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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.B. PARDIWALA; J., UJJAL BHUYAN; J.
Special Leave Petition (Crl.) No. 6564 of 2026; 29 April, 2026
KAILASH CHANDRA KAPRI *versus* STATE OF UTTAR PRADESH & ORS.

Criminal Procedure – Inherent Powers – Quashing of Proceedings – Right to Speedy Trial as a Fundamental Right under Article 21 - The Supreme Court allowed the appeal and quashed the criminal proceedings pending against the appellant for 35 years arising out of a dispute over food in a police mess involving minor offences under Sections 147, 323, and 504 of the Indian Penal Code, 1860 and Section 120 of the Railways Act - Supreme Court emphasized that a quick trial is a *sine qua non* of Article 21 of the Constitution of India - Keeping a public servant in suspended animation for 35 years without any fault on his part runs completely contrary to the spirit of the "procedure established by law" - Right to speedy trial is not an abstract or illusory safeguard; it is a fundamental right and a human right that no civilized society can deny to an accused - If the continuation of proceedings amounts to a violation of Article 21, the High Court should not hesitate to exercise its inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) or its writ jurisdiction under Article 226 of the Constitution. *[Paras 30 - 42]*

Judiciary and Case Management – Non-accountability of Trial Courts – Ineffectiveness of Guidelines - The Supreme Court lamented that multiple guidelines issued by it over the last two decades for the expeditious conduct of criminal trials often remain merely on paper - Trial courts frequently fail to implement these guidelines because there is an absolute lack of accountability and no one is made answerable or held accountable for the resulting systemic delays. *[Para 39]*

Judicial Monitoring – Systematic Pendency Data – Directives to High Court - To make the right to a speedy trial meaningful and real rather than illusory, the Supreme Court directed the Registrar General of the Allahabad High Court to submit a comprehensive affidavit on oath detailing the statistics of pending cases before Judicial Magistrates and Sessions Courts, the functional and vacant strength of the judicial cadre, and categorized data regarding the period of custody undergone by undertrial prisoners awaiting bail. *[Relied on Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr., (1992) 1 SCC 225; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578; Union of India v. K.A. Najeeb, (2021) 3 SCC 713; Imtiyaz Ahmad v. State of Uttar Pradesh & Ors., (2012) 2 SCC 688; State of Kerala v. Rasheed, (2019) 13 SCC 297; Paras 42 - 44]*

[Arising out of impugned final judgment and order dated 23-02-2026 in A482 No. 20610/2024 passed by the High Court of Judicature at Allahabad]

For Petitioner(s): Mr. Rajesh Gulab Inamdar, AOR Mr. Shashwat Anand, Adv. Ms. Sheena Taqui, Adv. Ms. Akanksha Saini, Adv. Mr. Shashank Tiwari, Adv. Mr. Ankur Azad, Adv. Ms.

Saumitra Anand, Adv. Mr. Faiz Ahmad, Adv. Mr. Shrey Bhushan, Adv. Mr. Raghav Grover, Adv. Mr. Mohd. Kumail Haider, Adv.

For Respondent(s): Ms. Ruchira Goel, AOR

O R D E R

"Crime and the actions of the criminal justice system are mutually responsive, influencing each other in ways that are only minimally predictable; general changes in the political and socio-economic climate will affect both crime and the criminal justice system in a similar manner".

[Alfred Blumstein in Encyclopedia of Crime and Justice, Khadish (ed.)]

1. Leave granted.

2. This appeal arises from the order passed by the High court of Allahabad dated 23.02.2006 in application under Section 482 No. 20610 of 2024 by which the application preferred by the appellant-herein praying for quashing of the criminal proceedings of Case No. 545 of 1991 arising out of Case Crime No. 115 of 1989 registered with the GRP Rambagh Police Station for the offence punishable under Sections 147, 323 and 504 of the Indian Penal Code,(for short, "IPC") respectively and Section 120 of the Railways Act came to be dismissed.

3. It appears from the materials on record that one Gajendra Singh, constable No. 614, posted at the relevant point of time, at GRP Rambagh, Distt. Gonda, Allahabad lodged a First Information Report with the GRP Rambagh police station referred to above against the appellant-herein and four other police constables for the offences enumerated above.

4. The FIR dated 19.02.1989 reads thus:

"Respectfully submitted that on 19.2.1989 at about 20:00 hours I was going to Mess No 1 At that time Constable No. 57 Shiv Charan Tiwari; Constable No 95 Arvind Kumai", Constable No. 51 Kailash Katariya, Constable No. 90 Harish Chandra Joshi and Constable No. 190 Kailash Chandra Kapri who had come from District Almora; for Kumbh Mela duty at G.R.P., began to say that you have become very close to Mess Manager Shukla. I said that I have no concern with anyone. They started abusing me. I told them not to abuse. Thereupon they surrounded me and assaulted me with fists and kicks and beat me with red shoes. Constable No. 825 Parmhansh Singh and Constable No. 713 Achyutanand Mishra saved me and witnessed the incident. Afterwards the accused persons ran away taking their belongings. My report be written and action be taken. Constable No. 614 Gajendra Singh District Gonda Dated 19.02.1989."

5. Upon completion of the investigation chargesheet came to be filed for the offences enumerated above against the appellant and other co-accused. The filing of the chargesheet culminated in Criminal Case No. 545 of 1991 pending as on date in the court of Additional Chief Judicial Magistrate (Railway) Allahabad.

6. We take notice of the fact that two of the co-accused passed away during the pendency of the proceedings and the other two co-accused were put to trial and came to be acquitted by the Additional Chief Judicial Magistrate (Railway) Allahabad *vide* judgment and order dated 01.02.2023. We are informed that the

two co-accused were acquitted as prosecution was unable to lead any evidence in support of the charge.

7. The judgment acquitting the two co-accused in Case No. 545A of 1991 passed by the Additional Chief Judicial Magistrate (Railway), Allahabad is on record. It is very much relevant to reproduce some part of the judgment which reads thus:

"Charges under Section 147, 323, 504 IPC and Section 120 Railway Act were framed against the accused persons. The accused denied the charges and claimed for trial.

The prosecution was granted sufficient and long opportunity by This Court to produce evidence. However, the present case has remained pending in this Court since the year 1991, i.e., for about 33 years, and this file was one of the oldest pending records of this Court, but the prosecution failed to examine even a single witness in the matter. It is noteworthy that all the witnesses were police personnel themselves, and every possible step was taken to secure their presence. Summons were sent even through Radiogram to the; Director General of Police, Uttar Pradesh). and other competent authorities, yet the prosecution failed to produce any witness. Thereafter, the Court granted a last opportunity to the prosecution to produce evidence, but even then the prosecution failed to examine any witness. Consequently, on 25.05.2022, the opportunity for prosecution evidence was closed and the statements of the accused under Section 313 Cr.P.C. were recorded, in which they denied the occurrence and also declined to produce any defence evidence. Thereafter, the case was fixed for arguments.

I have heard the learned prosecution officer and the learned counsel for the accused persons and carefully perused the oral as well as documentary evidence available on record.

It is a well-settled principle of criminal law that the prosecution must prove its case beyond reasonable doubt.

The case has been pending since the year 1989, and charges were framed long back, and since then the case remained fixed for prosecution evidence, but the prosecution failed to examine any oral witness in support of its case.

It is also relevant that in the present case, after investigation, the witnesses cited in the charge-sheet were police personnel themselves, yet the prosecution failed to produce any witness. The case has been pending since 1989, and the prosecution cannot be given endless and unlimited opportunities to produce evidence. In view of the above facts and circumstances of the case, and keeping in view the directions laid down by the Hon'ble High Court, the prosecution has failed to prove the charges against the accused persons beyond reasonable doubt due to lack of evidence, and the accused persons are entitled to be acquitted of the charges under Sections 147, 323, 504 IPC and Section 120 Railway Act."

8. We enquired with the learned counsel appearing for the State as to why the trial did not proceed against the appellant along with the co-accused. We were informed that the appellant came to be transferred to the State of Uttarakhand after the bifurcation took place of the State of Uttar Pradesh and since the appellant left Uttar Pradesh, no summons could be served upon him.

9. It appears on plain reading of the FIR and the other materials on record that on the date of the alleged incident five police constables posted with the GRP Rambagh fought with each other on a very trivial issue. This incident occurred in the police mess relating to food.

10. We also take notice of the fact that in 1991 when the FIR came to be registered the appellant was 22 years old and as on date, he is 59 years of age.

It appears that for the reasons assigned by the appellant in the pleadings no summons was issued to him by the trial court till the year 2021.

11. In such circumstances referred to above the appellant went before the High court and prayed that it has been 35 years that the criminal proceedings are pending against him and on this ground alone the proceedings deserve to be quashed. The High court declined to quash the proceedings by way of the impugned order. The impugned order read thus:

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the entire criminal proceedings of Case No. 545 of 1991, arising out of Case Crime No. 115 of 1989, under Sections 147, 323, 504 I.P.C. and 120 Railway Act, Police Station GRP Rambagh, District Allahabad.

3. Inom the perusal of the material on record and looking into the facts of the case at this stage it Cannot he said that no offence is made out against the applicant at this stage. All the submissions made at the bar, relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. No case for interference is made out. The prayer for quashing the entire criminal proceedings of the aforesaid case is refused.

4. Learned counsel for the applicant has prayed that a liberty may be given to the applicant to appear before the court below through counsel to move discharge application and the court below may be directed to decide the discharge application within the stipulated period.

5. Accordingly, liberty is given to the applicant to appear before the court; below through counsel to move discharge application within 30 days from today.

6. This application is disposed of with a direction to the court below that in case the applicant appears before the court below through counsel within 30 from today and moves a discharge application, the same shall be considered and decided in accordance with law. Till the disposal of discharge application, no coercive action shall be taken against the applicant.

7. It is made clear that in case the applicant does not appear before the court below within the aforesaid period, no further time shall be given to him."

12. In such circumstances referred to above the appellant is here before this court with the present appeal.

13. We heard the learned counsel appearing for the appellant and also the learned counsel appearing for the State.

14. The short question that falls for our consideration is whether the criminal proceedings pending against the appellant herein past 35 years deserve to be quashed only on the ground that his fundamental right to have a speedy trial as enshrined in the Article 21 of the Constitution could be said to have been infringed?

15. The Right to have a speedy trial is one of the requirements of Article 21 of the Constitution irrespective of the fact whether the accused is in jail or on bail and furthermore irrespective of the nature of the crime. This speedy trial is one of the requirements of Article 21 of the Constitution and from the facts and circumstances of a given case if the High court finds that the proceeding if allowed to continue will amount to violation of Article 21 of the Constitution then the High court should not hesitate to exercise its inherent powers under Section

528 of the BNSS 2023 or in exercise of its writ jurisdiction under Article 226 of the Constitution.

16. The Supreme Court of the United States in *Robert Dean Dickey* v. *State of Florida*, (1970) 26 Law Ed 2d 26 : 398 US 30, has explained the right to a speedy trial in the following words:

"The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly exposed. If the case for the prosecution calls on the accused to meet charges rather than rest on the infirmities of the prosecution's case, as is the defendant's right, the time to meet them is when the case is fresh. Stale claims have never been favoured by the law, and far less so in criminal cases. Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial."

(Emphasis supplied)

17. Another aspect of the right to speedy trial was then highlighted in *Barker* v. *Wingo*, (1972) 33 Law Ed 2d 101 : 407 US 514 in these words:

"The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and, at times in opposition to the interests of the accused."

(Emphasis supplied)

18. Yet again, the basic principles underlying the right were embodied in the following terms in *Richard M. Smith* v. *Fred M. Hooey*, (1969) 21 Law Ed 2d 607 : 393 US 374:—

"Suffice it to remember that this constitutional guarantee has universally been thought essential to protect at least three basic demands of criminal justice in the Anglo-American legal system:

'(1) to prevent undue and oppressive incarceration prior to trial,

(2) to minimize anxiety and concern accompanying public accusation, and,

(3) to limit the possibilities that long delay will impair the ability of an accused to defend himself.'"

(Emphasis supplied)

19. In *Hussainra Khatoon* v. *State of Bihar*, AIR 1979 SC 1360 this Court after in terms quoting the Sixth Amendment to the American Constitution and also Art. 3 of the European Convention on Human Rights, observed as under:

"We think that even under our Constitution though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Art. 21 as interpreted by this Court in Maneka Gandhi v. Union of India, AIR 1978 SC 597. We have held in that case that Art. 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just.' If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Art. 21 and he

would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fail or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Art. 21. There can, therefore be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art. 21."

(Emphasis supplied)

20. In the succeeding case of the series *Hussainara Khatoon* v. *State of Bihar*, AIR 1979 SC 1369, it was again reiterated as under: —

"Speedy trial is, as held by us in our earlier judgment dated 26th February, 1979, an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Art. 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial of the accused."

(Emphasis supplied)

21. In *Maneka Gandhi* v. *Union of India* reported in AIR 1978 SC 597 this Court explained and gave a new dimension to the contents of Article 21 of the Constitution of India. It was held that the "law" within the meaning of Article 21 of the Constitution of India must be a law which fulfills the requirements of Articles 14 and 19 of the Constitution respectively. In other words, the procedure contemplated by Article 21 must answer the test of reasonableness and must be right, just and fair and not arbitrary, fanciful or oppressive.

22. The same view was reiterated in *Kadra Pehadiya* v. *State of Bihar* reported in AIR 1981 SC 939.

23. In *S. Gum* v. *Grindlays Bank Limited* reported in AIR 1986 SC 289 this Court was considering a case which went from the Calcutta High Court. In this case the accused was acquitted by the Metropolitan Magistrate. The High Court after setting aside that order gave an order for retrial. In paragraph 3 of the judgment this Court observed:

"After going through the Judgment of the Magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial when the order of acquittal had been passed nearly 6 years before the judgment of the High Court. The pendency of the criminal appeal for 6 years before the High Court is itself a regrettable feature of this case. In addition to it, the order directing retrial has resulted in serious prejudice to the appellants. A fresh trial nearly even years after the alleged incident is bound to result in harassment and abuse of judicial process."

(Emphasis supplied)

24. In *Rakesh Saxena* v. *State through CBI* reported in AIR 1987 SC 740 this court quashed the charges in a criminal case on the twin considerations of delay and doubtfulness of an ultimate conviction. The court observed as follows:

"We have carefully considered the various aspects of the case and we are of the view that having regard to the nature of the dispute and the fact that the offences, if any, are alleged to have been committed more than 6 years ago and the appellant was merely a trader at the lowest rung of the hierarchy in the foreign Exchange Division of the Bank and not a highly placed officer and the trial is bound to occupy the time of the Court of first instance for not

less than 2 or 3 years in view of the complicated nature of the case and even then, it is extremely doubtful whether it will at all result in conviction, no useful purpose will be served by allowing the prosecutions to continue."

(Emphasis supplied)

25. A Full Bench of the Patna High Court in *The State* v. *Maksudan Singh* reported in AIR 1986 Patna 38 held as follows:

"Once the constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure under Article 21 has been violated, then the accused is entitled to unconditional release and the charges levelled against him would fall to the ground. The right of speedy and public trial does not arise or depend on the conviction and sentence of the accused…. An accused person on the ground of inordinate delay should claim the right long before the conclusion of the trial and before the stage of holding him guilty or otherwise arises."

(Emphasis supplied)

26. Another Full Bench decision of the Patna High Court in *Madheshwardhari Singh* v. *State of Bihar* reported in AIR 1986 Patna 324 reiterated the same view and even sought to prescribe an outer limit of 7 years of delay as sufficient to quash the proceeding as any further continuation thereof would violate the Constitutional guarantee of a speedy trial under Article 21 of the Constitution of India.

27. This Court in the case of *State through CBI Vs. Dr. Narayan Waman Nerukar and another* reported in (2002) 7 SCC 6 observed as under:

"6. "Recently a 7-Judges Bench of this Court in P. Ramachandra Rao vs. State of Karnataka held as under:(SCC pp.587-88,para 1)

"No person shall be deprived of his life or his personal liberty except according to procedure established by law-declares Article 21 of the Constitution. 'Life and liberty', the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of state policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial - in short, everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far off peak. Myriad fact-situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting, by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the Legislature and the

statutes have not chosen to do so - is a question of far-reaching implications which has led to the constitution of this bench of seven-judge strength."

7. It was held that the decisions in the two "Common Cause" cases and Raj Deo Sharma v. State of Bihar and Raj Deo Sharma (II) v. State of Bihar, were not correctly decided on certain aspects. It is neither advisable nor feasible, nor judicially permissible or draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in the aforesaid four cases could not have been so prescribed or drawn and, therefore, are not good law. Criminal courts are not obliged to terminate trial of criminal proceedings merely on account of lapse of time, as prescribed by the directions made in the aforesaid cases.

8. As was observed in P. Ramchandra Rao's case (supra), at the most periods of time prescribed in those decisions can be taken by the Courts in seisin of the trial or proceedings to act as reminder when they may be persuaded to apply to their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration several relevant factors as pointed in A.R. Antulay's case (supra) and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not be treated by any court as a bar to further trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

9. While considering the question of delay the court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features if any. No generalization is possible and should be done. It has also to be borne in mind that the criminal courts exercise available powers such as those under Sections 309, 311 and 258 of the Cr.P.C. to effectuate right to speedy trial."

(Emphasis supplied)

28. In the case of *Mahendra Lal Das vs. State of Bihar and others* reported in (2001) Cri.L.J. 4718 this Court observed as under:

"Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr, [1992] 1 SCC 225 while interpreting the scope of Article 21 of the Constitution held that every citizen has a right of speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilty or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice."

22. In Hussainara Khatoon's case (AIR 1979 SC 1360) (supra), the Hon'ble Apex Court gave anxious consideration to the pathetic plight of under trial prisoners languishing in jail for years together and held that any procedure which would not ensure a speedy trial could not be regarded as reasonable, fair or just and that the right of an accused to speedy trial rather 'a reasonably expeditious trial' is imbibed in Article 21 of the Constitution of India. In paragraph 5 thereunder, it was held thus :-

"We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India (AIR 1978 SC 597). We have held in that case that article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, far or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

In Abdul Rehman Antulay's case (AIR 1992 SC 1701) (supra), a Constitution Bench of the Hon'ble Supreme Court held that right to speedy trial is part of fair, just and reasonable procedure implicit in Article 21 and is reflected in S. 309, Cr. P. C. and that the said right comprehends all stages viz., investigation, inquiry, trial, appeal, revision and retrial. In paragraph 81, it was held :

"81. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After Maneka Gandhi v. Union of India (AIR 1978 SC 597), it can hardly be disputed that the 'law' (which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 3 of the Constitution) in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes. In Abdul Rehman Antulay's case (AIR 1992 SC 1701) (supra), a Constitution Bench of the Hon'ble Supreme Court held that right to speedy trial is part of fair, just and reasonable procedure implicit in Article 21 and is reflected in S. 309, Cr. P. C. and that the said right comprehends all stages viz., investigation, inquiry, trial, appeal, revision and retrial. In paragraph 81, it was held :

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In paragraph 86, it was held thus:

"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves that social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or nonavailability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken

by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on - What is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker (1972) 33 Law Ed "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell (1966) 15 Law Ed in the following words:

'..... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the Court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given can before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly

refused to fix any such outer timelimit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

(Emphasis supplied)

29. In P. Ramachandra Rao's case reported in (AIR 2002 SC 1856), a Seven Judge Bench of this Court held that the criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure respectively to effectuate the right to speedy trial. In paragraph 29 of P. Ramachandra Rao's case (supra), this Court upheld and reaffirmed the propositions laid down in the matter of speedy trial in Abdul Rehman Antulay's case (supra). It was held thus:

"The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A. R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions."

In paragraph 29(5) thereunder, it was held:

"The criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482, Cr. P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. "

(Emphasis supplied)

30. In A. R. Antulay's case (supra) this Court observed that the very fact of being accused to a crime is a cause for concern and it affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. It is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes. Right to life means right to live with full human dignity, without humiliation and deprivation or degradation of any sort. The impact of being an accused is evident from the aforequoted observations of this Court and therefore, there can be no doubt that the tag of 'accused' would deprive a man the right to live with full human dignity. It is these facets and factors that fetched 'fair trial' the recognition as a human right. Speedy trial is an integral part of fair trial. Therefore, we are of the view that the right to speedy trial is also a human right and no civilized society can deny the same to an accused. Furthermore, it should always be the concern of the society to see that a real culprit is given the condign punishment at the earliest and also to see that an accused is given an early opportunity to clear the cloud of suspicion shrouded around him and to remove the tag of 'accused'. The said purpose in view that is founded on social interest may stand frustrated if trial is unduly delayed as trial is the sole device to decide the guilt or innocence of an accused. While considering the grievance of denial of speedy trial, the decision in Zahira Habibulla H. Shaikh's case reported in AIR 2004 SC 3114 should also be borne in mind. At the same time,

the propositions laid in the form of guidelines, as observed in A. R. Antulay's case (supra), more particularly, the first and eighth propositions respectively also should be borne in mind. We may advert to and quote the said propositions. They read thus :

"(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily.

Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(8) Ultimately, the Court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case."

(Emphasis supplied)

31. In *Imityaz Ahmad vs. State of Uttar Pradesh & Ors.* reported in (2012) 2 SCC 688 this Court while taking judicial notice of long pendency of serious criminal cases like murder, rape, kidnapping, dacoity etc., observed as under:

"14. On the basis of the aforesaid data it is clear that problems which the administration of justice faces today is of serious dimensions. Pendency is merely a localised problem, in the sense that it affects some High Courts far more than others. As seen above, just four High Courts in this country amount for 76.9% of the pendency. This may well be because of various social, political and economic factors, which are beyond the scope of the current enquiry by this Court. It is a matter of serious concern that 41% of the cases have been pending for 2-4 years, and 8% (approximately 1 out of every 12 cases) have been pending for more than six years."

32. The Court proceeded to further observe as under:

"25. Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.

26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable [see United Nations Development Programme, Access to Justice — Practice Note (2004)].

27. The present case discloses the need to reiterate that "access to justice" is vital for the rule of law, which by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of rule of law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of the citizens' rights under the Constitution, in particular under Article 21.

28. In a very important address to the Virginia Bar Association in 1908, William H. Taft observed that one reason for delay in the lower courts is the disposition of Judges to wait for an undue length of time in the writing of their opinions or judgments. [See William H. Taft,

The Delays of the Law, Yale Law Journal, Vol. 18, No. 1 (November 1908), pp. 28-39.] The Judge should deliver the judgment immediately upon the closure of the argument. It is almost of as much importance that the court of first instance should decide promptly as that it should decide right. It should be noted that everything which tends to prolong or delay litigation between individuals, or between individuals and State or Corporation, is a great advantage for that litigant who has the longer purse. The man whose rights are involved in the decision of the legal proceeding is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him.

29. Dispatch in the decision-making process by court is one of the great expectations of the common man from the judiciary. A sense of confidence in the courts is essential to maintain the fabric of order and liberty for a free people. Delay in disposal of cases would destroy that confidence and do incalculable damage to the society; that people would come to believe that inefficiency and delay will drain even a just judgment of its value; that people who had long been exploited in the small transactions of daily life come to believe that courts cannot vindicate their legal rights against fraud and overreaching; that people would come to believe that the law—in the larger sense cannot fulfil its primary function to protect them and their families in their homes, at their workplace and on the public streets. [See Belekar Memorial Lecture Series, organised by the High Court Bar Association, Nagpur. Lecture delivered on 31-8-2002.]

30. Merely widening the access to justice is not enough to secure redress to the weaker sections of the community. Post Independence, it was evident that litigation in India was getting costlier and there was agonising delay in the process. After the adoption of the Constitution and creation of a welfare State, the urgency of some structural changes in the justice delivery system was obviously a major requirement. In the 14th Report of the Law Commission under the Chairmanship of the first Attorney General for India, Shri M.C. Setalvad, it was observed as under: "Insofar as a person is unable to obtain access to a court of law for having his wrongs redressed …. Justice becomes unequal and laws which are meant for his protection fail in their purpose."

31. In a very important discourse, Roscoe Pound argued that by responding to the doctrine of social justice, the concept of justice has advanced through various stages. [See Roscoe Pound, Social Justice and Legal Justice (address delivered to the Allegheny County Bar Association) 5-4-1912.] At the first stage justice was equated with dispute settlement. At the second stage justice was equated with maintenance of harmony and order. In the third stage, justice was equated with individual freedom. Pound argued that a fourth stage had developed in society, but had not yet been fully reflected in the courts, and that was what Pound called "social justice". That is the ideal form of justice where the needs of the people are satisfied, apart from ensuring that they have freedom.

32. Despite complicated social realities, it is submitted that the rule of law, independence of the judiciary and access to justice are conceptually interwoven. All the three bring to bear upon the quality of aspirations which are guaranteed under our Constitution. In order to fulfil the aspiration, it is important that the system must be a successful legal and judicial system. This would involve improvement of better techniques to manage courts more efficiently, cutting down costs and duration of proceedings and to ensure that there is no corruption in the judiciary and the establishment of the judiciary and would also require regular judicial training and updating.

33. *The memorable words of Lord Devlin (as quoted by D.M. Dharmadhikari, J.) are pertinent to note: (SCC p. J-7)*

… The prestige of the judiciary and their reputation for stark impartiality is not at the disposal of any Government; it is an asset that belongs to the whole nation….

(See Justice D.M. Dharmadhikari, Nature of Judicial Process [(2002) 6 SCC J-1) .

34. *Under the principle of the rule of law, adequate protection of the law must be given to all persons and to give meaning to it, there must exist an unimpeded right of access to justice. In the words of Lord Bingham:*

"It would seem to be an obvious implication of the principle that everyone is bound by and entitled to the protection of law that people should be able, in the last resort, to go to court to have their civil rights and claims determined. An unenforceable right or claim is a thing of little value to anyone." (See Thomas Bingham, The Rule of Law, p. 85.)

35. *The right of access to justice has been recognised as one of the fundamental and basic human rights in various international covenants and charters. [See Article 14(3) of the International Covenant on Civil and Political Rights (Iccpr).] The right of access to justice is also recognised under Article 67 of the Statute of the International Criminal Court (Rome Statute).*

36. *In the context of the European Union, Article 47 of the Charter of Fundamental Rights of the European Union, 2007 provides for the right to an effective remedy and to fair trial. With respect to the Council of Europe, the European Convention on Human Rights and Fundamental Freedoms, 1950, Article 6 significantly protects this right to access justice.*

37. *The European Court of Human Rights has held that a broader interpretation must be given to Article 6(1) of ECHR laying emphasis on "right to a fair administration of justice" in Delcourt v. Belgium [1970 ECHR 1] . "… In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6(1) would not correspond to the aim and purpose of that provision."*

38. *Article 8 of the Universal Declaration of Human Rights provides that:*

"8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

39. *Article 16(2) of the Draft Principles on Freedom from Arbitrary Arrest and Detention [Ed.: UN Department of Economic and Social Affairs, Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile (UN DOC E/CN.4/826/Rev.1) (1964). The Draft Principles form Part VI of the Study and were drawn up in 1962 by a Committee established by the UN Commission on Human Rights.] provides that:*

"16. (2) To ensure that no person shall be denied the possibility of obtaining provisional release on account of lack of means, other forms of provisional release than upon financial security shall be provided."

40. *The principle of "access to justice or courts" is recognised as a right in South Africa's Constitution as well:*

"34. Access to courts.—Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

41. *The learned amicus urged that having regard to the paramount importance of the right to access the court which he argues is a basic fundamental right, specially the Central Government and the State Governments have a duty to ensure speedy disposal of cases for proper maintenance of rule of law and for sustaining peoples' faith in the judicial system. He further argued that with the present infrastructure it is not possible for courts, whether it is District Courts or the State High Courts or this Court to effectively dispose of cases by just and fair orders within a reasonable time-frame. The learned amicus also urged that the problem is huge and the considerations are momentous. To understand the magnitude of the problem, the Government must appoint a permanent commission to make continuous recommendation on measures which are necessary to streamline the existing justice delivery system.*

42. *In support of his submission, the learned amicus referred to the report of Lord Woolf submitted to the Lord Chancellor in England:*

"… It will not only assist in streamlining and improving our existing systems and process; it is also likely, in due course, itself to be a catalyst for radical change as well…."

[Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (Lord Woolf's Report), 1996, Chapter 21, para 1."

33. In the case of The National Investigation Agency vs. Areeb Ejaz Majeed [Criminal Appeal No.389 of 2020 decided on 23rd February 2021], the High court of Bombay observed as under:

"29. But, the case of the respondent on the second aspect of the matter appears to be on firm footing. There is no dispute about the fact that right to fair and speedy trial is a right recognized under Article 21 of the Constitution of India. The Hon'ble Supreme Court and various High Courts, including this court, have consistently held that the undertrials cannot be allowed to languish for years together in jail, while the trials proceed at snail's pace. If ultimately, the accused are found to be not guilty, the number of years, months and days spent by such accused as undertrials in jail, can never be given back to them and this is certainly a violation of their valuable right under Article 21 of the Constitution of India. Therefore, right to speedy trial has been recognized and reaffirmed consistently by the judgments of the superior courts.

30. In cases where the accused are facing charges under Special Acts like UAPA, parameters for grant of bail are more stringent, as a consequence of which, the undertrials in such cases remain in custody while the trials are pending. This is because they are accused in serious and heinous offences and their rights are required to be balanced with the rights of the society and citizens at large. The courts are required to perform a balancing act, so as to ensure that a golden mean is reached between the rights of the individual and those of the society at large.

31. It is in the context of Special Acts that the Hon'ble Supreme Court in the case of Shaheen Welfare Association (supra) held that the long time taken by courts in disposal of the cases would justify invoking Article 21 of the Constitution of India to issue directions to release the undertrials on bail. The said judgment was rendered in the context of TADA, which also had stringent provisions with regard to grant of bail. Although, it was stated in the said judgment itself that the directions given therein were in the form of one time measure, the said judgment has been recognized as having laid down principles for grant of bail to undertrials, who could be classified in different categories.

32. It has been held in the said judgment that the undertrials could be categorized into three categories, depending upon the role with which they were charged in the context of special provisions of TADA. It was held that those categorized in category (a) were hardcore criminals, whose release would prejudice the prosecution case, apart from being a menace to the society and they could not be given liberal treatment. But, it was held that the other undertrials who could be categorized in category (b), (c) and (d) could be dealt with differently and depending upon the duration that they had spent in custody, they could be released on bail subject to specific conditions.

33. In the present case, the NIA Court has categorized the respondent in category (b) and, by applying the ratio of Shaheen Welfare Association (supra), it has been held that since the respondent has spent more than five years in jail as an undertrial, he deserved to be granted bail, subject to two stipulations being satisfied. It was found that these two stipulations were firstly, that there was no likelihood of the trial being completed in the next six months, and secondly, that the respondent did not have any antecedents or that, if released, he would not be harmful to the complainant and witnesses or their family members.

34. *It needs to be examined that whether the NIA Court was justified in holding that the respondent could be categorized in category (b) as indicated in the judgment of Shaheen Welfare Association (supra) and further as to whether he satisfied the aforesaid two stipulations.*

35. *In the present case, the respondent has been charged with offences under Sections 16 and 18 of the UAPA apart from Section 125 of the IPC. There is no dispute about the fact that the charge under Section 20 of the UAPA was not framed by the NIA Court itself against the respondent despite the fact that offence under the said section was registered against him. Section 16 of the UAPA pertains to punishment for a terrorist act and it is specified therein that if death has resulted as a consequence of such terrorist act, the accused could be punished with sentence of death or imprisonment for life. It was further specified that in any other case, the sentence could be imprisonment for life or for a sentence, which shall be not less than five years. Section 18 of the UAPA pertains to punishment for conspiracy and there also it is provided that the sentence could range between five years and imprisonment for life. In the present case, the respondent has been charged on the basis that he along with the absconding co- accused committed terrorist acts in Iraq and Syria and further that he actively took part in such acts with the intention to strike terror in the minds of the people. He also stood charged under Section 125 of the IPC for waging war against the Governments of Iraq and Syria, who happen to be friendly nations with India. There is also reference made on behalf of the NIA to the fact that the respondent had allegedly returned to India with an intention to carry out terrorist activities in India, including blowing up of Police Headquarters at Mumbai. In any case, no death was caused by the alleged plans hatched by the respondent, since he was arrested the moment he landed in India.*

36. *In this backdrop, it cannot be said that the NIA Court committed an error in categorizing the respondent in category (b) above and thereby applying stipulations laid down in the judgment of the Hon'ble Supreme Court in Shaheen Welfare Association (supra). There is no dispute about the fact that the respondent has remained in custody as an undertrial for more than six years now. The process of examining 51 witnesses has taken more than five years and admittedly there are 107 more witnesses to be examined by the prosecution. Therefore, there is no likelihood of the trial being completed within the next six months. It is an admitted position that the proceedings under the NIA Act are undertaken by the NIA Court once in every week and that the said court is also dealing with cases pertaining to other Special Acts like the MCOCA, TADA, POTA, etc. Therefore, there is every likelihood of the trial continuing for the next few years. There is also no dispute about the fact that even if convicted for the offence with which the respondent is charged, he could be sentenced for imprisonment for a period ranging between five years and life imprisonment. It is crucial that the respondent has undergone more than six years as an undertrial.*

37. *Considering the aforesaid facts, it needs to be examined as to whether the law laid down by the Hon'ble Supreme Court in the context of granting bail to undertrials, who have already undergone incarceration for number of years, needs to be applied in the case of respondent. In this context, it is necessary to keep in mind that the respondent is accused of offences under the Special Act i.e. the UAPA.*

38. *It is in this context of the aforesaid Special Act like the UAPA that the Hon'ble Supreme Court has rendered the latest pronouncement in the case of K.A. Najeeb (supra). While considering the stringent provisions of the Special Acts i.e. the UAPA pertaining to bail, the Hon'ble Supreme Court has held as follows:*

"18. 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."

39. *Apart from the fact that the Constitutional Courts can certainly take note of violation of fundamental rights guaranteed under Part III of the Constitution of India, particularly the right to life under Article 21 of the Constitution in the context of right to speedy trial, it is specifically held that the rigours of stringent provisions of bail as found in Section 43D(5) of the UAPA would melt down where there is no likelihood of the trial being completed in a reasonable time and the period of incarceration already undergone exceeds substantial part of the prescribed sentence. This is an aspect which becomes significant in the facts of the present case. We are conscious of the fact that even a sentence of life imprisonment can be imposed for the offence with which, the respondent has been charged under the UAPA and the IPC but, we cannot ignore the fact that the sentence could range between five years to imprisonment for life. This is particularly significant in the backdrop of the fact that the respondent has admittedly already undergone incarceration for more than six years while the trial is underway before the NIA Court. Looking to the pace at which about 51 witnesses have been examined, which took more than five years for the NIA Court, there is clearly no likelihood of the trial being completed within a reasonable time in the near future. Therefore, we are of the opinion that on this aspect, no error can be attributed to the impugned judgment and order passed by the NIA Court, while holding in favour of the respondent.*

40. *The other aspect of the matter is, as to whether it can be said that releasing the respondent would amount to prejudicially affecting the trial and whether there would be possibility of influencing the witnesses and tampering with the evidence. We have observed that the respondent is an educated person, who was completing his graduation in Civil Engineering when he left for Iraq at the age of 21 years. He categorically stated before us that as a 21 year old, he was carried away and that he had committed a serious mistake, for which he had already spent more than six years behind bars. In the past more than six years of his incarceration, the respondent has argued his case on his own before the NIA Court. He represented his own case before this Court as well as the NIA Court and we could find that he was presenting his case by maintaining decorum and in a proper manner. During the course of hearing, it transpired that his father is a doctor of Unani medicine and his sisters are also doctors. His brother is an engineer. This shows that he comes from an educated family and that if stringent conditions are imposed upon him, with an undertaking to cooperate with the trial proceedings before the NIA Court, his release on bail may not be harmful to the society at large and it would not adversely affect the trial proceedings before the NIA Court.*

41. *Therefore, we are of the opinion that on the second aspect of the matter, the findings rendered by the NIA Court need to be upheld. In view of the above, although we have held that the findings rendered by the NIA Court on the merits of the matter in the impugned judgment and order are unsustainable and consequently they are set aside, on the second aspect of the matter pertaining to the long pendency of the trial and the respondent having already undergone incarceration for more than six years, we are inclined to uphold the impugned order on the said ground. Yet, we intend to impose further stringent conditions on the respondent while upholding his release on bail. Consequently, part of the impugned order deserves to be modified by imposition of further conditions. Hence, the following order:"*

34. Thus, the Bombay High Court ordered release of the accused on the ground that he had already undergone incarceration of more than six years and likelihood of the trial being concluded in near future was very remote.

35. In the case of Union of India vs. K. A. Najeeb [Criminal Appeal No.98 of 2021 decided on 1st February 2021] this Court observed as under:

"12. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Association (supra), laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case:

"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899], on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21." (emphasis supplied)

13. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [(1999)9 SCC 252, Babba alias Shankar Raghuman Rohida v. State of Maharashtra [(2005) 11 SCC 569] and Umarmia alias Mamumia v. State of Gujarat [(2017) 2 SCC 731] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

14. We may also refer to the orders enlarging similarly- situated accused under the UAPA passed by this Court in Angela Harish Sontakke v. State of Maharashtra [SLP (Crl.) No.6888 of 2015 order dated 4 th May 2016]. That was also a case under Sections 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of UAPA. Similarly, in Sagar Tatyaram Gorkhe v. State of Maharashtra [SLP (Crl) No.7947 of 2015 order dated 3 rd January 2017], an accused under the UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

15. The facts of the instant case are more egregious than these two above-cited instances. Not only has the respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, two opportunities were given to the appellant-NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co-accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can therefore be legitimately expected that if found guilty, the respondent too would receive a sentence within the same ballpark. Given that twothird of such incarceration is already complete, it appears that the respondent has already paid heavily for his acts of fleeing from justice.

16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India [(1994) 6 SCC 731], it was 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 an effective trial and 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 them on bail.

17. As regard to the judgment in NIA v. Zahoor Ahmad Shah Watali (supra), cited by learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had re-appreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidences, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.

18. 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.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

20. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead, Section 43-D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.

CONCLUSION

21. In light of the above discussion, we are not inclined to interfere with the impugned order. However, we feel that besides the conditions to be imposed by the trial Court while releasing the respondent, it would serve the best interest of justice and the society-at-large to impose some additional conditions that the respondent shall mark his presence every week on Monday at 10AM at the local police station and inform in writing that he is not involved in any other new crime. The respondent shall also refrain from participating in any activity which might enrage communal sentiments. In case the respondent is found to have violated any of his bail conditions or attempted to have tampered the evidence, influence witnesses, or hamper the trial in any other way, then the Special Court shall be at liberty to cancel his bail forthwith. The appeal is accordingly dismissed subject to above-stated directions." (Emphasis supplied)

36. Thus, this Court unequivocally held that although it was conscious of the fact that the charges levelled against Najeeb were grave and a serious threat to societal harmony and the plea of bail could have been declined at the threshold, yet keeping in mind the length of the period spent in the custody and the unlikelihood of the trial being completed at any time in near future, the High Court was justified that it was left with no other option, except to grant bail. K.A. Najeeb was one of the co-accused along with the other members of the Popular Front of India. He was allegedly involved in an incident in 2010 where a group chopped off the hand of a Malayalam Professor and hurled bombs at the bystanders. The attackers believed that the question paper set by the Professor for his college exam was blasphemous and offended the Holy Prophet Mohammed. After absconding from the police for five years, Najeeb was finally arrested in 2015. His bail applications between 2016 and 2021 were repeatedly rejected. Finally, the Kerala High Court granted him bail as he had already served four years as an undertrial prisoner. The speedy trial mandated under the National Investigative Agency Act, 2008 was not met. The State in its appeal before this Court asserted that the High Court was wrong in granting bail to Najeeb. On behalf of Union of India, it was argued that the normal bail granting standards under the criminal law would be inapplicable for the offences under the UAPA or other special laws. It was further argued that the National Investigative Agency ('NIA') had prima facie evidence of Najeeb's involvement and culpability. It was argued on behalf of Najeeb that most of the co-accused, in the case, were acquitted. Even those who were found guilty did not get sentence of more than eight years. Najeeb had been kept in prison for over five and a half years without a trial. This violated his fundamental right to a speedy trial and access to justice. The five and half years Najeeb spent as an undertrial prisoner became a crucial factor. The Court invoked Shaheen Welfare Association v. Union of India reported in (1996) 2 SCC 616 to hold that the 'gross delay' in trial violates the right to life and personal liberty under Article 21. A fundamental right violation could be used as a ground for granting bail. Even if the case is under a stringent criminal legislation including the anti-terror laws, prolonged delay in a trial necessitates granting of bail.

37. We may also refer to one order passed by a Division Bench of the Calcutta High Court in C.R.M. No.9314 of 2020 decided on 27th November 2020. In the said case, the High court considered the question whether the restrictions imposed by Section 37 of the NDPS Act are over ridden by the operation of the directions issued by this Court in Supreme Court Legal Aid Committee vs. Union of India reported in (1994) 6 SCC 731 in the matter of grant of bail to the undertrials in the NDPS cases. In the said case, the accused was in custody past five years and six months and only two witnesses had been examined till the date the High Court passed the order of bail. Relying on the ratio laid down in Supreme Court Legal Aid Committee (supra), the accused therein pressed for bail. It was argued on behalf of the Union of India that no law under Article 141 of the Constitution was declared in the decision of this Court in the case of *Supreme Court Legal Aid Committee* (supra) and only "one time direction" was issued. It was further argued that the inordinate delay in trial may entitle the

undertrials to apply for bail only after due compliance of the requirements under Section 436A of the Code of Criminal Procedure and not otherwise. A Division Bench of the Calcutta High Court, while releasing the accused on bail, held as under:

"Right of bail to an under-trial flows from Article 21 of the Constitution of India which frowns upon unnecessary and prolonged detention pending judicial adjudication of guilt. Nonetheless, discretion to grant bail to an accused is circumscribed by the "procedure established by law". NDPS Act was promulgated essentially for detection, investigation and prosecution of offences under Narcotic Psychotropic Act. In view of the grave nature of offences involving trafficking of narcotics in commercial quantities, the law engrafts strict restrictions under Section 37 of the Act on the Court s discretion to "s discretion to grant bail.

Section 37 of the Act reads as follows:-

"37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable; (b)no person accused of an offence punishable for offences under Section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2. The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

As per the provision, if the prosecutor opposes the prayer for bail, an onerous duty is cast on the accused to satisfy the Court there are reasonable grounds to believe that he is not guilty of the alleged offence and shall not commit similar offence while on bail. The Apex Court has unequivocally held the expression "reasonable ground" must mean "prima facie ground". [See State of Kerala vs. Rajesh. AIR 2020 SC 721 (Para 21)]. Charge in this case involves possession of narcotic substances above commercial quantity. Hence, to obtain bail on merits, the petitioner would require to overcome the hurdle of satisfying the Court with regard to the twin requirements, as aforesaid. However, in the present case, the petitioner has sought bail not on merits but on the score of inordinate delay in trial which infracts his fundamental rights under Sections 14 and 21 of the Constitution of India. In rebuttal, it has been argued unless the petitioner has undergone half of the maxim sentence as envisaged under Section 436A of the Code of Criminal Procedure, no such right can be said to have fructified in his favour. That apart, contribution of the petitioner and other accused persons in the delay must also be taken into consideration. In this regard learned Additional Solicitor General drew our attention to the observation of the Apex Court in the cited decision holding deprivation of liberty by the accused persons who have suffered half of the maximum punishment provided for the offence can be held to be violative of Articles 14 and 21 of the Constitution.

We are unable to accept the contentions of the learned Additional Solicitor General for the following reasons.

The Apex Court while dealing with the issue of grant of bail on the score of inordinate delay in disposal of trials, had taken into consideration the statutory restrictions under Section 37 of the NDPS Act and held as follows :

"15. …we are conscious of the statutory provisions finding place in Section 37 of the Act, prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have averted to this Section in the earlier part of the judgement. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh vs. State of Punjab. Despite this provision we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a constitution Bench of this Court, A.R.Antulay vs. R.S. Nayek, released on bail, which can be taken to be embedded in the right of speedy trial, may in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21."

Aforesaid ratio clearly curves out a separate niche for grant of bail to under trials on the score of inordinate delay in contradistinction to bail on merits. Exercise of judicial discretion in this domain stands on a completely different footing from grant of bail on merits which is circumscribed by the restrictions envisaged under section 37 of the Act.

Observation of the Court with regard to the under trials suffering half of the maximum sentence (as referred to by learned ASG) has to be read in the light of the subsequent directives issued by the court in NDPS cases. After analysis of the impact of inordinate and inexplicable delay on the fundamental rights of prisoners, the court explored the reliefs which may be made available to the incarcerated persons booked under NDPS Act:-

"The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted by having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:-

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order".

It is argued that such directions were intended to operate as an "one time measure" in the State of Maharashtra. We, however, note that the directives were subsequently extended to the State of West Bengal and other States vide order dated 17th April, 1995 reported in 1995(4) SCC 695. We are of the view that the aforesaid directives of the Apex Court in the matter of grant of bail due to inordinate delay are required to be taken into consideration and similar relief is to be extended to all undertrials who stand on the same footing. Liberty is an inalienable right of every individual guaranteed by our Constitution and cannot be whittled down by arbitrary categorisation. "Procedure established by law" under Article 21 cannot be viewed in isolation from the principles of "equal justice" or "equality before law" enshrined under Article 14. To achieve such universal equality it is imperative that the directives laid down by the Court in the said report be extended to all undertrials who are similarly circumstanced and are suffering protracted detention throughout the length and breadth of the country. Selective approach to personal liberty is an anathema to our constitutional scheme. Hence, it is the duty of every Court including the High Courts when faced with the question of "bail or jail" to bear in mind the beholden principles of parity and equal access to justice. Courts need to rise above petty technicalities to preserve and restore liberty to all similarly circumstanced persons. Failure to do so, would create privileged oases of liberty accessible to few and denial of freedom to most.

This concern is poignantly highlighted by the Apex Court in Arnab Manoranjan Goswami Vs The State of Maharashtra & Ors. in Criminal Appeal No. 742 of 2020, wherein the Court held that the High Courts and the District Judiciaries are required to enforce the principle of "bail and not jail in practice and not leave the court of last resort to "s discretion to intervene at all times. The Court observed that the remedy of bail is "an expression of the humanness of the criminal justice system" and it cannot be applied in an inverted manner. If we do not extend the wholesome directives in Supreme Court Legal Aid Committee (Supra) to all under trials (in NDPS case) incarcerating in jail for more than five years, we would fail to discharge our constitutional duty to preserve personal liberty of citizens and apply the balm of humanness to those unfortunate undertrials who have failed to knock the door of the Apex Court

We are conscious that delay may also be caused by an accused and it is nobody's case that such a litigant can derive benefit out of his own wrong. However, the principle of apportionment of responsibility in the matter of delay in trial must be counteracted in the backdrop of the constitutional duty of the State to ensure effective and speedy prosecution. The Constitution assures every individual the precious right of personal liberty and when it is forfeited by the State to ensure administration of criminal justice a heavy corresponding duty is cast on it to ensure speedy conclusion of trial minimizing under trial detention. Directives in Supreme Court Legal Aid Committee (Supra) are to be viewed from such perspective. These directions cannot be whittled down or restricted by the operation of Section 436 A Cr.P.C. The said provision is an expression of similar anxiety of the legislature to minimize under trial detention. The directives of the Apex Court relating to bail and section 436A operate in the same field and are supplementary to one another. To read one in derogative of the other would amount to restricting the right of under-trials to bail in the face of inordinate delay in trials and would frustrate the very spirit of the aforesaid law.

In this backdrop, we have gone through the records of the case and we do not find any special feature relating to contributory role of the petitioner in the inordinate delay in trial. Absence of forensic laboratories, under staffing in those laboratories, inadequate number of prosecutors and frequent transfer of official witnesses cause chronic delay in trial of narcotic cases. Adverting to such issues, the Apex Court in Thana Singh Vs. Central Bureau of Narcotics, (2013) 2 SCC 590 issued various directions to ensure speedy trial. Thana Singh (Supra) quoted with approval the directives Supreme Court Legal Aid Committee (Supra). In spite of such directions, there is little progress in the ground and the bleak picture of delay persist to haunt under trials.

In light of the aforesaid discussion, we are of the view that the directives in Supreme Court Legal Aid Committee (Supra) applies with full force to the facts of this case and the petitioner ought to be released on bail on the score of inordinate delay in trial infracting his fundamental rights under Articles 14 and 21 of the Constitution.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 2,00,000/- with ten sureties of Rs. 20,000/- each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, North 24 Pargans, subject to the conditions that petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall remain within the jurisdiction of Gardenreach Police Station until further orders except for the purpose of investigation and/or for attending Court proceedings and shall report to the Officer-in-Charge of the concerned police station and Mr. Kalyan Das, Superintendent, Customs, AIU, Legal Section, Customs House, 15/1, Strand Road, Kolkata- 700 001, once in a week until further orders.

In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

Under-trial detention in India is a chronic malady in the administration of criminal justice. 25th Edition of the Prison Statistics in India as per NCRB Report, 2019 shows that 69.5 per cent of prisoners in Indian jail are undertrials.

Under such circumstances and to ensure that equal justice is extended to all under trials who are incarcerated in jail for five years and more in NDPS cases, we direct the learned ASG as well as the learned Public Prosecutor, High Court, Calcutta to submit reports enumerating cases under NDPS Act where accused persons are in detention for five years or more."

(Emphasis supplied)

38. We may also refer to the decision of this Court in the case of State of Kerala vs. Rasheed reported in (2019) 13 SCC 297, wherein this Court laid down guidelines to be followed by the Trial Courts in the conduct of a criminal trial as far as possible:

"24.1 A detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

24.2 The case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

24.3 The case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

24.4 Testimony of witnesses deposing on the same subject matter must be proximately scheduled;

24.5 The request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case-calendar;

24.6 The grant for request of deferral must be premised on sufficient reasons justifying the deferral of crossexamination of each witness, or set of witnesses;

24.7 While granting a request for deferral of crossexamination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for;

24.8 The case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

24.9 In cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

39. We wonder how many such guidelines as referred to above may have been issued by this Court over a period of at least two decades. Guidelines just remain on paper; guidelines do not work fully. The reason for the same is also very simple. No court bothers to follow the guidelines. They do not follow because there is no accountability. No one is made answerable for the same.

40. The case at hand is one of causing simple hurt and criminal intimidation. It is, as such, neither a grave or heinous offence nor an offence against the community as such, though all criminal offences are crime against the society. Having regard to the nature of offence, there is enormous delay in proceeding with the criminal prosecution- 35 years for a trial for simple hurt and criminal intimidation is too long a time. Quick justice is *sine qua non* of Article 21 of the Constitution. Keeping a person in suspended animation for 35 years and that too a public servant without any cause at all- and none was indicted before the High court or before us- gone by with the spirit of procedure established by law. In that view of the matter, it is just unfair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. We do so accordingly.

41. Having said so as aforenoted we could have closed this matter. However, closing this matter with the grant of necessary relief to the appellant is not going to serve the overall purpose with which we have dictated this judgment. Article 21 has been a part of our Constitution since it was adopted in 1949 and came into effect on January 26, 1950. As of 2026, it has been a cornerstone of Indian democracy for 76 years while it states that " No person shall be deprived of his life or personal liberty except according to the procedure established by law", its meaning has expanded significantly over the decades through various decisions of this Court to include the right to privacy, education, clean environment, etc., and above all, the right to speedy trial. This right to speedy trial should not remain as an abstract or illusory safeguard.

42. We firmly believe that we should carry this matter further to make this right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution more meaningful and real. The question is how to go about it? In other words, how to make this right more meaningful and real and not just let it remain illusory.

43. We believe we should call for some relevant information from the High court of Allahabad. Once we are able to collect the necessary data and the statistics, we may consider to work out some modalities by which we can make some difference in so far as the State of U.P. is concerned.

44. We direct the Registrar General of the Allahabad High court to furnish us with the following information on oath by way of an affidavit.

i. How many criminal cases are pending as on date in the courts of Judicial Magistrate First Class and Chief Judicial Magistrates? How old are these cases pending before the Judicial Magistrate First Class and the Chief Judicial Magistrates respectively in the State? In how many cases the accused persons are in jail as under trial prisoners and since how long? What is the status of these criminal cases and what are the impediments coming in the way of different courts in proceeding further with these cases?

ii. How many sessions cases are pending as on date in the sessions courts? How old are these cases pending before the sessions courts in the State? In how many cases the accused persons are in jail as under trial prisoners and since how long? What is the status of these criminal cases and what are the impediments coming in the way of different courts in proceeding further with these cases?

iii. How many judicial officers are functioning as on date in the rank of Judicial Magistrate First Class, Chief Judicial Magistrate and Sessions judge respectively?

iv. How many sanctioned posts are there in so far as civil judges and JMFCs are concerned? How many sanctioned posts are there in the cadre of Chief Judicial Magistrate? How many sanctioned posts are there for the post Sessions judge?

v. How many posts are lying vacant in so far as the judicial officers of different cadres referred to above are concerned. vi. Are there any proposals forwarded by the High Court pending with the State Government for filling up of various posts at the level of Judicial Magistrate First Class, Chief Judicial Magistrate and Sessions judges?

Information Regarding Pendency and Tracking of Bail Applications

1. Whether information about the period of custody undergone by an undertrial prisoner is recorded by the High Court Registry in respect of bail applications filed before the High Court? If not, whether collection of such a data point can be mandated for subsequent filings?

2. What is the number of bail applications pending before the High Court as on 30.04.2026? Kindly categories the data in a tabular format according to the year of filing.

3. Whether the pending bail applications can be categorised according to the period of custody undergone by the applicant/undertrial prisoner?

4. If the answer to Question No.3 is in the affirmative, kindly provide the data in the following manner:

a. Number of cases where the period of custody undergone by the applicant is more than 10 years.

b. Number of cases where the period of custody undergone is between 8-10 years.

c. Number of cases where the period of custody undergone is between 6-8 years.

d. Number of cases where the period of custody undergone is between 4-9 years.

e. Number of cases where the period of custody undergone is between 2-4 years.

f. Number of cases where the period of custody undergone is between 1-2 years.

g. Number of cases where the period of custody undergone is between 0-1 years.

5. Whether any measures are currently in place, or were introduced in the past, to expedite the disposal of bail applications wherein the period of detention undergone by the applicant exceeds 5 years, or to prioritise the disposal of the oldest pending bail applications or bail applications where the applicant is in custody pending trial for unduly long periods?

6. If the answer to Question No. 5 is in the negative, whether any measures can be introduced for tracking and expediting the disposal of bail applications wherein the period of custody of the undertrial prisoner exceeds 5 years and the oldest pending bail applications?

7. Whether data is available regarding the number of undertrial prisoners in the State of Uttar Pradesh who are in custody for a period exceeding 5 years and whose bail applications have not yet been filed or decided by the Court of Sessions, or who have not yet preferred a bail application before the High Court in the event of rejection of bail by the Court of Sessions?

45. The aforesaid information called for should reach the Registry of this Court on or before 13.07.2026.

46. Post this matter for further hearing along with the status report that may be received from the High Court of Allahabad.

47. The matter be treated as part heard.
