of the UAPA squarely applies to the present matter.

49. In support of his contentions, the learned ASG relied on the following judgments:

- i. Union of India rep. by Inspector of Police National Investigation Agency Chennai Branch v. Barakathullah etc.*, 2024 SCC OnLine SC 1019;
- ii. Yash Pal Mittal vs. State of Punjab*, (1977) 4 SCC 540;



*iii. Gurwinder Singh vs State of Punjab & Anr.,  
(2024) 5 SCC 403.*

**SUBMISSIONS OF THE APPELLANT IN REJOINDER**

50. In rejoinder, Mr. Jawahar Raja, the learned counsel for the appellant, submitted that the case of the prosecution is weak against the appellant, as the alleged transactions had occurred in the year 2010, prior to the date on which Mohammad Yousuf Shah @ Syed Salahuddin, the appellant's father, was declared a terrorist, which occurred on 27.10.2010.

51. He submitted that the prosecution's case is primarily based on the appellant's disclosure statement, which does not even reveal that the appellant was ever involved in any terrorist activity or had any knowledge that the alleged funds received in his account had any link to a terrorist organization, a terrorist gang, or an individual terrorist. He further submitted that the prosecution has also failed to establish any intention on the part of the appellant to further the activities of a terrorist organization.

52. Furthermore, unlike the Prevention of Money Laundering Act, 2002 (PMLA), he submitted that under the UAPA, there is no statutory presumption *qua* the receipt or possession of funds.

**ANALYSIS AND CONCLUSION**

53. Having heard the learned counsel for the appellant, the learned ASG for the respondent, and having perused the record and the





judgments furnished by the parties, we may, at the outset, consider the common submission made by Mr. Jawahar Raja on behalf of both the appellants. He contends that although charges were framed against the appellants on 07.02.2020, the prosecution has examined only 32 witnesses till date. As a large number of witnesses remain to be examined, it indicates that there is no likelihood of the trial concluding in the near future. He submitted that the appellants have been in custody since the date of their arrest, the appellant Syed Ahmed Shakeel having spent 6 years and 11 months in incarceration, and the appellant Shahid Yousuf having undergone incarceration of a period of 7 years and 8 months, which he argued, is inherently violative of the appellants' fundamental rights under Article 21 of the Constitution of India.

54. It was further submitted that the NIA's failure to produce material witnesses or case property on various listed dates, and its practice of summoning irrelevant witnesses, indicate a lack of urgency in prosecuting the trial.

55. On the contrary, with respect to the issue of delay, the learned ASG submitted that mere delay in the trial cannot be a ground to override the statutory bar under Section 43D (5) of the UAPA, especially when the Charges are grave and the evidence implicates the appellants in aiding a terrorist organisation. The delay, he argued, is not attributable to the prosecution but rather to the complexity of the case and the necessity of a number of witnesses to be examined by the prosecution.



56. To consider the above submissions, it would be apposite to note the provision under Section 43D of UAPA, which reads as under:-

**“Modified application of certain provisions of the Code.**

*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.”*

57. Section 43D (5) of the UAPA has been analysed in various decisions of the Supreme Court as well as by Co-ordinate Benches of this Court. The Supreme Court, in the case of **Zahoor Ahmed Shah Watali** (supra), has culled out the criteria on which the grant of bail is to be tested under the UAPA. The relevant extract is:

*“21. Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:*

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the charge;*



- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail. (*State of U.P. v. Amarmani Tripathi* [*State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21, para 18 : 2005 SCC (Cri) 1960 (2)] .)

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25. From the analysis of the impugned judgment [*Zahoor Ahmad Shah Watali v. NIA*, 2018 SCC OnLine Del 11185] , it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused



*by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.”*

58. In the case of ***K.A.Najeeb*** (supra), the Supreme Court distinguished the law laid down in the case of ***Zahoor Ahmed Shah Watali*** (supra) and held that while Courts are expected to appreciate the legislative policy against the grant of bail, the rigours of such provision will abate when 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. The relevant portion is reproduced as under:

*“16. As regards the judgment in NIA v. Zahoor Ahmad Shah Watali [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , cited by the learned ASG, we find that it dealt with an entirely different factual matrix.*



*In that case, the High Court [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] had reappreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.”*

59. Section 43D (5) of the UAPA further came under consideration before the Supreme Court in the case of **Thawaha Fasal** (supra). The relevant portion of the decision is reproduced as under:

*“ 26. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether*



*prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is."*

60. On the other hand, the learned ASG strongly relied upon the decision of the Supreme Court in **Gurwinder Singh** (supra) and contended that, in the said case, the Supreme Court had considered its earlier decisions, including **Zahoor Ahmed Shah Watali** (supra) and **K.A. Najeer** (supra), and had dismissed the bail appeal. He submitted that the Supreme Court further clarified the principles governing the consideration of bail applications in cases involving offences under the provisions of the UAPA, which are set out below:

*"26. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of courts must tilt in favour of the oft-quoted phrase — "bail is*



*the rule, jail is the exception” — unless circumstances justify otherwise — does not find any place while dealing with bail applications under the UAP Act. The “exercise” of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in the proviso to Section 43-D(5)— “shall not be released” in contrast with the form of the words as found in Section 437(1)CrPC — “may be released” — suggests the intention of the legislature to make bail, the exception and jail, the rule.*

*27. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under the UAP Act, the courts are merely examining if there is justification to reject bail. The “justifications” must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, “prima facie” standard, as a measure of the degree of satisfaction, to be recorded by the Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of “strong suspicion”, which is used by courts while hearing applications for “discharge”. In fact, the Supreme Court in *Zahoor Ahmad Watali [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383]* has noticed this difference, where it said : (SCC p. 24, para 23)*

*“23. ... In any case, the degree of satisfaction to be recorded by the court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges*



*in relation to offences under the 1967 Act.”*

*(emphasis supplied)*

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

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

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

*1.1. Examine if, prima facie, the alleged “accusations” make out an offence under Chapter IV or VI of the UAP Act;*

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

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





*On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused, etc. the court must ask itself:*

- 2.1. Whether the accused is a flight risk?*
- 2.2. Whether there is apprehension of the accused tampering with the evidence?*
- 2.3. Whether there is apprehension of accused influencing witnesses?*

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

***Test for rejection of bail : Guidelines as laid down by Supreme Court in Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383]***

*31. In the previous section, based on a textual reading, we have discussed the broad inquiry which courts seized of bail applications under Section 43-D(5) of the UAP Act read with Section 439CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents.*

*32. In this regard, we need to look no further than Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] which has laid down elaborate guidelines on the approach that courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paras 23 to 24 and 26 to 27, the following 8-point*



*propositions emerge and they are summarised as follows:*

**32.1. Meaning of “prima facie true” :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 24, para 23)

*On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.*

**32.2. Degree of satisfaction at pre charge-sheet, post charge-sheet and post-charges — compared :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 28, para 26)

*“26. ... 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 173CrPC), 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.”*

**32.3.Reasoning, necessary but no detailed evaluation of evidence :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 27, para 24)

*“24. ... the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.”*

**32.4.Record a finding on broad probabilities, not based on proof beyond doubt :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 27, para 24)

*“The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.”*

**32.5.Duration of the limitation under Section 43-D(5) :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 27, para 26)

*“26. ... 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.”*

**32.6.Material on record must be analysed as a “whole”; no piecemeal analysis :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 28, para 27)



*“27. ... 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.”*

**32.7. Contents of documents to be presumed as true :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC p. 28, para 27)

*“27. ... The Court must look at the contents of the document and take such document into account as it is.”*

**32.8. Admissibility of documents relied upon by prosecution cannot be questioned :** (Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] , SCC pp. 24 & 28, paras 23 & 27)

*The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.*

61. We may herein note that subsequent to the decision of **Gurwinder Singh** (supra), the Supreme Court, in the case titled **Sheikh Javed Iqbal v. State of Uttar Pradesh**, 2024 INSC 534, held that when a trial is prolonged, the prosecution cannot oppose bail for an undertrial solely on the ground that the charges are very serious. It



was further observed that ***K.A. Najeeb*** (supra), which was decided by a three-judge bench, is binding on a two-judge bench, such as in ***Shaikh Jawed Iqbal*** (supra). Significantly, in ***Shaikh Jawed Iqbal*** (supra), the Supreme Court also observed that, depending on the facts of a particular case, the Constitutional Court may decline to grant bail.

62. Subsequently, a review petition was filed in ***Gurwinder Singh*** (supra), wherein the Supreme Court noted that the said decision was based on the specific facts and circumstances of the case and dismissed the review petition.

63. From the above legal position, it is evident that while adjudicating a bail application under the UAPA, it is requisite for the Court to satisfy itself that there exists reasonable grounds for believing that the allegations made against the accused are *prima facie* true. In this regard, the Court is required to examine the material and evidence collected by the Investigating Agency in support of the allegations levelled against the accused. Accordingly, the nature of the offence and the prosecution's case regarding the manner in which the offence was committed must be taken into account for the purpose of forming a *prima facie* view.

64. Furthermore, Section 43D (5) of the UAPA does not take away the power of the Constitutional Courts to grant bail, especially when an accused has been in jail for a long period and there is no likelihood of the trial concluding soon. The right to life and personal liberty under Article 21 of the Constitution of India is of paramount importance, and if this right is being violated, the Court can grant bail.



However, the grant of bail ultimately depends on the specific facts and circumstances of each case.

65. The present appeal, therefore, ought to be considered in view of the aforementioned binding principles of law as enunciated herein above.

66. Now turning to the allegations against the appellant, Syed Ahmed Shakeel (A-8), it is alleged that between 2009 and 2010, the appellant wilfully received and collected terror funds totalling Rs. 2,74,444/- in six instalments, which include Rs. 50,000/- on 09.03.2009, Rs. 50,000/- on 24.06.2009, Rs. 50,000/- on 29.06.2009, Rs. 24,744/- on 01.10.2009, Rs. 50,000/- on 19.01.2010 and another Rs. 50,000/- again on 19.01.2010. These amounts were allegedly received from co-accused Aijaz Ahmad Bhat (A-6) through Western Union Money Transfer, using multiple identity cards of the appellant, including his office ID and election card.

67. The prosecution further alleges that the said money was collected by the appellant with full knowledge that these funds had been raised, received, and collected by members of the Hizb-ul-Mujahideen terrorist outfit, led by his father, Mohammad Yousuf Shah @ Syed Salahuddin. The said terrorist organization has been involved in several terrorist activities in the State of Jammu & Kashmir and other parts of India, resulting in the deaths of innocent persons and damage to the property belonging to the Government of India and the Government of Jammu & Kashmir.



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68. It is further alleged that Mohammad Yousuf Shah @ Syed Salahuddin had received and collected terror funds from various sources, including government agencies in the Islamic Republic of Pakistan, the Kingdom of Saudi Arabia, and other Islamic Countries, through different means, and had these funds transferred to India through Aijaz Ahmad Bhat (A-6) and others, for the furtherance of terrorist activities.

69. The further case of the prosecution is that A-6 used the addresses of Ijaz Ahmad Abdull R/o Sittin City, JED, Saudi Arabia, and Eijaz Ahmad Mohammad Abdullah R/o Msuhrfa, Jehdha, Saudi Arabia, to transfer the funds to the appellant.

70. The investigation further revealed that cash deposits of Rs. 90,000/-, Rs. 12,000/- and Rs. 40,000/- were made on 20.01.2010, 08.03.2010 and 26.03.2010 respectively (amounting to a total of Rs. 1.42 lakhs) into a loan account of J&K Bank, SKIMS Branch, Soura, Srinagar, standing in the name of A-8. In addition to the aforesaid, cash amounts of Rs. 1,00,000/- and Rs. 12,000/- were deposited on 01.05.2008 and 19.06.2008, respectively (totalling Rs. 1.12 lakhs) into another loan account of the appellant, maintained with the same bank branch. Likewise, cash deposits of Rs. 61,500/- and Rs. 1,00,000/- were made on 10.11.2016 and 13.03.2018, respectively, in the salary/savings account of the appellant.

71. It is the case of the prosecution that a total amount of Rs. 4.15 lakhs was deposited in cash in the bank accounts of the appellant.



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72. Upon being questioned regarding the source of the said cash deposits, the appellant, in his disclosure statement, stated that the said amounts were deposited by him towards repayment of the loan. However, he was unable to disclose or substantiate the source from which the said amounts were obtained.

73. The prosecution has claimed that the appellant, in pursuance to the criminal conspiracy and in connivance with A-6 and other members of Hizb-ul-Mujahideen, acted as a member of the terrorist gang/organization, indulged in unlawful activities, raised and mobilized funds from Saudi Arabia, and held proceeds of terrorism to support terror activities of Hizb-ul-Mujahideen in the State of Jammu & Kashmir and other parts of India.

74. To support the allegations against the appellant, the prosecution has relied upon documents received from the Post Office and the Office of the Director of Accounts (Postal), J&K Circle, which contain the handwriting and signatures of the accused, as well as receipts obtained from Western Union Services Pvt. Ltd.

75. In his Disclosure Statement (D-191 and D-192), the appellant has stated that he used to receive telephone calls from his father, who was residing in Islamabad, Pakistan. However, he claimed that he never made any calls to his father. He further disclosed that during the years 2009–2010, he received six to seven telephone calls from Aijaz Ahmad Bhat (A-6). Additionally, he stated that in the year 2009, on one occasion, his father informed him over the phone that one person,





Aijaz, would call him and provide him with a number, and that he was to act upon the directions received accordingly.

76. In view of the foregoing, the main allegations summed up against the appellant are as follows:

- i. That he had received funds to the tune of Rs. 2,74,744/- on six different occasions, from a proclaimed offender and co-accused A-6, who had sent the money through Western Union Money Transfers at the behest of his father;
- ii. That there were unaccounted cash deposits amounting to Rs. 4.15 lakhs in his bank accounts;
- iii. That these funds were received by the appellant while acting as a member of the proscribed terrorist organization, Hizb-ul-Mujahideen, and pursuant to a larger criminal conspiracy;
- iv. It is also alleged that the appellant had been receiving phone calls from his father, who is presently residing in Pakistan and is the leader of the aforesaid organization, and has been declared a terrorist.

77. The learned counsel for the appellant vociferously submitted that although charges under Sections 17, 18 and 38 of the UAPA and Section 120B of the IPC have been framed against the appellant, an appeal against the framing of charge is pending adjudication before this Court. More so, there is not an iota of evidence on record to allege that appellant has been a member of the Hizb-ul-Mujahideen or that he had any knowledge that the alleged money received in his account was to be used towards terrorist activities.



78. We have considered the facts and circumstances of the present case. The trial is underway, therefore, we are restraining ourselves to delve deep into the evidence. Suffice it to say here that the mainstay of the prosecution against the appellant is the receipt of money and not its use for any terrorist activity. The appellant therefore, has satisfied the test under Section 43D(5) of the UAPA.

79. The prosecution is yet to examine a substantial number of witnesses, as only 32 witnesses have been examined till date. Though the learned ASG has submitted that the trial can end by the end of the year, this is with a rider that the learned Trial Court takes up the trial four times a week for full day. We are not directing the learned Special Court to do so, as there would be other trials also pending before it. It is for the learned Special Court to manage its Board and to determine the matter which needs to be prioritised over others.

80. The co-accused A-2, A-3, and A-4 already pleaded guilty to offences under Sections 13, 17, 18 and 20 of the UAPA, and *vide* Order dated 04.06.2018, were sentenced to the period already undergone by them in custody since their date of arrest, which was 7 years and 4 months, along with a fine. The co-accused A-1 was convicted for 12.5 years under Sections 13 and 18 of the UAPA *vide* Order dated 22.05.2023.

81. The appellant has already suffered prolonged incarceration of around 6 years and 11 months, without any certainty of the trial concluding within a reasonable time.



82. The learned ASG had emphasized the conduct of the appellant in failing to appear before the NIA despite the service of three notices requiring him to join the investigation. The appellant has offered an explanation for his non-appearance, which has not been challenged by the respondent. Moreover, the appellant is a Government Servant, working as a Senior Lab Technician in the Department of Microbiology at Sher-i-Kashmir Institute of Medical Sciences, Soura.

83. In our considered opinion, keeping in view the role assigned to the appellant, continued detention of the appellant at this stage would not serve the ends of justice.

84. Accordingly, we enlarge the appellant on bail in the present case, on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of like amount, to the satisfaction of the learned Trial Court/ Special Court/CMM/ Duty Magistrate, and further subject to the following conditions:-

- i. The appellant shall not leave India without prior permission of the learned Trial Court;
- ii. The appellant shall surrender his passport before the learned Trial Court and shall not travel abroad without taking prior permission from the learned Trial Court.
- iii. The appellant shall report at the Local Area Police Station twice a week, that is, every Monday and Thursday at 04:00 P.M., for marking his presence;



- iv. The appellant shall intimate the learned Trial Court, by way of an affidavit and also inform the Investigating Officer regarding any change of residential address;
- v. The appellant shall appear before the learned Trial Court as and when the matter is taken up for hearing;
- vi. The appellant is directed to provide his mobile number to the Investigating Officer and keep it operational at all times;
- vii. The appellant shall not contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case;
- viii. The appellant shall also not tamper with the evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

85. It is made clear that no observations made above shall be tantamount to an expression on the merits of the appellant's case, and they have been made for the purpose of consideration of bail alone.

86. A copy of this order be sent to the Jail Superintendent concerned for information and necessary compliance.

87. Accordingly, the present appeal is allowed.

**CRL. A 1023/2024 (SHAHID YUSUF, A-7)**

88. The prosecution claims that the appellant Shahid Yusuf, had entered into a conspiracy to raise and collect funds from co-accused, namely, Aijaz Ahmad Bhat (A-6), who is a cadre of the proscribed terrorist organization Hizb-ul-Mujahideen. It is further the case of the



prosecution that corroborative material on record demonstrates that the appellant, while acting as a member of Hizb-ul-Mujahideen, was part of a larger conspiracy to raise funds with the intention of supporting the activities of the terror outfit.

89. It is alleged that the appellant received terror funds amounting to a total of Rs. 4,40,850/- in nine installments between 2008 and 2014, eight times from GPO, Srinagar, and once from Sanatnagar, Budgam, through Western Union Money Transfer Service. The said amounts include Rs. 50,000/- on 16.09.2008, Rs. 50,000/- on 31.01.2011, Rs. 49,900/- on 17.09.2011, Rs. 49,950/- on 14.10.2011, Rs. 50,000/- on 02.01.2012, Rs. 50,000/- on 22.02.2012, Rs. 49,000/- on 19.11.2014, Rs. 47,000/- on 13.05.2014, and Rs. 45,000/- on 30.09.2014.

90. It is further alleged that appellant had consistently furnished his mobile number along with other identity documents in the records of GPO, Srinagar, at the time of receiving the aforesaid amounts during the relevant period between 15.09.2008 and 28.09.2014. Moreover, in the year 2011, there were three telephonic communications between A-6 and the appellant.

91. Furthermore, various diaries recovered from the possession of the appellant indicate that he was in contact with his father. It has also come to light that the appellant travelled to Dubai in 1999–2000 using a passport bearing his name, in which his father's name was recorded as Mohd Yousuf Mir. During this visit, the appellant allegedly met both, his father- Mohammad Yousuf Shah @ Syed Salahuddin, and



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Nazir Ahmed Qureshi, a key hawala operator and fundraiser for Hizb-ul-Mujahideen.

92. It is further alleged that the appellant received a sum of 3,000 UAE Dirhams from his father during this visit.

93. It is alleged that the appellant received 'proceeds of terrorism' with full knowledge that the said funds had been raised, received, and collected by members of Hizb-ul-Mujahideen, which is led by his father.

94. The prosecution further claims that the funds originated under the directions of Mohammad Yousuf Shah @ Syed Salahuddin, Supreme Commander of Hizb-ul-Mujahideen, and were routed through operatives based in Pakistan, Saudi Arabia, and other Islamic countries, through various channels, and that these terror funds were transferred to India through co-accused A-6 and other operatives for the purpose of furthering terrorist activities within the territory of India.

95. It has also been alleged that Mohammad Yousuf Shah @ Syed Salahuddin had been transferring terror funds in foreign currency through his grandson, namely, Muzammil Khan, son of Nazir Ahmad Khan and nephew of the appellant, who pursued his studies in Pakistan from the year 2010 till April 2017. It has further come to light that Muzammil Khan was a witness to the meetings held between Mohammad Yousuf Shah @ Syed Salahuddin and Nazir Ahmed Qureshi at the former's residence in Pakistan. The forensic examination of the mobile phone, SIM cards, and SD card seized from



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the possession of the appellant revealed that he was in telephonic as well as online communication with the said Nazir Ahmed Qureshi and his sons. Furthermore, Muzammil Khan had had given 500 euros to the appellant.

96. The investigation revealed that A-6 was in telephonic contact with the appellant and had used multiple mobile numbers in Saudi Arabia to remain in touch with his associates for the purpose of funding terrorist and other related unlawful activities during the relevant period. Telephonic calls were made by A-6 on 30.01.2011 to the appellant and on 31.01.2011, A-6 had transferred an amount of Rs. 50,000/- to the appellant through Western Union Money Transfer.

97. It is stated that the association of the appellant with the aforementioned Nazir Ahmed Qureshi, coupled with his association with A-6, clearly establishes that the appellant was actively involved in raising, receiving, and transferring funds through members of the said terrorist outfit and associates of Mohammad Yousuf Shah @ Syed Salahuddin, as part of a larger criminal conspiracy to raise and route terror funds to the State of Jammu and Kashmir for the purpose of carrying out terrorist activities.

98. In order to substantiate the allegations against the appellant, the prosecution has placed reliance upon D-144 to D-155 and D-154, which comprise letters received from Western Union Money Transfer and the Srinagar GPO, indicating the receipt of funds by the appellant from A-6.



99. Further reliance is placed on documents D-136 to D-143, being the disclosure statements of the appellant, wherein he has admitted to raising, receiving, and collecting funds from A-6, and to having visited Dubai to meet Nasir Ahmad Qureshi, a fundraiser for Hizb-ul-Mujahideen. Additionally, reliance is placed on D-129 and D-131, being handwritten diaries of the appellant.

100. The NIA has placed reliance on document D-177, which, according to the prosecution, establishes that the accused Shahid Yousuf was in telephonic contact with A-6 during the year 2011 from Saudi Arabia. Further reliance is placed on document D-178 to establish the appellant's connection with Nasir Ahmad Qureshi, a fundraiser for Hizb-ul-Mujahideen.

### **SUBMISSIONS OF THE APPELLANT**

101. Mr. Jawahar Raja, while seeking bail of the appellant, Sahid Yusuf, apart from raising similar grounds regarding his long incarceration of nearly seven years and eleven months, as well as the period of sentence awarded to the co-accused A-2 to A-4 under Sections 13, 17, 18, and 20 of the UAPA upon their conviction, submitted that a bare reading of the second Charge-Sheet filed against the appellant reveals that there is no material whatsoever, which may even remotely inculcate the appellant in any offence, let alone the serious charges that have been framed against him. It was submitted that, even assuming the case of the prosecution in its entirety to be true, the mere receipt of funds by the appellant from his father,





without anything more, would not constitute any offence under the law.

102. The learned counsel submitted that the prosecution has heavily placed reliance upon twelve diaries, purportedly containing handwritten entries of the appellant, which, he submitted, are in no manner incriminating so as to connect the appellant with any terrorist act or organization. The said diaries merely contain disconnected references pertaining to the appellant's relationship with his father, which in themselves are innocuous and do not disclose any element of the commission of an offence or any 'terrorist act'. He submitted that a bare reading of the diaries reflects some personal notings of the appellant, having no connection whatsoever with any terrorist organization.

### **SUBMISSIONS OF THE RESPONDENT**

103. The learned ASG, while seeking dismissal of the appeal, submitted that the evidence gathered during the course of investigation establishes that the appellant conspired to raise and collect funds from the absconding co-accused, that is, A-6. The disclosure statements of the appellant, when read in conjunction with other incriminating evidence collected by the Investigating Agency, establishes that the appellant was acting as a member of the terrorist organization - Hizb-ul-Mujahideen and was a part of a larger conspiracy to raise funds with the intent to further the activities of the said organisation.

104. Furthermore, it was submitted that the recovery of incriminating handwritten diaries and other documents from the appellant



establishes that the appellant received funds at the behest of Mohammad Yousuf Shah @ Syed Salahuddin and had met associates of Mohammad Yousuf Shah @ Syed Salahuddin in Dubai. In addition, other documentary evidence establishes that the appellant was in telephonic contact with co-accused Aijaz Ahmad Bhat (A-6) from Saudi Arabia and was also connected with Nasir Ahmad Qureshi, another cadre of Hizb-ul-Mujahideen. The aforesaid documentary evidence, when read in conjunction with the oral evidence, that is, statements of protected/prosecution witnesses, he submitted, *prima facie* establishes the offences alleged against the appellant.

105. The learned ASG submitted that the appellant, on an earlier occasion, had travelled to Dubai on a forged passport, wherein the name of his father was mentioned as Mohd Yousuf Mir instead of Mohammad Yousuf Shah or Syed Salahuddin.

106. The learned ASG, thus, submitted that in view of the material available on record, the learned Special Court, *vide* Order dated 17.02.2020, framed charges against the appellant under Sections 120B of the IPC and Sections 13, 17, 18, 20, 21, 38, and 40 of the UAPA.

107. He submitted that the allegations against the appellant are grave and indicate that the appellant had complete knowledge that he was working at the behest of the terrorist organization Hizb-ul-Mujahideen and cooperated with it in receiving the proceeds of terrorism.

### **ANALYSIS AND CONCLUSION**



108. We have already dealt with the submissions advanced on behalf of the appellant concerning the alleged delay in the investigation, and the position of law with respect to the statutory embargo contained under Section 43D of the UAPA. These have been duly considered in the foregoing analysis and, therefore, do not merit further elaboration at this stage.

109. Apart from the above, we have carefully considered the material placed on record as well as the submissions advanced on behalf of both parties. Relevantly, it appears from the record that the nature of allegations levelled against the present appellant is graver than those attributed to the accused A-8.

110. In the present case, the prosecution has ascribed the following role to the appellant :

- i. That the appellant had entered into a conspiracy to raise and collect funds from A-6. During the period between 2008 and 2014, he received terror funds amounting to a total of Rs. 4,40,850/- in nine installments, eight times from GPO, Srinagar, and once from Sanatnagar, Budgam, through Western Union Money Transfer Service. The said amounts include Rs. 50,000/- on 16.09.2008, Rs. 50,000/- on 31.01.2011, Rs. 49,900/- on 17.09.2011, Rs. 49,950/- on 14.10.2011, Rs. 50,000/- on 02.01.2012, Rs. 50,000/- on 22.02.2012, Rs. 49,000/- on 19.11.2013, Rs. 47,000/- on 13.05.2014, and Rs. 45,000/- on 30.09.2014.



- ii. In the year 2011, there were three telephonic communications between A-6 and the appellant.
- iii. A search conducted at the appellant's residence led to the seizure of several electronic devices, including a laptop, mobile phones, SIM cards, and SD cards, along with certain documents purportedly containing incriminating material, including diaries and photographs.
- iv. Forensic examination of the seized devices revealed that the appellant was in telephonic and online communication with Nazir Ahmed Qureshi, a key hawala operator and fundraiser for Hizb-ul-Mujahideen, and his sons.
- v. The appellant had several contacts saved on his mobile device, regarding which he gave evasive responses in his disclosure statement, claiming that apart from 2–3 numbers, he does not remember anything about the remaining numbers.
- vi. Certain messages extracted from the Facebook account on the appellant's mobile phone were alleged to be of a serious nature.
- vii. The appellant's web browsing history, containing 937 items, included one item that the prosecution has claimed to be of a suspicious nature.
- viii. During his visit to Dubai, the appellant had met Nazir Ahmed Qureshi in person.



- ix. The appellant had travelled to Dubai on a passport in which his father's name was recorded differently. In his disclosure statement (D-141), the appellant stated that he had no knowledge of who had arranged the said passport and further claimed that he had destroyed it in the year 2008.
- x. Several handwritten diaries of the appellant indicate that he was in contact with his father, and the contents of the diaries do not merely record domestic expenses and expenditures, as claimed by the appellant in his disclosure statement.

111. The learned ASG had submitted that a perusal of the diaries recovered from the appellant reveals that the appellant was sympathetic towards various terrorists who were killed in different operations.

112. The learned counsel for the appellant, while seeking bail, emphasized the appellant's prolonged incarceration, submitting that he has been in custody for a period of 7 years and 4 months, which is violative of his right to liberty under Article 21 of the Constitution of India, and therefore, he is entitled to be enlarged on regular bail.

113. Undisputedly, the appellant has been in custody since the date of his arrest, that is, 30.08.2018, and is facing trial under Sections 13, 17, 18, 20, 21, 38 & 40 of the UAPA. The charges have been framed, and the case is presently at the stage of recording of evidence of the prosecution witnesses. The learned ASG had submitted that the prosecution had made earnest efforts to fast-track the trial and intends to prune the list of witnesses by deleting as many as 30 witnesses.



114. This Court is conscious of the fact that the appellant, being an undertrial, has a right to a speedy trial. At the same time, statements of protected witnesses is being recorded before the Special Court. This Court cannot ignore the larger conspiracy brought forth by the prosecution, which poses a threat to the unity, integrity, and security of the Nation. The prosecution has highlighted the use of hawala channels to route terror funds into Jammu and Kashmir, and the appellant is allegedly part of this network. The nature of the allegations and the material placed on record *prima facie* establish the appellant's involvement in this conspiracy and his direct contact with known members of the proscribed terrorist outfit. He is alleged to have received money from co-accused A-6, knowing that the funds would be used to further terrorist activities.

115. Moreover, the possibility of the appellant being a flight risk cannot be ruled out, especially in light of the allegation that he had earlier travelled on a passport with a falsified parental identity and later destroyed the document. There exists a real likelihood of his tampering with evidence and influencing witnesses.

116. We have also perused the decisions relied upon by the learned counsel for the appellant and find that those decisions do not come to the aid of the appellant, as those decisions are based on their own peculiar facts and circumstances of the case, thereby not being applicable to the facts of the present case.



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117. In view of the entire conspectus of facts and circumstances, we are not inclined to release the appellant on bail. Accordingly, the present appeal is dismissed.

118. The pending applications, if any, are also accordingly dismissed.

119. There shall be no order as to costs.

**SHALINDER KAUR, J**

**NAVIN CHAWLA, J**

**AUGUST 08, 2025/sk**