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

Reserved on: 25th March, 2026

Pronounced on: 24th April, 2026

Uploaded On: 24th April, 2026

+ **CRL.A. 95/2025**

MOHD.SAQUIB ANSARIAppellant

Through: Ms. Deeksha Dwivedi, Adv.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.

AND

+ **CRL.A. 252/2025**

WAQAR AZHARAppellant

Through: Ms. Deeksha Dwivedi, Adv.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode
2. The present appeals have been filed by the Appellants- Mohd. Saquib Ansari and Waqar Azhar under Section 21 of the National Investigation Act, 2008 assailing the following orders:

- In **CRL.A. 95/2025**, order dated 10th January, 2025 passed by Id. Additional Sessions Judge-02, New Delhi District, New Delhi in **IA No. 04/2024** in **Sessions Case No. 8808/2016**.
- In **CRL.A. 252/2025**, order dated 29th January, 2025 passed by Id.



Additional Sessions Judge-02, New Delhi District, New Delhi in *IA No. 06/2025* in *Sessions Case No. 8808/2016*.

3. *Vide* the impugned orders, the applications filed by the Appellants seeking bail have been rejected by the Trial Court.

4. The Appellants are accused persons in *FIR No.54/2011* dated 22nd November, 2011 registered at PS. Special Cell, Delhi Police. The details of the Appellants are as under:

In CRL.A. 252/2025

<i>Name of the Appellant</i>	Mohd. Waqar Azhar @ Haneef
<i>Occupation</i> <i>/Qualification</i>	Pursuing B. Tech (Mechanical)
<i>Details of FIR</i>	<i>FIR No.54/2011</i> registered at PS. Special Cell, Delhi Police under Sections 17/18/18A/18B/19/20 of the Unlawful Activities Prevention Act, 1967, Sections 3/4/5 Explosive Substance Act, 1908 Sections 201/468/471/474/489B/489C/120B of the Indian Penal Code, 1860, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959.
<i>Date of Arrest</i>	23 rd March, 2014

In CRL.A. 95/2025

<i>Name of the Appellant</i>	Mohd. Saquib Ansari @ Khalid
<i>Occupation</i> <i>/Qualification</i>	Book designing job at Rajasthan
<i>Details of FIR</i>	<i>FIR No.54/2011</i> registered at PS. Special Cell, Delhi Police under



	Sections 17/18/18A/18B/19/20 of the Unlawful Activities Prevention Act, 1967, Sections 3/4/5 Explosive Substance Act, 1908 Sections 201/468/471/474/489B/489C/120 B of the Indian Penal Code, 1860, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959.
<i>Date of Arrest</i>	23 rd March, 2014

Background

5. Initiation of this case was when one, Mohd. Quateel Siddiqui @ Sajan @ Siraj @ Vivek Mishra (since expired), who was a member of *Indian Mujahideen*, was apprehended on 21st November, 2011 near Anand Vihar Inter-State Bus Terminal in Delhi. During his interrogation, he had disclosed the names of various other persons, who were stated to be members of the *Indian Mujahideen*, which is a banned terrorist outfit. The said outfit was involved in several terrorist incidents including the German Bakery Blast in Pune in 2010, Chinnaswami Stadium blast in Bengaluru in 2010 and the Jama Masjid attacks in Delhi in 2010.

6. After registration of ***FIR No.54/2011*** at PS. Special Cell, Delhi Police, on the basis of disclosures made and information received, several other individuals were also arrested and large quantity of explosives including chemicals, arms, ammunitions, etc. were seized by Special Cell, Delhi Police.

7. A total of 18 persons including one Yasin Bhatkal@ Ahmad Siddibappa @ Imran @Asif @ Shahrukh @Ahmad was also arrested and charge-sheeted. ***FIR Nos. 65/2010*** and ***66/2010*** were also registered at PS. Jama Masjid in respect of the Jama Masjid terrorist attacks. These individuals



were also arrested in the said cases. Non-Bailable Warrants were also issued against various other persons, who were absconding.

Allegations qua the Appellants in Supplementary Chargesheet (IV)

8. During the course of investigation, one Zia-Ur-Rehman @ Waqas, a Pakistani national, against whom warrants were issued, was arrested from Ajmer Railway Station, Rajasthan on 22nd March, 2014 when he arrived from Bandra, Mumbai. He had disclosed, upon his arrest, that he was on his way to Jaipur on the directions of Tehsin Akhtar @ Monu, the operational commander of *Indian Mujahideen* in India and Riyaz Bhatkal, the Chief Commander of *Indian Mujahideen*, who was stated to have been operating from Pakistan. Zia-Ur-Rehman @ Waqas then disclosed the names of certain members of *Indian Mujahideen* as:

- Mohd. Maroof with code name Ibrahim from Jaipur,
- Waqar *i.e.*, Appellant in **CRL.A. 252/2025** with code name Haneef from Jaipur and
- Saquib *i.e.*, Appellant in **CRL.A. 95/2025** with code name Khalid from Jodhpur, Rajasthan.

9. The said Zia-Ur-Rehman @ Waqas disclosed that terrorist attacks had been planned in Delhi and they had imparted training to this new module consisting of Mohd. Maroof, Waqar and Saquib. In view of this disclosure, a team was constituted and sent to Jaipur and Jodhpur, which led to the arrest of the Appellants. The team, which was dispatched to Jaipur, had apprehended Mohd. Maroof on 23rd March, 2014. The recovery on arrest from Mohd. Maroof is as under:



Mohd. Maroof	One HP Pavilion Laptop, two Nokia mobiles, two pen drives, internet dongle, 20 CDs, College Id card of Maroof, air gun and jehadi literature
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10. Mohd. Maroof had led the police team to Waqar Azhar's house and the following material was recovered from Waqar Azhar upon his arrest on 23rd March, 2014:

Electronic items	Two Laptops (HP & DELL), one mobile, one pen drive, internet dongle, two fake election I cards and Jihad literature.
Explosive Material/components used in preparation of Circuits/IEDs	1. Three Wrist Watch make Casio 2. Seven Wrist Watches make Gasio 3. Two Detonators 4. Ten Relay 5. Two Complete circuit (relay, resistance, LED, Diode) 6. Two small plastic bottles containing ball bearing (550 gm), 7. Nails half box (100 gm) 8. Battery HW 6F 22 9V 9. Silver Colour Explosive material 240 gm 10. One plastic bottle of 500 gm containing Rankem (Sodium Hydroxide) 11. One plastic bottle of 470 gm containing Rankem (Magnesium Sulphate) 12. Castor seeds 170 Gms 13. Four Transit Circuit 14. Ten Circuit plate 15. 2 Soldering rods with two wires 16. One Soldering paste (50 gm) 17. Sodium Chloride IP Appx. 400 gm 18. Hundreds Filter paper 19. One Casio calculator 20. On packet Jackly hardware tools 21. One Mastech MultiMeter 22. One DPS Universal battery charger 23. One small and one large Cutter (Saw) 24. One <i>Chimtee</i> 25. One Wire Cutter 26. One White colour circuit plate 27. One Dispovan syringe with needle 28. Two used plastic tape 29. Fourteen LED 30. One <i>Plas</i> 31. One White colour small Keep 32. One Mini Kharal 33. One Universal transistor 34. Twenty six Resisters 35. Ten diodes 36. One pair Kiwi acid & alkali proof gloves size twelve. (Copy of seizure memo in this regard is placed on file)



11. In respect of the explosives which were recovered, **FIR No.03/2014** was registered at PS. S.O.G, Jaipur.

12. The arrest of Saquib Ansari was made from Jodhpur on 23rd March, 2014. At the time of his arrest, the following explosive material and electronic gadgets were recovered from his possession:

Electronic items (Saquib)	Two Laptops (Sony & HP), two mobiles (Spice & Samsung), three pen drives, three internet dongles, Memory Cards, 5Nida-E-Haq Magazines, 25 CDs, CPU.
Explosive Material/components used in preparation of Circuits/IEDs	1.8Sutli Bomb 2.Safety fuses 592 feet 3.TwoTimer switch with red and black wire 4. Eight circuit in which 5 are ready to use 5.Soldering iron 6.Soldering paste 7.Soldering wire 8.15 diode(electronic) 9. One Digital wrist watch make Casio 10.Pencil cell 11.Match Box 12.White tape 13.Black tape 14.Two detonators electric 15.194 Detonators non electric 16.2 Screw Drivers 17.Wire cutter 18.Three electronic circuit plates 19.Two batteries High Volt 20.Two electric wire black and red 21.One screw driver set 22. One electronic panel having some diode fixed in it 23.Electro meter Unit 24. One country made bomb 25.One homemade bottle bomb 26.Homemade Shishi bomb 27.Alarm clock timer 28.Electronic circuit plate 29.One note book containing instruction and diagrams to prepare bomb (Hand written) 30.Management one diary 31.6 KG Ammonium nitrate 32.1.6 KG chemical known as Laal Daana 33.41.4 KG (23 .7 KG & 17.7 KG Gun powder Black Colour in two separate bags) 34.17.65 KG stone cracking powder(copy of Seizure memo in this regard is placed on file)



13. In view of the seizure from Saquib Ansari, a separate FIR was registered in Jodhpur being *FIR No.113/2014* registered at PS. Pratap Nagar. After the arrest, both the Appellants disclosed that they were members of *Indian Mujahideen* and were in contact with Riyaz Bhatkal, Waqas and Tehsin Akhtar. They had also disclosed that they were planning a terrorist attack in Delhi on the directions of Riyaz Bhatkal.

14. As per the charge-sheet filed by the Special Cell, Delhi Police, a large quantum of material related to terrorist organizations and Anti-India material, etc. was also discovered in their electronic devices. Further arrests were made on the basis of disclosures made by the Appellants.

15. The Appellants and their associates had various code names and email addresses, which were being used. Ordinary words like CD, DVD and CV were used for pistol, rifle and explosives respectively. **As per the investigation, the Appellants were operating the Rajasthan module of the Indian Mujahideen.** Encrypted chats which are stated to have been recovered from the Appellants, show that Saquib Ansari had connection with Riyaz Bhatkal. The Appellants had also planned terrorist attacks in Bharatpur, Rajasthan and were also involved in the Sikar and Jodhpur modules of *Indian Mujahideen*.

16. A pen drive recovered from Waqar Azhar also revealed a substantial quantity of *jihadi* material. The social media accounts of both the Appellants were also analysed by the investigating agencies, which showed various documents relating to the Caliphate and material relating to the Hon'ble Prime Minister of India, the Chief of *Rashtriya Swayamsevak Sangh* and multimedia files of *jihadi* speeches. Similar was the situation in the electronic devices



recovered from Saquib Ansari, which contained motivational *jihadi* videos.

17. The investigation in *FIR No.54/2011* registered by PS. Special Cell, Delhi Police led the investigating agency to Delhi, Rajasthan, Karnataka, Uttar Pradesh, etc. It was also found that certain sim cards were purchased using false identification by the Appellants and other members of the *Indian Mujahideen*. Through this network and the sim cards which were purchased, the Appellants were in touch with Riyaz Bhatkal. They had also established contact with Zahida, wife of Yasin Bhatkal. The owner of the shop who had sold the sim cards to Saquib Ansari had identified him during the investigation. The rented accommodation, which was used by several of the accused persons including Waqas and Tehsin Akhtar @ Monu at Rajiv Gandhi Colony, Jodhpur, was pointed out by all the accused persons. The same was arranged by Saquib Ansari and the owner of the said accommodation had identified the five accused persons including the Appellant- Saquib Ansari.

18. Fake election ID cards were also recovered from the Appellant-Waqar Azhar. The analysis of the mobile phones, internet dongles and data cards, which were used by Saquib Ansari revealed that he was using these data cards, etc., to access the internet and speak to members of the *Indian Mujahideen* in Pakistan through an app namely, Nimbuzz Chat. The Nimbuzz ID used by Saquib Ansari was 'duskam002' to contact one *Atta* using the Nimbuzz ID 'junmik'.

19. Even the attendance records from the Engineering College from Jaipur where Waqar Azhar was doing B.Tech (CS), showed that he was not regularly attending classes and in the year 2014 he had not attended classes even a single day.



20. As per the chargesheet, one of the serious allegations against Waqar Azhar was that he had also made efforts to make poison with the help of chemicals such as magnesium sulphate, acetone and castor seeds. The intention was to send letters soaked with poison to targets.

21. On the basis of these allegations, the Appellants were charge-sheeted. Charges were framed *qua* the Appellants *vide* order on charge dated 3rd August, 2017 in the following terms:

*“(e). Accused **Waqar Azhar** being member of Indian Mujahidin conspired terrorist act in Delhi. He organized training camps in Jaipur and Jodhpur. He harbor wanted terrorist Tehsin Akhtar and Zia-ur-Rehman @ Waqas by providing them shelter in Jaipur and Jodhpur. He possessed and used fake IDs. Let the charge for the offences u/s 18/18A/19/20 UA (P) Act & 468/471/474 IPC be framed against him.*

*“(f). Accused **Saquib Ansari** being member of Indian Mujahidin conspired terrorist act in Delhi. He organized training camps in Jaipur and Jodhpur. He harbor wanted terrorist Tehsin Akhtar and Zia-ur-Rehman @ Waqas by providing them shelter in Jaipur and Jodhpur. Let charge for offences u/s 18/18A/19/20 UA (P) Act be against accused him”*

22. The trial in **FIR No.54/2011** is presently underway.

Status in FIR No.03/2014 registered at PS. S.O.G., Jaipur

23. In **FIR No.03/2014** registered at PS. S.O.G., Jaipur, the final judgment of the Trial Court in Jaipur in **Sessions Case No. 83 of 2015** has been rendered on 30th March, 2021 convicting the Appellants in the following terms:

*“ 364.): Accused persons **Waqar Azhar**, **Mohammed Saqib Ansari**, Barkat Ali, Mohammed Maroof and*



Ashraf Ali are convicted for the charges of the offences levelled under Sections 4, 5 and 6 of the Explosive Substances Act, 1908; Sections 16, 17, 18, 18-A, 18-B, 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and Sections 121, 121A, 122, 465, 468 & 471 of the Indian Penal Code.”

24. The sentence awarded to the Appellants *vide* the judgment of the Trial Court in Jaipur in **Sessions Case No. 83 of 2015**, is as under :

“370.): The accused persons, (1.): **Waqar Azhar s/o Mohammed Tasleem, aged 27 years, r/o 20 Purana Choodigaron-ka-Mohalla, Pali, Rajasthan;** (2): **Mohammed Saqib Ansari s/o Mohammed Ashlam Ansari, aged 29 years, r/o A-45, Barkatuillah-Khan-Colony, Police Station, Pratap Nagar, Jodhpur (Rajasthan);** (3): *Barkat Ali s/o Liyakat Ali, aged 33 years, r/o House No. 08, Haji Street, Shantipriya Nagar, Chheerghar, Police Station, Pratap Nagar, Jodhpur (Rajasthan);* (4): *Mohammed Maroof s/o Mohammed Farooq Engineer, aged 28 years r/o D-105, Sanjay Nagar, Joshi Marg, Police Station, Jhontwara, Jaipur (Rajasthan) and* (5): *Ashraf Ali Khan s/o Sabir Ali, aged 47 years, r/o House No. 653, Laikan Mohalla, Opposite to Masjid, Jodhpur (Rajasthan) are punished in the following manner for the offences for which they have been convicted:-*

NOTE: (Details of punishment awarded to all of the abovementioned accused persons follow with Section and the Act for which convicted in continuous order hereunder).

i.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 4 of the Explosive Substances Act, 1908.).

ii.): Rigorous imprisonment for the term of ten years



and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 5 of the Explosive Substances Act, 1908.).

iii.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 6 of the Explosive Substances Act, 1908.).

iv.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 16 of the Unlawful Activities (Prevention) Act, 1967.

v.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 17 of the Unlawful Activities (Prevention) Act, 1967.

vi.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967.

vii.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 18A of the Unlawful Activities (Prevention) Act, 1967.

viii.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further



undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 18B of the Unlawful Activities (Prevention) Act, 1967.

ix.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 19 of the Unlawful Activities (Prevention) Act, 1967.

x.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967.

xi.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 23 of the Unlawful Activities (Prevention) Act, 1967.

xii.): Life term imprisonment and the fine amounting to Rupees One Lakh and in case of non-remittance of the fine amount, shall further undergo rigorous imprisonment for the term of two years for the offence punishable under Section 121 of the Indian Penal Code.

xiii.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine-amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 121-A of the Indian Penal Code.

xiv.): Rigorous imprisonment for the term of ten years and a fine of Rupees Fifty Thousand, and in case of non-remittance of the fine-amount, shall further undergo rigorous imprisonment for the term of one year, for the offence punishable under Section 122 of



the Indian Penal Code.

xv.): One year's rigorous imprisonment for the offence punishable under Section 465 of the Indian Penal Code.

xvi.): Rigorous imprisonment for the term of five years and fine of Rupees Twenty Five Thousand, and in case of non-remittance of the fine-amount, shall further undergo rigorous imprisonment for the term of six months, for the offence punishable under Section 468 of the Indian Penal Code.

xvii.): One year's rigorous imprisonment for the offence punishable under Section 471 of the Indian Penal Code.

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372.): All the original punishments awarded to all the convicted and punished accused persons shall run concurrently, and the period of imprisonment suffered by them during police & judicial custody will be adjusted in the original punishment”

25. The Appellant- Saquib Ansari has preferred an appeal assailing the judgment passed by Trial Court in Jaipur being ***D.B. Criminal Appeal No.103/2021*** titled ***Sakib Ansari Son Of Mohammad Aslam Ansari, Aged About 32 Years, Resident Of A-45, Barkatullah Khan Colony, Thana Pratapnagar, Jodhpur, Rajasthan (Applicant Is Confined In Central Jail, Jodhpur) v. State Of Rajasthan, Through Its Public Prosecutor.*** In the said appeal, the Appellant filed ***D.B. Criminal Misc Suspension Of Sentence Application (Appeal) No. 1489/2023*** seeking suspension of sentence during the pendency of the appeal. *Vide* order dated 6th September, 2024 passed by the High Court of Rajasthan, the sentence of the Appellant-Saquib Ansari has been suspended. The Court has not been informed if an appeal has been filed by Appellant- Waqar Azhar. It appears that he has however, not challenged the conviction.



Status in FIR No.113/2014 registered at PS. Pratap Nagar, Jodhpur

26. The **FIR No.113/2014** is registered at PS. Pratap Nagar, Jodhpur for the offences under Sections 4/5/6 of the Explosive Substances Act, 1908, Sections 16/17/18/18A/18B/19/20/23/38 of the Unlawful Activities (Prevention) Act, 1967 and Sections 120B/121/121A/122/212/465/468/471 of the Indian Penal Code, 1860. In this case, the High Court of Rajasthan has granted bail to both the Appellants *vide* the following orders:

- Bail granted to Saquib Ansari *vide* order dated 7th November, 2024 in **S.B. Criminal Miscellaneous Bail Application No. 5646/2024** titled **Mohd. Shakib Ansari S/o Mohd. Aslam Ansari, Aged About 34 Years, R/o A-45, Barkatullah Colony, P.s. Pratapnagar, Jodhpur (Presently Lodged In Central Jail, Jodhpur) v. State Of Rajasthan, Through Pp.**
- Bail granted to Waqar Azhar *vide* order dated 10th January, 2025 in **S.B. Criminal Miscellaneous Bail Application No. 14838/2024** titled **Mohammed Wagar Azhar @ Hanif @ Mohsin S/o Mohammad Taslim, Aged About 32 Years, R/o H. No.20, Purana Chudighar Mohalla, Dist Pali Raj. (At Present Lodged In Central Jail Jodhpur) v. State Of Rajasthan, Through Pp.**

27. In the orders passed by the High Court of Rajasthan in **FIR No.03/2014** registered at PS. S.O.G., Jaipur and **FIR No.113/2014** registered at PS. Pratap Nagar, Jodhpur, the High Court has either suspended sentence or granted bail on the ground that the Appellants have served for more than 9/10 years in incarceration. There is, however, no discussion on merits in any of these orders.

Impugned orders dated 10th January, 2025 and 29th January, 2025

28. In the impugned orders dated 10th January, 2025 and 29th January, 2025,



the Trial Court has relied upon the judgment of the Supreme Court in ***Gurwinder Singh v. State of Punjab & Anr., (2024) 5 SCC 403*** and the stringent conditions that are required to be satisfied under Section 43D(5) of the Unlawful Activities (Prevention) Act 1967 (hereinafter, 'UAPA').

29. After going through the seizure that has been made in the cases registered in Delhi, Jaipur and Jodhpur, the Trial Court came to the conclusion that case for bail is not made out by the Appellants. The Trial Court also distinguishes the case of Mohd. Maroof with Waqar Azhar. It further holds that mere delay in trial cannot be a ground for bail in these cases.

Submissions on behalf of the Appellants

30. Ms. Deeksha, Id. Counsel appearing for the Appellants submits at the outset that a total of 25 people were made as accused persons in the present FIR being ***FIR No. 54/2011*** registered at P.S. Special Cell, Delhi Police. Out of the said 25 accused persons, 11 had already pleaded guilty and one has expired. Accordingly, only 13 persons remain, who are facing the trial.

31. The primary contention on behalf of the Appellants is that this Court has already granted bail to a co-accused *i.e.*, Mohd. Maroof, who is almost identically placed as the Appellants. Reliance is placed upon the order dated 15th January 2025 in ***CRL. A. 560/2024*** titled ***Mohd Maroof v. State (NCT of Delhi)*** by which Mohd. Maroof was granted bail by this Court.

32. Id. Counsel for the Appellants has pointed out various factors that would establish that the Appellants are similarly placed to Mohd. Maroof. The said factors pointed out by the Id. Counsel are as under:

- i) That the recovery of the explosives was at the behest of Mohd Maroof from Saquib Ansari and Waqar Azhar *i.e.*, the Appellants, in the FIRs registered in Jaipur and Jodhpur respectively. Therefore,



Mohd. Maroof was fully aware of and was a co-conspirator;

ii) The charges framed against Mohd. Maroof are under identical provisions as that of the Appellants;

iii) The High Court of Rajasthan has granted suspension of sentence/bail in both the cases *i.e.*, Jaipur and Jodhpur despite all three of them *i.e.*, the Appellants and Mohd Maroof having been convicted by the Trial Court in ***FIR No. 03/2014*** registered at P.S. S.O.G, Jaipur; and

iv) Insofar as the recovery of explosives are concerned, it is her submission that in the ***FIR No. 54/2011*** registered in Delhi, charges are not under Section 16 of the Explosives Act, 1884 but are merely under Sections 18, 18A, 19 and 20 of the UAPA

33. Ld. Counsel for the Appellants further submits that the recovery of explosives is not the subject matter of ***FIR No. 54/2011*** registered at P.S. Special Cell, Delhi Police as there is no seizure of explosives by the Delhi Police. The Delhi Police, therefore, cannot rely on the recovery explosives as a ground to press charges in the said FIR. Ld. Counsel further submits that the orders passed by the High Court of Rajasthan on 6th September, 2024 and 7th November, 2024 would clearly show that the said two orders have considered the period of incarceration of the Appellants and similar persons having been granted bail or suspension of sentence. Accordingly, the said reasoning ought to follow even in these cases.

34. Ld. Counsel for the Appellants places reliance on the recent order of the Supreme Court dated 6th January, 2026 in a batch of three matters wherein the lead matter is ***Petition for Special Leave to Appeal (Crl.) No. 1422/2025*** titled ***Mahesh Khatri @ Bholi v. State NCT of Delhi*** where one of the



Appellants has been granted bail though charges under Maharashtra Control of Organised Crime Act, 1999 (MACOCA) and UAPA have been framed against him.

35. Further, the contention on behalf of the Appellants is that the FIR registered by the Delhi Police is for a less grave offence than the one registered in Jaipur and Jodhpur. Insofar as the conviction itself is concerned, it is submitted by the Id. Counsel that despite life imprisonment having been awarded under Section 121 of the Indian Penal Code, 1860 (hereinafter, 'IPC') in **FIR No. 03/2014** registered at PS. S.O.G, Jaipur, the High Court of Rajasthan has suspended the sentence of the Appellant-Saquib Ansari. Id. Counsel for the Appellants submits that the said Section 121 of the IPC is for a much graver offence of waging a war against the Government or the State. Under these circumstances, she submits that the Appellants cannot be treated differently than Mohd. Maroof and are deserving of bail.

36. Moreover, Id. Counsel for the Appellants submits that the Appellants as also Mohd. Maroof have been granted bail by the High Court of Rajasthan in **FIR No. 113/2014** registered at PS. Pratap Nagar, Jodhpur. Insofar as **FIR No. 03/2014** registered at PS. S.O.G, Jaipur is concerned, it is her submission that all three *i.e.*, the Appellants and Mohd. Maroof have been convicted and the same evidence as in the present case has been considered by the Trial Court in Jaipur and therefore, there is also an issue of double jeopardy. Reliance is placed upon paragraphs 273 and 285 of the judgment of the Trial Court in Jaipur.

37. According to the Id. Counsel, the role of the Appellants is not different from Mohd. Maroof, however, it is her submission that the State tries to distinguish the same by saying that there was recovery of explosives in case



of the Appellants.

38. Further reliance is placed by the Id. Counsel for the Appellants upon the following decisions:

- ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 INSC 534***
- ***Manish Sisodia v. Directorate of Enforcement, 2024 INSC 595***

Submissions on behalf of the State

39. On the other hand, Mr. Bahri, Id. APP submits that ***FIR No. 54/2011*** registered at PS. Special Cell by the Delhi Police is the parent FIR and the FIRs registered in Jaipur and Jodhpur were subsequent to the registration of the said FIR. It was in the course of the investigation in the ***FIR No. 54/2011*** that certain disclosures were made by one of the accused persons which led to the entire conspiracy of a proposed terrorist attack in Delhi being unravelled.

40. It is submitted by the Id. APP that ***FIR No. 54/2011*** registered at PS. Special Cell being the first FIR, and the conviction having already been ordered by the Trial Court in Jaipur in ***FIR No. 03/2014***, the requisite elements under Section 43D(5) of the UAPA, *i.e., prima facie* the case of the Appellants being guilty, stand duly established.

41. Moreover, it is the submission on behalf of the State that there exists sufficient case law to support the contention that once charges are framed under the UAPA, a *prima facie* case exists indicating the possibility of the Appellants being convicted.

42. Id. APP further submits that the judgment on conviction passed by the Trial Court in Jaipur would show that the Appellants have been convicted under various provisions of the UAPA and the IPC and have also been



awarded *ajeevan karawas i.e.*, life imprisonment. It is his submission that once the requirements under Section 43D(5) of the UAPA are satisfied, bail ought not to be granted.

43. Ld. APP places reliance upon the decision of the Supreme Court in ***Gulfisha Fatima v. State (Govt. of NCT of Delhi), 2026 INSC 2***, to argue that mere delay in trial would not be sufficient to grant bail especially in such cases. Ld. APP further submits that a perusal of the Trial Court record in the present case would reveal that it is not the prosecution which has merely delayed the trial but also the defence who has taken 22 adjournments. Further, on six occasions, the presiding officer was on leave and on one occasion, there was a lawyers' strike. He therefore submits that there is no reason to blame the prosecution for the delay in trial though prosecution has also taken certain adjournments. Further, it is the case of ld. APP that 68 witnesses have already been examined in the present case.

44. Reliance is placed upon the decision in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** which is referred to by the Trial Court as also upon the decision in ***Gurwinder Singh (Supra)***. Finally, Mr. Bahri, ld. APP for the State submits that mere delay in the trial would not result in grant of bail as in the present case, the Appellants have not crossed the stringent conditions laid under Section 43D(5) of the UAPA.

45. On the strength of these submissions and predominantly on the reading of the judgment of conviction passed by the Trial Court in Jaipur, Mr. Bahri, ld. APP submits that neither the sentence of the Appellants deserves to be suspended nor do the Appellants deserve to be released on bail.



Analysis and Findings

46. The Court has considered the matter. The primary submissions on behalf of the Appellants are three-fold:

- (i) That a co-accused, Mohd. Maroof has already been granted bail in the same FIR by this Court.
- (ii) That the **FIR No. 113/2014** registered at PS. Pratap Nagar, Jodhpur and **FIR No. 03/2014** registered at PS. S.O.G, Jaipur emanates from the same material as is now relied upon in **FIR No. 54/2011**, PS. Special Cell, Delhi Police. In **FIR No. 113/2014**, bail has been granted to the Appellants and in **FIR No. 03/2014**, the sentence of Saquib Ansari has also been suspended.
- (iii) That the Appellants have already undergone a long period of incarceration. The nominal roll of both the Appellants would show that they have served almost 12 years in custody.

47. The question that arises in the present case is whether the period of incarceration by itself would be sufficient to grant bail in these circumstances or not.

48. The first and foremost, aspect that this Court is required to note is that the Appellants were active members of a banned terrorist organisation *i.e.*, *Indian Mujahideen*. The Appellants are alleged to be in fact the key members, who were running the Rajasthan Module of this banned terrorist organization.

49. A perusal of the seizure which was made in Jaipur and Jodhpur would show that the seizure is substantial in nature. The kind of damage that could have been caused with the amount of material which was seized in the form of chemicals, electronic material, IED material, arms, detonators, digital devices, etc., cannot be ignored by the Court.



50. In the opinion of this Court, no parity can be drawn between the material seized from Mohd. Maroof, which was only in the form of digital devices, and the explosive material seized from these two Appellants, as extracted hereinabove. Thus, they cannot claim parity merely on the ground that Mohd. Maroof has been granted bail by this Court.

51. The most significant factor in the present case is that both the Appellants have, in fact, been convicted in the **FIR No. 03/2014** registered at PS. S.O.G, Jaipur under Sections 4, 5 and 6 of the Explosive Substances Act, 1908; Sections 16, 17, 18, 18-A, 18-B, 19, 20 and 23 of the UAPA and Sections 121, 121A, 122, 465, 468 & 471 of the IPC. The findings of the Trial Court in Jaipur are relevant and are summarized below:

- i) Appellants had taken oath on 30th June, 2012/1st July, 2012 about becoming members of the *Indian Mujahideen*.
- ii) That huge quantity of explosive materials was seized from both these Appellants and thereafter, they were arrested. The Appellants used to incite a number of other members to join the module by showing clippings, *jihadi* materials, speeches, videos, etc. There were discussions about formulating schemes and carrying out bomb explosions. Three of the accused persons in **FIR No. 03/2014** were pursuing engineering courses.
- iii) The Appellants had established contacts through the internet with various other accused persons who were in touch with the three terrorists of the *Indian Mujahideen* present in Pakistan.
- iv) That the Appellants used forged identification cards and were collecting funds for the purposes of *Jihad*. Both the Appellants were part of the terrorist module in Rajasthan which had hatched a plan to



accomplish a terrorist incident in Delhi and for this purpose they had collected a huge quantity of explosives. All the materials seized which were recorded in the seizure memo were also duly verified.

- v) The Appellant-Waqar Azhar, in fact, had knowledge of making bombs and had imparted the said knowledge and training to other members of the module as well.
- vi) The seizure of the explosive substances from both Appellants is not in doubt. The places from where the purchase of explosive material including chemicals and other goods are done have also come in evidence. The digital watches and the detonators that were used have all been discussed.
- vii) The link between Jaipur and Jodhpur modules of the *Indian Mujahideen* have also been analyzed by the Trial Court. The locations where both the Appellants had met and exchanged electronic devices and information had also been discussed.
- viii) Forged IDs and photographs under the name Rajendra son of Prakash were used by the Appellants for contacting Riyaz Bhatkal. There was evidence to the effect about the use of the Pseudonym-Rajender by Saquib Ansari for buying sim cards, which was also proved before the Trial Court.
- ix) The details of the chats, e-mail addresses, Facebook ids, etc., were also considered. The e-mail addresses that were used by both the Appellants to communicate with each other and the individuals in Pakistan have also been analysed.
- x) The report of the Forensic Science Laboratory (FSL) in respect of the explosive material is summarized by the Trial Court in paragraph 285



of the judgment as under:

“285.): Examination report of the forensic science laboratory Ex. P/497 which has been filed, therein examination report has been given about the digital wristwatch, reels, battery, electronic circuit, circuit-plate, breadboard, L. E. D., transistor, cistern, triode, transistors, electronic circuit etc., which had been recovered on 23rd of March, 2014 from the rented house No. 35/118, Pratap Nagar, Jaipur from the possession of the accused persons Waqar Azhar and Ammar Yasar upon the information of the accused Mohammed Maroof. This report has been sent by the forensic science laboratory that by joining/linking to the abovementioned implements in the aforesaid circuits, the same could be utilized by way of an explosive instrument, and the silver-coloured powder, plates, white powder, brown coloured seeds, cardboard-box, container, white-coloured powder etc., are the chemical items.”

- xi) The purchase of the articles from various shops in Jaipur under concealed names was proved on record. Waqar Azhar had, in fact, carried out a recce at various places where bombs could be exploded including Moti Doongari, Birla Mandir, Gaurav Towers, World Trade Park/Centre at Jaipur and Laxman Mandir, Ganga Mandir, Main Market, Kothwali in Bharatpur. The bill books of the shops showing the purchase by the Appellants were also brought in evidence.
- xii) The Appellants were also in contact with Ms. Zahida Khanam, wife of Yasin Bhatkal, who was also a member of the *Indian Mujahideen*.

52. On the basis of all the evidence placed before the Trial Court in Jaipur, the Appellants were convicted in the terms extracted above.

53. In the light of these findings by the Trial Court in Jaipur in **FIR No.**



03/2014 and the seizure of explosive materials, digital devices and other materials from the Appellants, the question is whether the conditions under Section 43D(5) of the UAPA for grant of bail are satisfied or not. The said provision reads as under:

“43D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

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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”

54. At the very outset, the decision in *Manish Sisodia (Supra)* relied upon by the Appellant is completely distinguishable in the facts of the present case. The said case related to a politician and cannot be compared to the present Appellants who were members of the *Indian Mujahideen*, a banned terrorist outfit.

Scope and Ambit of Section 43D(5) of the UAPA

55. It is no longer *res integra* that if there are reasonable grounds to show that the accusations against the persons are *prima facie* true, then the



Appellants are not to be released on bail. These twin conditions under Section 43D(5) of the UAPA have been repeatedly discussed in several judgments by the Supreme Court.

56. In the decision in *National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1*, the Supreme Court has laid down the various aspects that deserves consideration while considering a bail application under the UAPA. The relevant portion of the said decision reads as under:

“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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24. A priori, 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. 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.”

57. In ***Gurwinder Singh (Supra)***, the Supreme Court discussed Section 43D(5) of the UAPA in detail and held that ***‘jail is an exception and bail is a rule’*** under this provision. The relevant portions of the said judgment 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.”

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”.**”

58. In ***Gurwinder Singh (Supra)***, the twin-prong test *i.e.*, whether the test for rejection is satisfied or not was enunciated. Further, as part of the second test, the ‘***tripod test***’ *i.e.*, flight risk, influence to the witnesses and tempering of evidence, is to be applied by a Court while deciding a bail application. The Supreme Court in ***Gurwinder Singh (Supra)*** elaborated on the different aspects which were laid down in ***Zahoor Ahmad Shah Watali (Supra)*** as under:



“Test for rejection of bail : Guidelines as laid down by Supreme Court in Watali case

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, 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 , 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, 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 , 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, 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, 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, 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, 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.”

59. Moreover, a Co-ordinate Bench of this Court in ***Abdul Wahid v. National Investigation Agency, 2024 SCC OnLine Del 5402*** observed in respect of Section 43D(5) of the UAPA as under:

“21. The UAPA is a special Act, which has provisions that lay down standards to be adopted for grant of bail. Section 43-D(5) of the UAPA reads as under:

“(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.”

22. A perusal of the above provision shows that the threshold for granting bail under Section 43-D(5) of UAPA is quite high; the accused person shall not be released on bail if the Court is of the opinion that there are grounds to believe that the allegations against the accused are prima facie true.”

60. In the light of the findings given by the Trial Court in Jaipur in **FIR No.03/2014** and the judgments discussed above, this Court has to take a *prima facie* view that as to whether the accusations against the Appellants are true or not. The question is whether the various findings, which have been given by the Trial Court in Jaipur leading to conviction of the Appellants, satisfies the test under Section 43D(5) of the UAPA.

61. The conviction means that the various allegations against the Appellants *i.e.*, that they are the members of *Indian Mujahideen*, that they had contacts with leaders of the said group, that they had knowledge of making bombs and were found in possession of various chemicals, electronic equipment with an intention to implement a terrorist attack, have also been proved by the agency. The mere fact that the sentence of the Appellants has been suspended, does not mean that the conviction is doubted at this stage. In the opinion of this Court, the **FIR No. 03/2014** is linked to the **FIR No. 54/2011** registered at PS Special Cell, Delhi Police. The facts proved therein and the findings of the Court are sufficient to satisfy the test of *prima facie* under Section 43D(5) of the UAPA.



Prolonged Period of Incarceration

62. The need for speedy trial and the issue of long incarceration has been discussed by the Supreme Court in the decision in *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari (Supra)*. The Supreme Court granted bail in this matter and distinguished *Gurwinder Singh (Supra)* on the ground that the trial was underway in the latter case. The relevant portion of the decision in *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari (Supra)* reads as under:

“22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude

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31. In Gurwinder Singh (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh



observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeeb (supra)* being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

63. The Supreme Court has also emphasised on the need for speedy trial in the decision in *Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr, 2024 SCC OnLine SC 1693*. In the decision dated 10th January, 2025 in *Crl. A. 871/2023* titled *Md. Heydaitullah v. National Investigation Agency*, this Court under similar circumstances, after considering the evidence on record as also the material which was available, rejected the prayer for bail. The decision in *Thwaha Fasal v. Union of India, 2021 SCC OnLine SC 1000* was also discussed by this Court in the said case.

64. In the recent judgment of the Supreme Court in *Gulfisha Fatima (Supra)* rendered on 5th January, 2026, the Supreme Court has considered all



the judgments relating to the issue of prolonged incarceration and judicial custody. The Supreme Court after considering the said judgments has observed as under:

“46. One such consideration is the gravity of the alleged offence in its statutory setting. Under the UAPA, Parliament has legislatively characterised certain conduct as implicating the security of the State and the peace of society. That legislative characterisation does not conclude the judicial inquiry, but it is not constitutionally irrelevant. It forms part of the context in which the Article 21 claim is assessed.

47. A closely allied consideration is the role attributed to the accused. Prosecutions under the UAPA may allege varying degrees of participation, ranging from peripheral acts to strategic, organisational, or ideological centrality. The constitutional significance of prolonged incarceration cannot be assessed uniformly for all accused regardless of role. Where the attribution suggests a central or organising role in the alleged design, the need for circumspection before constitutional intervention displaces a statutory embargo is correspondingly greater. Conversely, where the role is peripheral or episodic, prolonged incarceration may more readily assume a punitive character.

48. Another consideration is the prima facie strength of the accusation at the limited threshold contemplated by Section 43D(5). At this stage, the Court does not weigh evidence, test defences, or conduct a mini trial. Yet, the constitutional inquiry cannot proceed as if all allegations are identically situated. Whether the prosecution material, taken at its highest, discloses a prima facie nexus between the accused and the statutory ingredients is a circumstance that informs the assessment of continued detention.

49. Consideration must also be given to the integrity of the trial process and the risks associated with release.



Depending on the nature of the case, these may include the possibility of influencing witnesses, tampering with evidence, or undermining the fairness of the proceedings. In prosecutions alleging organised activity, the assessment of such risks may differ from that in ordinary criminal cases. This is not to presume guilt, but to recognise that bail decisions are necessarily forward-looking in terms of ensuring an effective trial.

50. The Court must also bear in mind that it is not confined to a binary choice between continued custody and unconditional release. Where delay becomes a matter of constitutional concern, appropriate directions for expeditious trial, prioritisation of witnesses, or periodic review of progress may be issued. Such measures are constitutionally significant responses that address the vice of delay while respecting the statutory framework. The liberty to renew a prayer for bail upon continued stagnation may also be preserved.

51. There is a further constitutional aspect that warrants articulation. Article 21 protects individual liberty. It also, within the same guarantee of life, reflects the State's obligation to protect the life and security of the community. In prosecutions alleging threats to public order and national security, the Court cannot be unmindful that both dimensions are engaged. The constitutional order is not served by an approach that treats liberty as the sole value and societal security as peripheral. Both must be accommodated through reasoned adjudication.

52. The consequence of the above is that Najeeb(supra) must be understood as a principled safeguard against unconscionable detention. Prolonged incarceration is a matter of serious constitutional concern and carries great weight. It is not, however, the sole determinant. **The Court must consider, in totality, whether continued detention has become constitutionally unjustifiable, having regard to the role attributed, the**



statutory context, the limited prima facie material, the trajectory of the trial, the causes of delay, and the availability of intermediate remedies.

53. This approach does not dilute Article 21. It gives Article 21 structured content in a field where the Constitution itself recognises competing interests. Nor does it render Section 43D(5) absolute. It recognises that statutory restraint must yield in an appropriate case where detention becomes punitive by reason of unreasonable and unjustified delay. What it excludes is a mechanical override based on time alone, divorced from legal context.

54. Having set out the above governing approach, this Court, in the later part of this judgment would apply these principles in a calibrated manner viz. to the claim of each of the appellants. The Court will examine, in relation to each appellant, the role attributed and whether the statutory threshold under Section 43D(5) is attracted on the prosecution material taken at its highest. Thereafter, where the plea of delay and prolonged incarceration is pressed, the Court will consider whether the circumstances warrant constitutional intervention in terms of the principles noticed above, or whether appropriate directions for expeditious trial would adequately address the concern expressed under Article 21.

55. It is in this disciplined manner, and in faithful regard to both statutory design and constitutional principle, that the present appeals are proposed to be adjudicated.

56. It therefore becomes necessary to state, with clarity, the governing approach. In prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint. Rather, delay serves as a trigger for heightened judicial scrutiny. **The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including**



(i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration, viewed cumulatively in the facts of the case, has become demonstrably disproportionate so as to offend the guarantee of personal liberty under Article 21.

57. Thus, when the composite evaluation yields a clear conclusion that continued detention has crossed the bounds of constitutional permissibility that the Court may justifiably intervene notwithstanding statutory restrictions.”

65. A three-judge bench of the Supreme Court in *K.A Najeeb (Supra)* observed that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail under UAPA and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time. The relevant paragraph of the said judgement reads as under:

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



approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

66. However, insofar as the decision in ***K.A. Najeeb (Supra)*** is concerned, the Supreme Court in the decision in ***Gulfisha Fatima (Supra)*** has observed as under:

*“61. To read ***Najeeb (supra)*** as mandating bail solely on account of prolonged incarceration, irrespective of the statutory context or the nature of the allegations, would be to attribute to the decision a consequence it neither intended nor supports. Such a construction would also lead to an interpretive absurdity, whereby a special statute enacted by Parliament to address offences implicating the sovereignty, integrity, and security of the State would stand effectively neutralised by the mere passage of time, even at a pre-trial stage. Such an outcome cannot be countenanced in constitutional adjudication. Accordingly, the finding in ***Najeeb(supra)*** is properly situated as a constitutional safeguard to be invoked in appropriate cases, and not as a mathematical formula of universal application.”*

67. Insofar as the prolonged period of incarceration is concerned, the decision in ***Gulfisha Fatima (Supra)*** makes it clear that the role which has been attributed to the Appellants, *prima facie* material, etc. deserves to be considered by this Court. In the case of persons such as Appellants, who are part of terrorist organizations, there exists a continuing threat that they are likely to indulge in such behaviour if they are granted bail, especially, when considered in the light of the conviction which has already been handed out to the Appellants. Accordingly, this Court is of the view that merely prolonged



incarceration would not be sufficient to grant bail to the Appellants, in these facts and circumstances.

Parity: Ground for Seeking Bail

68. The Supreme Court in the decision in *Gulfisha Fatima (Supra)* emphasised on the fact that all the accused persons cannot be treated identically. The Court noted that there has to be a distinction between accused persons based on the quality of material, the nature of involvement, and the necessity of further detention. The relevant portion of the said decision reads as under:

“100. The gravity of the alleged act is unquestionably serious however, public interest and national security concerns may be engaged to a materially different degree depending on the role of each accused. The continued detention of those alleged to be the architects of the conspiracy may be required to safeguard broader security interests and deter future acts, whereas the rationale for continued incarceration of minor participants is comparatively attenuated once the investigative purpose is exhausted. The Court is therefore justified in calibrating its approach, ensuring that the pursuit of security does not eclipse the principle of proportionality.

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



those alleged to have orchestrated the offence

102. The statutory restrictions under special enactments do not preclude the Court from recognising distinctions between accused persons based on the quality of material, the nature of involvement, and the necessity of further detention.

69. Further, the Supreme Court in the decision in *Sagar v. State of U.P.*, 2025 SCC OnLine SC 2584 while discussing the issue of granting bail on the ground of parity with a co-accused observed as under:

“10. The question that arises for consideration is whether, as done by the High Court in the impugned order, parity with the co-accused persons can be the sole reason for granting bail. Bail has often been stated to be the rule, and jail, the exception. This cannot be emphasized enough. At the same time, this, however, does not mean that the relief of bail is to be granted without due regard to the circumstances involved in the alleged offence for which the accused person has been arrested. In this regard, it has to be noted that a Court, while granting bail, has to consider a number of aspects. Judgments too many to count, delivered by this Court have delineated the relevant considerations to be kept in mind. A recent reiteration thereof was in Ashok Dhankad v. State of NCT of Delhi³ The relevant extracts thereof are as under:—

“19. The principles which emerge as a result of the above discussion are as follows:

(i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;

(ii) The Court concerned must not venture



into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;

(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court.

[See: Y v. State of Rajasthan (Supra); Jaibunisha v. Meherban and Bhagwan Singh v. Dilip Kumar @ Deepu]

(iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;

(v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and

(vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.”

*11. It is clear from the perusal of the above factors that the High Court failed to consider all that was relevant. On parity, it is necessary to refer to Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana(Koli). **This***



Court observed that while utilizing parity as a ground for bail, the same must focus on the role of the accused and cannot be utilized solely because another accused person was granted bail in connection with the same offence, and neither can this ground be claimed as a matter of right. [See also: Tarun Kumar v. Assistant Director Directorate of Enforcement; Sabita Paul v. State of West Bengal]

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14. What flows from the above judgments, which have been referred to, only to the limited extent indicated above, is that the High Courts speak in one voice that parity is not the sole ground on which bail can be granted. That, undoubtedly, is the correct position in law. The word 'parity' is defined by the Cambridge Dictionary as "equality, especially of pay or position."14 When weighing an application on parity, it is 'position' that is the clincher. The requirement of 'position' is not met only by involvement in the same offence. Position means what the person whose application is being weighed, his position in crime, i.e., his role etc. There can be different roles played - someone part of a large group, intending to intimidate; an instigator of violence; someone who throws hands at the other side, instigated by such words spoken by another, someone who fired a weapon or swung a machete - parity of these people will be with those who have performed similar acts, and not with someone who was part of the group to intimidate the other by the sheer size of the gathering, with another who attempted to hack away at the opposer's limbs with a weapon."

70. In the opinion of this Court, the prayer for parity would not be tenable inasmuch as the nature of the material, which was recovered from Mohd. Maroof, who has been released on bail by this Court and the present two Appellants is distinct and different. In case of the Appellants, substantial



amount of damaging material such as chemicals, IEDs, electronic gadgets, etc. were recovered which would show that they were in the process of preparing for a terror attack in the country. The seizure and recovery of such explosives, electronic devices, capability of one of them of being trained to even making poison and trained for making bombs distinguishes the case of Mohd. Maroof from the Appellants.

Conclusion:

71. Thus, as it stands, this Court has to consider the following aspects:

- i. The gravity of the offence;
- ii. The role of the Appellants;
- iii. The strength of the *prima facie* case; and
- iv. The extent to which continued incarceration viewed culminatively on facts would offend the rights of the Appellant under Article 21 of the Constitution of India.

72. In the background of the legal position enumerated above, the facts of the present case need to be considered. Both Appellants are not merely undertrials but they have in fact been convicted for possessing explosive substances, for being members of the *Indian Mujahideen* which is a banned outfit and for conspiring with various co-accused persons to carry out bomb explosions in various parts of the country. Both the Appellants are well educated individuals and in fact, one of them *i.e.*, Waqar Azhar was studying engineering. The seizure which was affected from the Appellants is established and proved in the final judgment of the Trial Court in Jaipur.

73. The ***FIR No.03/2014*** registered at PS. S.O.G., Jaipur and ***FIR No.113/2014*** registered at PS. Pratap Nagar, Jodhpur were the mere offshoots of the main FIR *i.e.*, ***FIR No. 54/2011*** which has been registered in Delhi.



Even though the Appellants may have been in incarceration for a long period, their release poses a big threat to national security and safety.

74. The Appellants are persons who have been in touch with the leadership of the *Indian Mujahideen* not only in India but also in Pakistan. They have spread *Jihadi* material and imparted training in making bombs.

75. At the *prima facie* stage, these facts are more than sufficient for rejecting bail. The manner in which the Appellants have been wholly entrenched in the activities of the *Indian Mujahideen* leaves no manner of doubt that, in order to prevent them from indulging in anti-national activities and terrorist activities, and considering the fact that they pose a flight risk and could also have an impact on other witnesses who are to appear in the matter, this Court is of the opinion that they do not deserve to be released on bail.

76. The facts of these two appeals are distinguishable from the case of Mohd. Maroof from whom the seizure is merely of digital devices. Parity cannot be applied in a blind manner and it needs to be deeply scrutinized as to what were the roles of each of these persons. The Appellants herein form the Rajasthan Module of the *Indian Mujahideen*. They were arrested upon secret information being received by the Special Cell, Delhi Police. They had indulged in forging identities and using pseudonyms such as Rajendra son of Prakash, etc., to avoid being tracked. They had purchased explosive materials, chemicals, detonators, IEDs, etc., and were in the preparation for a big terrorist attack in the country.

77. Under Section 18 of the UAPA, even an act of preparation for commission of a terrorist act is punishable by imprisonment for life. There is no indication that the Appellants would not continue these activities even after being released from prison on bail. The vehement reliance on the orders



passed by the High Court of Rajasthan would be of no avail to the Appellants inasmuch as in the said two cases suspension/ bail was granted only on the ground of long incarceration period and merits of the case was not discussed by the High Court of Rajasthan. However, under Section 43D(5) of the UAPA, this Court has an obligation to consider whether the accusations are, *prima facie*, true or not.

78. Considering the findings in the *FIR No.03/2014* registered at PS. S.O.G., Jaipur and the various materials which have been seized from the Appellants, this Court is clearly of the view that the test under the proviso to Section 43D(5) of the UAPA for not releasing the Appellants stands satisfied.

79. Under these circumstances, the appeals are devoid of merits. The order dated 10th January, 2025 passed in *IA No. 04/2024* in *Sessions Case No. 8808/2016* and the order dated 29th January, 2025 passed in *IA No. 06/2025* in *Sessions Case No. 8808/2016*, both by Id. Additional Sessions Judge-02, New Delhi District, New Delhi respectively do not require any interference of this Court and are accordingly, confirmed.

80. The present appeals are dismissed in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**MADHU JAIN
JUDGE**

APRIL 24, 2026
Dk/Ck