



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). OF 2026

(Arising out of SLP(Crl.) No(s). 13399 of 2025)

SHABIR AHMED SHAH ...APPELLANT(S)

VERSUS

**NATIONAL INVESTIGATION
AGENCY ...RESPONDENT(S)**

ORDER

1. Heard.
2. Leave granted.
3. The appellant, Shabir Ahmed Shah¹, presently incarcerated in connection with National Investigation Agency² case bearing RC No. 10/2017/NIA/DLI dated 30th May, 2017, for offences punishable under Sections 120B, 121 and 121A of the Indian Penal Code, 1860 and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967, has approached this Court seeking release on bail during the pendency of the trial.

¹ Hereinafter, referred to as “appellant”.

² Hereinafter, referred to as “NIA”.

4. The statutory criminal appeal preferred by the appellant under Section 21 of the NIA Act, 2008, against denial of bail by the learned Additional Sessions Judge-03, Patiala House Court, New Delhi, stands rejected by the Division Bench of the High Court of Delhi *vide* judgment and order dated 12th June, 2025.

5. Mr. Colin Gonsalves, learned senior counsel representing the appellant, urged that the appellant has spent almost 39 years in jail in connection with different criminal proceedings, with intermittent breaks in between. The appellant was subjected to multiple orders of preventive detention, most of which were subsequently quashed by the High Court.

6. Mr. Gonsalves further submitted that, in the present case, the appellant continues to languish in jail since 4th June, 2019. The prosecution has cited 248 witnesses and only 30 have been examined till date, and the trial is proceeding at a snail's pace, with no possibility of an early culmination. Even the requirement under Section 207 of the Code of Criminal Procedure, 1973, was completed only in the year 2022, and the charges were also framed in the

very same year, *i.e.*, after the appellant had suffered three years' custody as an undertrial.

7. The co-accused of the appellant, namely, Mohd. Aslam Wani @ Amit Kumar³, with whom the appellant is alleged to have been involved in the suspected terror funding transaction of Rs.10 lakhs, has been acquitted by the trial Court concerned in the predicate offence arising out of FIR No. 122 of 2005, which formed the basis of the Enforcement Directorate⁴ case bearing ECIR No. 04/DZ/2007, for offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002⁵. The co-accused, Aslam Wani and the appellant have also been granted bail by the trial Court concerned in the aforesaid ED case.

8. He, therefore, urged that the principal charge of the prosecution in the NIA case, that the appellant was involved in terror funding transactions with the co-accused, Aslam Wani, stands negated in view of the acquittal of the said co-accused.

³ Hereinafter, referred to as "co-accused, Aslam Wani".

⁴ Hereinafter, referred to as "ED".

⁵ Hereinafter, referred to as "PMLA".

9. Mr. Gonsalves also submitted that the appellant being 74 years' old man is suffering from various ailments, and there being no possibility of culmination of the trial in the near future, the appellant deserves indulgence of bail.

10. *Per contra*, Mr. Siddharth Luthra, learned senior counsel appearing for the NIA, vehemently and fervently opposed the submissions advanced by the learned senior counsel for the appellant.

11. He urged that there exists substantial incriminating evidence against the appellant implicating him in secessionist activities and terror funding. He submitted that upon examination of the data extracted from the electronic devices seized from the house of the appellant, significant incriminating material has been discovered against him.

12. He further submitted that there is credible evidence in the form of statements of protected witnesses against the appellant, establishing his involvement in terror funding operations and hence, the appellant does not deserve indulgence of bail.

13. However, Mr. Luthra did not dispute the fact that in the present case the appellant has been in custody for last nearly 7 years; that the charges in

the present case were framed on 16th March, 2022, *i.e.*, after 3 years of filing of the chargesheet, and only 34 of the 248 listed witnesses have been examined so far. He, however, contended that the list of witnesses would be pruned by the prosecution at an appropriate stage.

14. Mr. Luthra did not dispute the fact that Wani, who was the co-accused of the appellant in the ED case, has been acquitted by the trial Court concerned in the predicate offence which pertains to the dubitable monetary transaction with the appellant.

15. He also did not dispute the fact that the combined period of custody suffered by the appellant in the ED case, from which the appellant was taken into custody in the present case, is more than 8 ½ years.

16. Mr. Luthra, however, submitted that if this Court favourably considers the prayer for grant of bail, stringent conditions may be imposed upon the appellant.

17. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

18. It is not in dispute that the appellant has suffered combined incarceration of 8 ½ years in the ED case and the NIA case at hand. The appellant was undergoing custody as an undertrial in the ED case when he was taken into custody in the present case on 4th June, 2019. The co-accused, Aslam Wani, has been acquitted in the predicate offence. The appellant is about 74 years of age and is reportedly suffering from various medical ailments.

19. Prolonged incarceration of an accused, particularly in circumstances where the trial has made little or no substantial progress, is a relevant factor in adjudicating the matter of bail. If the trial is not likely to conclude within a reasonable time, continued detention may result in undue curtailment of the personal liberty guaranteed under Article 21 of the Constitution of India. In this regard, we may gainfully refer to the following observations of this Court in **V. Senthil Balaji v. Deputy Director, Enforcement Directorate**⁶, wherein it was underscored that an extended period of custody and the absence of meaningful progress towards the

⁶ 2024 SCC OnLine SC 2626.

conclusion of the trial are significant considerations while dealing with a prayer for grant of bail: -

“25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of ***K.A. Najeeb2***, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. **We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.”**

(Emphasis Supplied)

20. In this view of the matter, without making any observations on the merits of the case and considering the fact that there are bleak chances of an early disposal of the trial; the prolonged period of custody suffered by the appellant and his advanced age, we are inclined to enlarge the appellant on bail during the pendency of the trial, subject to the following conditions, in addition to which the trial Court may impose:-

- i. He shall not leave Delhi without the permission of the trial Court.
- ii. He shall surrender his passport, if any, with the trial Court.
- iii. He shall use only one mobile phone and/or one landline number during the course of trial. Details of these numbers shall be provided to the Special Public Prosecutor, and the mobile phone shall always be kept in the switched-on mode.
- iv. He shall report to the investigating officer of NIA once every fortnight *i.e.*, either Wednesday or Thursday between 10:00 AM to 11:00 AM.
- v. He shall neither try to influence any witness nor tamper with evidence.

- vi. He shall furnish an undertaking before the trial Court that he shall not commit any further offence of similar nature while being on bail.
- vii. He shall not make any comment in the media about the present case or his role in the case.

21. In the event of the appellant violating any of the conditions mentioned above, the prosecution will be at liberty to seek cancellation of bail granted to the appellant. The appellant shall file an undertaking before the trial Court setting out the conditions mentioned above and additional conditions which may be imposed by the trial Court, within three days of his release. He shall furnish bail bonds as directed by the trial Court upon which he shall be released from custody.

22. The appeal is allowed accordingly.

23. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
MARCH 12, 2026.