



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1845 of 2024

Ansad Badruddin And Another

.....Appellant(s)

Versus

Anti Terrorist Squad Thru. Its Adg/Sp

.....Respondent(s)

Counsel for Appellant(s)	:	Sheeran Mohiuddin Alavi, Harsh Vardhan Kediya
Counsel for Respondent(s)	:	G.A.

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard Shri Amarjeet Singh Rakhra, who has filed his Vakalatnama on behalf of the appellants, the same is taken on record and Shri S.N. Tilhari, learned counsel for the Anti-Terrorist Squad (ATS).

2. At the very outset, Shri Rakhra has submitted that the present appellants are in jail w.e.f. 17.02.2021 in Third Bail Application No.3157 of 2024, arising out of Case Crime No.04 of 2021, under Sections 120B, 121A IPC, Sections 13, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967, Section 3, 4, 5 of Explosives Substances Act, 1908 and Sections 3, 25, 35 of Arms Act, registered at Police Station ATS Lucknow, District Lucknow.

3. Attention has been drawn towards the order of this Court dated 07.12.2022, whereby the first bail application of the present appellants have been rejected, the order reads as under:-

"(1) Heard Shri A.P. Singh, learned Senior Advocate assisted by Shri Amarendra Pratap Singh, learned counsel for the appellants, Shri S.N. Tilhari, learned AGA for State-respondent and perused the material on record.

(2) The brief facts of the case are that First Information Report was lodged against the petitioners by Anti-Terror Squad, Lucknow (hereinafter referred to as "ATS") on 16.12.2021 on the basis of a written

report of informant namely, Shri Hemant Bhushan Singh, Inspector, Special Task Force (hereinafter referred to as "STF"). The two appellants were arrested by ATS, Lucknow on 16.02.2021 and a recovery of various items was made from their possession.

(3) From Anсад Badruddin (appellant no.1) following items were recovered:-

- (i) One pistol 32 bore along-with six live cartridges;
- (ii) One mobile phone having BSNL SIM Card;
- (iii) a purse containing voter card, PAN card, ATM Card of Federal Bank, Driving License, Rs 3,530/-;
- (iv) two pocket diaries;
- (v) one railway ticket dated 11.02.2021 and 11 printed tickets of IRCTC;
- (vi) two receipts of Hotel Lee International and Silver Inn;
- (vii) a bag containing five small pages of diary;
- (viii) one big page diary;
- (ix) two pen drives;
- (x) nine rods of high quality explosives;
- (xi) two explosive devices (with electric battery detonator).

(4) From Firoz (appellant no.2) following items were recovered:-

- (i) one mobile phone having SIM of Idea Company;
- (ii) purse;
- (iii) Aadhar Card;
- (iv) ATM of Axis. Bank;
- (v) ATM of ICICI Bank;
- (vi) Metro Card;
- (vii) Driving License;
- (viii) Cash of Rs.1,270/-;
- (ix) Wrist watch and finger ring;
- (x) bag containing bank receipt of Nadakkuthazha Service Co-Bank Ltd.;
- (xi) seven rods of high-quality explosive;
- (xii) one bundle red color D.P. Wire.

(5) The Investigating Agency after thorough investigation has submitted charge sheet against the appellants for the offence under Sections 120-B,

121-A I.P.C., Sections 13, 16, 18, 20 of the Unlawful Activities (Prevention) Act, 1967, Sections 3/4/5 of the Explosive Substance Act, 1908 and Sections 3/25 Arms Act, 1959 and First Information Report was submitted under the same offences. The appellants are facing trial for the offences in question and the trial is for framing of charges against them.

(6) Learned counsel for the appellants has argued that instant appeal has been filed on behalf of the appellants under Section 21 of the National Investigation Act, 2008 against the impugned order dated 24.06.2022 passed by learned trial Court on the ground that the said order is illegal, unjust and improper. It has been further argued by learned counsel for the appellants that the appellants are the residents of State of Kerela and the members of Popular Front of India (hereinafter referred to as "PFI"), which is a registered organization registered under the Societies Registration Act and not a banned organization, hence assembly of two or more than two persons is not unlawful. Further, the FIR lodged against the appellants is based on a recovery memo dated 16.02.2021 on the written complaint of the informant and so far as joint recovery of contraband articles, which has been made from the possession of the appellants, is concerned there appears to be no independent or public witnesses as all the eighteen witnesses as per the chargesheet are witnesses of police, hence the recovery is a false and planted one. Details of recovery memo is mentioned in paragraph no.22 to the bail application. Moreover, the appellants have no role to play in the commission of alleged offence as their role was of ferrying the passengers to their destination. It has been lastly submitted that the appellants are in jail since 17.02.2021 and though they have criminal history of five cases, but the same are registered at Kerela and are of minor offences. Thus, from the perusal of the statements and material recorded in case diary, no cognizable offence is made out against the appellants.

(7) Learned AGA for the State-respondent submitted that a team was constituted and on the information of the informer that the members of the PFI will meet at Lucknow Kukrail Picnic Spot in order to commit the murder of people and Office Holders of Hindu Religious Organizations and for creating fear and terror in the Society and to commit blast in different programs of Hindu Religion and the Police team arrested the

accused-appellants at 18:30 hours on 16.02.2021 and at the time of the arrest of the appellants, one pistol 32 bore, 6 live cartridges, 9 rods of high quality explosive, 11 IRCTC railway ticket, one mobile phones, 2 Explosive ER FO Devices with battery, electronic detonator, diary written in Malayalam language, drive etc. was recovered from accused appellant no.1- Ansad Badruddin and 7 rods of high quality explosive, one bundle of red colour DP wire, one mobile phone and cash was recovered from the possession of accused appellant no.2- Firoz.

(8) Further the appellants had admitted that they are active members of PFI and their aim and object is of giving training to the people for fighting against Hindu religious organizations and to promote the ideology of PFI. A diary written in Malayalam language was also recovered from the possession of accused appellants disclosing their aim, object and ideology. In the diary "attack", "burning", "US", "Ram Mandir" like words were mentioned in code words. Further the words "defense", "enemy know everything", "we should prepare", "Muslims are strong", "the root of coming our area leader", "conspiracy" like words were also written.

(9) It was further pointed out that information was received by the ATS regarding a complaint made by the PFI to attack on the Senior Leader of different Hindu religious Organizations, important and sensitive places of Uttar Pradesh and on the said information the arrest of the accused appellants was made with huge quantity of explosives, etc. which shows that the appellants with an intent to achieve goal of PFI had made a conspiracy for committing the offences. It was further pointed out that explosives recovered from the appellants had been sent for examination, which were found to be high explosive PETN (Penta Erythritol Nitrate) in the report of the Forensic Science Laboratory, Agra. A copy of the same has been annexed as Annexure no. CA-4 to the counter affidavit.

(10) Further, the bank statement of accused appellant no.1- Ansad Badruddin shows that transaction of amount from his account to the account of PFI on different dates. The statement of the appellants was also recorded during investigation under Section 161 Cr.P.C. and they have confessed their guilt.

(11) Learned AGA has next argued that appellants had earlier filed a bail application before the Courts below but the same was rejected on 15.07.2021 and after rejection of the bail application the appellants preferred bail application under Section 439 Cr.P.C. before this Court and the same was again rejected by Co-ordinate Bench of this Court vide order dated 06.05.2022 with liberty to file an appeal against the said order under Section 21 of National Investigation Agency Act, 2008. That after dismissal of the said bail application the appellants preferred second bail application before the lower Court and the same was dismissed vide order dated 24.06.2022. Thus, the instant appeal has been preferred against the order dated 24.06.2022. It is next stated that it is true that PFI was not a banned organization at the relevant point of time, but the same does not give to the appellants a liberty to indulge in any sort of antisocial activities.

(12) After having heard the submissions of learned counsel for the parties and considering the fact that the recovery being made from the appellants of seized objectionable articles including explosive substances, which was to be used by them to attack on Senior Leader of different Hindu Religious Organization and to blast different sensitive places of Uttar Pradesh, for which no satisfactory explanation has been given by the appellants, thus, it cannot be said that the involvement of the appellants in their nefarious designs could be ruled out and further looking into their criminal antecedents and the fact that the trial is in progress, which is fixed for framing charges against the appellants by the trial Court, we are not inclined to grant bail to the appellants and the same is accordingly refused.

(13) Accordingly, while affirming the impugned order dated 24.06.2022, the instant criminal appeal of the appellants- Ansad Badruddin and Firoz, involved in Case Crime No.04/2021, under Sections 120-B, 121-A I.P.C., Sections 13, 16, 18, 20 of the Unlawful Activities (Prevention) Act, 1967, Sections 3/4/5 of the Explosive Substance Act, 1908 and Sections 3/25 Arms Act, 1959 at police station ATS Lucknow, District Lucknow, is dismissed.

(14) The trial court is directed to expedite the trial of the present case and

conclude the same expeditiously preferably within a period of one year from the date of production of a certified copy of this order, if there is no legal impediment.

(15) The learned counsel for the parties shall place a copy of this order before trial Court for necessary information and compliance."

4. Shri Rakhra has also drawn attention of this Court towards Annexure No.14, which is an order dated 24.01.2024 passed by this Court in Application U/S 482 No. 662 of 2024 "*Ansad Badruddin versus State of U.P. and another*", which reads as under:-

"1. Heard Sri Ishan Baghel, learned counsel for the petitioner and Sri Pradeep Tiwari holding brief of Sri Shiv Nath Tilhari, learned counsel for opposite party no. 2 as well as Sri Ram Raj, learned AGA for the State.

2. By means of this petition under Section 482 Cr.P.C., the petitioner has prayed the following main reliefs:

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to set-aside the order dated 24.04.2023 passed by the learned Special Judge NIA/ATS, Lucknow in Sessions Case No. 1309 of 2021 (State of Uttar Pradesh v. Ansad Badruddin and Another), wherein, the examination-in-chief of the prosecution witnesses PW-3 and PW-4 was conducted while the examination-in-chief of the PW-2 remained pending, as well as the orders 02.05.2023 and 15.05.2023 passed by the learned Special Judge NIA/ATS, Lucknow in Sessions Case No. 1309 of 2021 (State of Uttar Pradesh v. Ansad Badruddin and Another), wherein the learned Trial Court has proceeded to direct that examination-in-chief of all the prosecution witnesses, relied upon in the charge-sheet, be conducted and thereafter the said prosecution witnesses be called for cross examination by the defence, may also kindly be quashed, in the interest of justice.

Further, this Hon'ble Court may also kindly be pleased to direct the learned Special Judge NIA/ATS, Lucknow to conduct the proceedings of Sessions Case No.1309 of 2021 (State of Uttar Pradesh v. Ansad Badruddin and Another) in legal and lawful manner, by providing

reasonable opportunity to the applicant/accused to cross-examine the prosecution witnesses, before calling the rest of the prosecution witnesses for conducting examination-in-chief, in the interest of justice.

It is further prayed that the entire proceedings of Sessions Case No.1309 of 2021 (State of Uttar Pradesh v. Ansaad Badruddin and Another), arising out of FIR No. 04 of 2021, Police Station ATS, Gomti Nagar, District Lucknow, pending in the Court of the learned Special Judge NIA/ATS, Lucknow, under Sections 120-B, 121-A I.P.C., Sections 13, 16, 18 and 20 of UAPA, 1967 and Sections 3, 4 and 5 of Explosive Substances Act, 1908 and 3, 25 and 35 Arms Act, 1959, may kindly remain stayed during the pendency of the present Application, in the interest of justice."

3. At the very outset, learned counsel for the petitioner has informed that the cross-examination of PW-1 has been done by the present petitioner, however the same opportunity has been closed for other co-accused persons. Learned counsel for the petitioner has drawn attention of this Court towards Annexure No. 1 showing the orders dated 24.04.2023, 02.05.2023 and 15.05.2023 whereby the examination-in-chief of PW-3, PW-5, PW-6, PW-7 has been done, however none of the aforesaid prosecution witnesses have been permitted to be cross-examined by the petitioner and the order dated 15.05.2023 reveals that the learned trial court has observed that after recording the examination-in-chief of all the prosecution witnesses, the opportunity of cross-examination would be provided to the petitioner.

4. Learned counsel for the petitioner has referred Section 135 and 138 of the Evidence Act, 1872. Section 135 of the Act provides the order of production and examination of witnesses and Section 138 of the Act provides the order of examinations. For convenience, Sections 135 and 138 of the Evidence Act read as under:

"135. Order of production and examination of witnesses.?The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

138. Order of examinations. Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief."

5. As per Section 138, the witnesses shall be first examined-in-chief then if the adverse party so desires, cross examined, then if the party calling him so desires, re-examined. In other words, the examination-in-chief of the witness would be done first then he would be cross-examined and if there is any need, he may be re-examined. The aforesaid procedure is adopted by the learned trial court, therefore, for the convenience of the parties and also in the interest of justice, all the three steps, if so required, may be done one by one. After recording of examination-in-chief of any witness, he should be cross-examined, thereafter if it is so needed, he may be re-examined.

6. Learned counsel for the petitioner has stated that if the examination-in-chief of all the prosecution witnesses is recorded, then their cross-examination would not be convenient for the Advocate of the petitioner, therefore he has requested that all the prosecution witnesses whose examination-in-chief has been recorded i.e. prosecution witnesses nos. 2 to 9, they be cross-examined by the petitioner one by one. After the aforesaid cross-examination of PW-2 to PW-9, the examination-in-chief of the other prosecution witnesses be recorded.

7. Learned counsel for the petitioner has stated that for the aforesaid cross-examination, the short dates may be fixed but the petitioner may be given opportunity to cross-examine all the aforesaid prosecution witnesses one by one.

8. On the other hand, learned counsel for opposite party no. 2 has referred Section 231 of the Cr.P.C. which provides evidence for prosecution. Learned counsel has referred Sub Clause 2 of Section 231 Cr.P.C. which provides that the trial judge may, as per his discretion, permit the cross-examination of any witness to be deferred until any

witness or witnesses have been examined or recall any witness for further cross-examination, therefore, the learned trial court has rightly observed in the order dated 15.05.2023 that after chief-examination of all the prosecution witnesses, those may be cross-examined by the petitioner.

9. Replying the aforesaid contention of learned counsel for opposite party no. 2, Sri Baghel has referred a judgment of Apex Court in *Re: State of Kerala Vs. Rasheed* reported in [(2019) 13 SCC 297] wherein the Apex Court in Para nos. 18, 22 and 23 has held that the examination of witness should be done in accordance with Section 138 of the Act, 1872 and there cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) Cr.P.C. can be exercised as it shall depend on case-to-case basis. Vide Para 23 thereof, the factors have been explained by the Apex Court, deciding the application under Section 231(2) Cr.P.C. For the convenience, Para nos. 18, 22 and 23 of the judgment read as under:

"18. What follows from the discussion is that the norm in any criminal trial is for the examination-in-chief of witnesses to be carried out first, followed by cross-examination, and re-examination if required, in accordance with Section 138 of the Indian Evidence Act, 1872. Section 231(2) of the Cr.P.C., however, confers a discretion on the Judge to defer the cross-examination of any witness until any other witness or witnesses have been examined, or recall any witness for further cross-examination, in appropriate cases. Judicial discretion has to be exercised in consonance with the statutory framework and context while being aware of reasonably foreseeable consequences.⁵ The party seeking deferral under Section 231(2) of the Cr.P.C. must give sufficient reasons to invoke the exercise of discretion by the Judge, and deferral cannot be asserted as a matter of right.

22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) of the Cr.P.C. can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) of the Cr.P.C. is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an Application under Section 231(2) of the Cr.P.C., a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

- (i) possibility of undue influence on witness(es);
- (ii) possibility of threats to witness(es);
- (iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- (iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- (v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) of the Cr.P.C.

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) of the Cr.P.C."

10. Sri Baghel has also referred Annexure No. 5 which a judgment and order dated 28.04.2023 passed by this Court in Application U/s 482 Cr.P.C. No. 4201 of 2023 (Sallahuddin Vs. State of U.P. and Others), whereby application of Section 231(2) of Cr.P.C. has been discussed in the light of dictum of Apex Court in re: Rasheed (supra).

11. Having heard learned counsel for the parties, having perused the material available on record, the relevant provisions of Section 135 and 138 of the Evidence Act as well as Section 231 of Cr.P.C. and also having regard to the dictum of Apex Court in re: Rasheed (supra), I am of the considered opinion that the examination of any witness should be done strictly in accordance with Section 138 of the Act, 1872 and the discretion so conferred upon the trial court under Section 231(2) Cr.P.C. must be applied judicially and carefully giving specific reasons to that effect, so as to achieve the interest of justice of the cause and the parties.

12. In the present case, the learned trial court has not given any reasons

as to why he has not permitted the defence side for cross-examination of the prosecution witnesses after completion of examination-in-chief.

13. Hence, I find it appropriate to issue direction to the effect that those prosecution witnesses whose examination-in-chief has been completed i.e. PW-2 to PW-9, their cross-examination be conducted by the petitioner one by one. It is upon the trial court that the aforesaid cross-examination may be conducted on day-to-day basis. After the cross-examination of the aforesaid prosecution witnesses i.e. from PW-2 to PW-9, the examination-in-chief of the other prosecution witnesses may be permitted to be done. The learned trial court shall also ensure that the trial in question is conducted and concluded with expedition and no one unnecessary adjournment is given to any of the parties.

14. In view of the aforesaid observations, this petition is disposed of."

5. Shri Rakhra has therefore submitted that despite the aforesaid orders having been passed, the progress of trial is very slow and the PW-2 (informant of the FIR) has not been cross-examined till date. However, some formal witnesses like PW-3 Vasudev Raja, PW-4 Narendra Pratap Singh, PW-5 Shri Neeraj Kumar and PW-6 Jagdish Chauhan are already examined. Shri Rakhra has submitted that when the first bail application was rejected by this Court on 07.12.2022, the fact was noted by this Court that charges have already been framed. Further, attention has been drawn towards the supplementary affidavit dated 11.06.2026, showing Annexure Nos. 1 and 2, which are adjournment applications being filed by the prosecution and the order sheet w.e.f. 16.01.2025 to 04.02.2026.

6. The perusal thereof reveals that despite some coercive steps having been taken by the court concerned and despite an opportunity having been given to the prosecution to cross-examine the PW-2 through video conferencing (vide order dated 18.08.2025), cross-examination of PW-2 has not been completed.

7. Shri Rakhra has further submitted that there are total 18 prosecution witnesses and the cross-examination of prosecution witness number 2 (PW-2) has not been completed, therefore, there is no hope to conclude the trial in near future. Therefore, he has referred the dictum of

Constitution Bench of Apex Court in re; **Union of India versus K.A. Najeed** reported in **AIR 2021 Supreme Court 712**, the present appellants may be enlarged on bail.

8. Shri S.N. Tilhari has drawn attention of this Court towards the dictum in re; **Gulfisha Fatima versus State (Govt. of NCT of Delhi)** reported in **2026 LiveLaw (SC) 1**, referring so many paragraphs after para 33 of the judgment to impress the Court that since the present appellants are in jail pursuant to the Special Act, the rigor of Section 43D(5) does not permit the accused appellant to get bail even if the trial is being delayed.

9. Replying the aforesaid contention and legal argument of Shri Tilhari, Shri Rakhra has placed reliance on the dictum of Apex Court in re; **Syed Iftikhar Andrabi versus National Investigation Agency, Jammu** reported in **2026 SCC OnLine SC 881**, referring para 34 onwards, whereby the Hon'ble Apex Court has held that even if any accused person is within judicial custody or in jail, but their expectation of speedy trial would not be curtailed inasmuch as the right to speedy trial is enshrined under Article 21 of the Constitution of India and the Constitution Bench of the Hon'ble Apex Court in re; **K.A. Najeed** (supra) has interpreted such situation thoroughly. The judgment in re; **Syed Iftikhar Andrabi** (supra) has been pronounced by the Court on 18.05.2026, whereas the judgment in re; **Gulfisha Fatima** (supra) has been pronounced on 05.01.2026. In both the aforesaid judgments, the quorum is of two judges, whereas the judgment in re; **K.A. Najeed** (supra) is a judgment of Constitution Bench of the Apex Court.

10. Shri Rakhra has also referred the decision of the Apex Court in re; **Sheikh Javed Iqbal alias Ashfaq Ansari alias Javed Ansari versus State of Uttar Pradesh** reported in **(2024) 8 SCC 293**, wherein the similar controversy was before the Hon'ble Apex Court and the Hon'ble Apex Court has observed that the dictum of Apex Court in re; **K.A. Najeed** (supra) may not be ignored. He has also referred from the recent order/ judgment of the Apex Court in re; **Mohd. Saquib Ansari versus State of NCT of Delhi**, wherein the Apex Court vide order dated 27.07.2026 has observed that the speedy trial is a fundamental right of the accused-appellant.

11. In the light of what has been considered here-in-above, we are surprised to notice that the learned trial court i.e. the court of Special Sessions Judge 5/ NIA/ ATS, Lucknow has not shown its proper indulgence to abide by the directions of this Court, while rejecting the bail application and while passing the order in an application under Section 482 Cr.P.C. Prima facie, it is clear that there is no progress in the trial and in the absence of non-progress of the trial, the fundamental right of the accused persons under Article 21 of the Constitution of India may be protected in the light of the direction being issued by the Apex Court in **K.A. Najeeb** (supra). Therefore, the learned trial court is directed to submit its comprehensive report as to why the trial has not been concluded in terms of the order dated 07.12.2022, the bail rejection order and also as to why the positive efforts have not been taken in compliance of the order dated 24.01.2024 passed in an Application U/S 482 No. 662 of 2024.

12. Let the copy of this order be provided to the learned trial court through District & Sessions Judge, Lucknow within 24 hours by the Registry of this Court.

13. List/ Put up this appeal on 10.08.2026. This matter may be taken up as a first case immediately after lunch.

(Ram Manohar Narayan Mishra,J.) (Rajesh Singh Chauhan,J.)

August 3, 2026

Mohd. Sharif