

**IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR.**

WP(C) 964/2026

*Reserved on: 06.05.2026
Pronounced on: 21.05.2026
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Whether full judgment or
operative has been pronounced: Full*

**Arif Billa Sheikh
Aged 26 years
S/o Abdul Ahad Sheikh
R/o Tujjar, Tehsil Bomai,
District Baramulla.**

...Appellant(s)/Petitioner(s)

Through: Mr. Hussain Rashid Advocate

Vs.

**Union Territory of Jammu & Kashmir
Through Station House Officer,
Police Station Bomai,
District Baramulla.Respondents
Through:**

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. The petitioner by way of the instant petition filed under Article 226 of the Constitution of India, the seeks issuance of appropriate directions commanding the learned Trial Court/Special Court to conclude the trial arising out of FIR No. 03/2020 dated 30.03.2020 registered at Police Station Bomai for offences punishable under Sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967, Sections 3/4 of the Explosive Substances Act and Sections 307 and 427 IPC, within a time-bound period.

2. Learned counsel for the petitioner submits that the aforesaid FIR came to be registered on 30.03.2020 and after completion of investigation, charge-sheet was filed before the competent Court on 10.10.2020. Charges were framed on 29.03.2021. It is pleaded that though the prosecution had cited around 20 witnesses, statements of several witnesses already stand recorded and according to the petitioner, the prosecution evidence has substantially progressed, yet the trial is not being conducted on day-to-day basis as contemplated under law.
3. It is further pleaded that the petitioner has remained in custody since the date of his arrest and prolonged incarceration coupled with delay in conclusion of trial amounts to violation of his fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India.
4. Learned counsel for the petitioner submitted that Section 19 of the National Investigation Agency Act mandates that trials by Special Courts are to be conducted on day-to-day basis and are to be accorded precedence over other cases. It is contended that despite the statutory mandate and repeated pronouncements of the Hon'ble Supreme Court emphasizing expeditious disposal of criminal trials involving undertrial prisoners, the proceedings in the present case are moving at a slow pace.
5. Learned counsel has further relied upon the judgments rendered by the Hon'ble Supreme Court in *Hussain and another vs. Union of India*, AIR 2017 SC 1362, *Hussainara Khatoon vs. Home Secretary, State of Bihar*, (1979) 3 SCC 532, *Abdul Rehman Antulay vs. R.S. Nayak*, (1992) 1 SCC 225 and *P. Ramachandra Rao vs. State of*

Karnataka, (2002) 4 SCC 578 to contend that speedy trial is an inseparable facet of Article 21 of the Constitution.

6. Heard and Considered

7. This Court, having regard to the innocuous prayer made by the petitioner for expeditious conclusion of trial, and in view of the settled legal position by the Hon'ble Supreme Court with regard to the right to speedy trial under Article 21 of the Constitution of India, deems it appropriate to dispose of the present petition at the threshold.
8. The core issue which arises for consideration before this Court is whether prolonged pendency of trial in the present case, despite the petitioner remaining in judicial custody for a considerable period of time, amounts to infringement of the fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India, and whether this Court, in exercise of its extraordinary writ jurisdiction, ought to issue appropriate directions for expeditious conclusion of trial.
9. Before adverting to the factual matrix of the case, it becomes necessary to reiterate that the right to speedy trial is no longer res integra. It stands crystallized as a constitutional guarantee flowing directly from Article 21 of the Constitution of India. . Fair procedure under Article 21 necessarily includes fair investigation, fair inquiry and expeditious conclusion of trial.
10. In **Pankaj Kumar vs. State of Maharashtra, (2008) 16 SCC 117**, the Hon'ble Supreme Court has observed as under:

“It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under [Article 21](#) of the Constitution. This right is applicable not only to the actual

proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial.”

11. This Court is of the considered view that the principles laid down in the aforesaid judgment are fully applicable to the present case. The petitioner has remained in custody for a considerable period and the trial has remained pending for years after framing of charges. No sufficient reason is forth coming from record to justify such delay. Though the allegations against the petitioner are serious in nature, constitutional rights guaranteed under Article 21 cannot be defeated by prolonged delay in trial. Therefore, a balance has to be maintained between the interest of society and the liberty of the accused.

12. In **Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355**, the

Hon'ble Apex Court held that:

“15. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under [Article 21](#) of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated

above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial”

13. Tested on the touchstone of the aforesaid settled legal principles, the facts of the present case reveal that the FIR in question came to be registered on 30.03.2020 for offences punishable under Sections 16, 18, 20 and 23 of the UAPA, Sections 3/4 of the Explosive Substances Act and Sections 307 and 427 IPC. Investigation admittedly culminated into presentation of challan on 10.10.2020 and charges were framed on 29.03.2021. Despite passage of more than five years thereafter, the trial has not culminated into final adjudication. Such delay inevitably causes prejudice to the accused not merely in terms of deprivation of liberty but also by subjecting him to prolonged uncertainty and mental agony.

14. The petitioner has specifically pleaded that he has remained continuously incarcerated since the date of his arrest. It is also pleaded that substantial prosecution evidence already stands recorded and yet the proceedings are not being conducted with the urgency mandated under law.

15. This Court is conscious of the fact that offences under the UAPA are grave in nature and involve larger issues touching security of the State and public order. Courts dealing with such offences are expected to exercise utmost caution and seriousness. However,

seriousness of allegations, by itself, cannot eclipse constitutional guarantees available even to an accused charged with grave offences.

16. The criminal justice system does not proceed on presumption of guilt.

Every accused continues to enjoy presumption of innocence till guilt is established in accordance with law through a fair trial.

17. Therefore, where an accused remains incarcerated for a prolonged period without the trial reaching its logical conclusion, it becomes the constitutional obligation of the courts to examine whether such continued delay amounts to infringement of the fundamental right guaranteed under Article 21 of the Constitution of India.

18. In **Shaheen Welfare Association vs. Union of India, (1996) 2 SCC 616**, the Hon'ble Supreme Court while dealing with undertrial prisoners booked under TADA held that

“When stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to ok persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

19. This Court is of the view that even in cases arising under stringent statutory provisions, prolonged delay in trial cannot be ignored and constitutional courts are duty bound to balance national security concerns with individual liberty. If trials under such enactments remains pending, the process itself may become punitive. Therefore,

while safeguarding societal and national interests, courts must equally ensure that undertrial prisoners are not subjected to endless incarceration without timely adjudication

20. The Hon'ble Supreme Court in case titled In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India reported as (1994) 6 SCC 731 held that:

“Undertrials cannot indefinitely be detained pending trial .ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure a effective trial land to ameliorate the risk to society in case a potential criminal is left at large pending trial, courts are tasked with deciding whether an individual ought to be released pending trial or not once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, courts would ordinarily be obligated to enlarge the on bail.”

21. Applying the aforesaid constitutional principles this court is of the view that prolonged custody of the petitioner coupled with delay in progress of trial undoubtedly raises serious constitutional concerns which cannot be ignored .

22. At this stage, it would be appropriate to refer to Section 19 of the National Investigation Agency Act, 2008, which provides that trials before Special Courts shall be conducted on day-to-day basis and

shall have precedence over all other matters. For the facility of reference same is reproduced as under:

“19. Trial by Special Court to have precedence.

The trial under this Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.”

23. The legislative intent behind Section 19 is clear and unambiguous.

Parliament, while creating a special mechanism for trial of serious offences affecting sovereignty and integrity of the nation, simultaneously ensured that such prosecutions are not permitted to linger endlessly. The mandate of day-to-day trial is intended to strike a balance between societal interest and individual liberty.

24. This Court further notices that delay in criminal trials has far-reaching consequences not merely upon the accused but also upon the justice delivery system itself. Passage of time weakens evidentiary value, affects recollection of witnesses and undermines public confidence in judicial process.

25. In **Kartar Singh versus State of Punjab (1994) 3 S.C.C. 569** the Hon’ble Apex court observed that:

“The concept of speedy trial is read into [Article 21](#) as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages,

namely, the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the Court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

26. The observations of the Hon'ble Supreme Court assume greater significance in the facts of the present case where the petitioner has remained in custody for a substantial period and the trial has continued for years after framing of charge, prolonged incarceration itself constitutes serious prejudice and no extraordinary justification explaining such delay has been demonstrated before this Court.

27. This Court also cannot lose sight of the judgment rendered by the Hon'ble Supreme Court in **Union of India vs. K.A. Najeeb, (2021) 3 SCC 713** wherein it was held :

“10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA.”

28. Recently, the Hon’ble Supreme Court in **Syed Iftikhar Andrabi vs National Investigation Agency in SLP (Criminal) No.1090 of 2026** decided on 18.05.2026 while reiterating the binding nature of the law laid down in **K.A. Najeeb**, emphasized that the constitutional requirement of expeditious trial continues to apply irrespective of the seriousness of allegations levelled against an accused. The Apex Court categorically held that the principles laid down in *K.A. Najeeb* are binding and cannot be diluted or disregarded. For the facility of reference same is reproduced as under:

“39. In that spirit, we make it clear that Najeeb is binding law entitled to the protection of stare decisis. It cannot be diluted, circumvented, or disregarded by trial courts, High Courts or even by Benches of lower strength of this Court.”

29. This Court is of the considered view that the aforesaid judgments clearly reaffirm that prolonged incarceration coupled with delayed trial amounts to violation of Article 21 of the Constitution of India. The aforesaid judgment further make it clear that even under stringent provisions of the UAPA, constitutional courts can intervene where an accused has remained in custody for a long period and the trial is not

likely to conclude within a reasonable time. Prolonged detention and delay in conclusion of trial itself is violative of Article 21 of the Constitution of India.

30. Criminal justice is founded on the principle of fairness. Such fairness is not limited only to providing opportunity of hearing to the parties, but also requires that proceedings are concluded within a reasonable time. Unnecessary delay in criminal trials affects public confidence in the justice delivery system and defeats the very object of fair adjudication.

31. The constitutional guarantee under Article 21 cannot be rendered illusory by procedural stagnation. Liberty once deprived without timely adjudication transforms the process itself into punishment, which is impermissible in law.

32. Therefore, this Court may not issue any direction which may interfere with independent conduct of proceedings by the learned Trial Court, it is nevertheless necessary to ensure that the statutory mandate contained under Section 19 of the NIA Act and constitutional guarantee flowing from Article 21 are meaningfully implemented

33. This Court is of the considered view that unnecessary adjournments, unless warranted by compelling circumstances, defeat the very object of speedy trial. The learned Trial Court is therefore expected to regulate the proceedings in an effective manner and ensure meaningful progress of the case on each date of hearing.

34. Having regard to the overall facts and circumstances of the case, this Court finds merit in the grievance projected by the petitioner regarding delay in conclusion of trial and deems it appropriate to issue necessary directions for expeditious disposal of the proceedings.

35. Accordingly, without expressing any opinion on the merits of the allegations leveled against the petitioner, the present petition is disposed of with a direction to the learned Trial Court/Special Court concerned to accord priority to the trial arising out of FIR No. 03/2020 and make all possible endeavour to conclude the same expeditiously.

36. The prosecution as well as the defence shall extend full cooperation to the learned Trial Court and shall refrain from seeking unnecessary adjournments.

37. Writ petition stands **disposed of** along with connected applications, if any.

(Wasim Sadiq Nargal)
Judge

Srinagar:
21.05.2026
“Mubashir”

- i. Whether the Judgment is Reportable: Yes/No
- ii. Whether the Judgment is Speaking: Yes/No