



2026:AHC-LKO:55425-DB

A.F.R.

**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, Amarjeet Singh Rakhra, 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, learned counsel for the appellants and Shri S.N. Tilhari, learned counsel for the Anti-Terrorist Squad (ATS).
2. The instant Appeal is being preferred, against the order dated 14.05.2024 passed by the Ld. In-charge Special Judge-NIA, Lucknow, in Third Bail Application No. 3157/2024 arising out of Case Crime No.04/2021, under Sections 120 B. 121-A. IPC: Sections 13, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967, Sections 3, 4, 5 of the Explosives Substances Act, 1908, and Sections 3, 25, 35 of the Arms Act, registered at Police Station ATS Lucknow, District Lucknow.
3. This is the case where noticing huge recovery of contraband items including explosive items and other incriminating material from the appellants, this court rejected the bail of the appellants dated 07.12.2022 issuing directions to the learned trial court to conclude the trial within a period of one year. Not only the above, when one application has been filed by the appellants before this court under section 482 Cr.P.C., this court directed the learned trial court to conclude the trial with expedition completing examination of prosecution witnesses with expedition.
4. On 03.08.2026, when this case was put up before this Court and learned counsel for the appellants apprised the Court that the star witness/ most relevant

witness i.e. P.W.-2, who is complainant has not been examined in couple of dates despite the bailable warrant, non-bailable warrant and other coercive orders having been passed and the opportunity was given to such witness to be cross-examined through video conferencing, but he could not be cross-examined, then the following order has been passed on 03.08.2026:-

"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- Anсад 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- Ansa 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 "Ansa 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. Ansa 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. Ansa 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. Ansa 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. Ansa 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. Najeel** 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. Najeeb** (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. Najeeb** (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. Najeeb** (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. "

5. In compliance of the aforesaid order, the trial court has submitted a report dated 07.08.2026, which is on record as document no."A". The aforesaid report of the learned trial court clearly reveals that as on 07.08.2026, total 95 dates have been fixed by the learned trial court to examine the prosecution witnesses, but the prosecution has not cooperated in the trial proceedings. The learned trial court has informed that chief examination of total 11 prosecution witnesses have been completed and out of those 11 prosecution witnesses, only 5 prosecution witnesses have been cross-examined. P.W.-2, who is the most relevant prosecution witness has recorded his chief and his cross-examination has been completed in 35 pages, but his cross-examination has not yet been completed.

6. Having noted the aforesaid report of the learned trial court, we are surprised as to why the prosecution has not been taking proper step to get the prosecution witnesses examined before the learned trial court. For not examining the prosecution witness by the prosecution is nothing but to extend the help, indirectly, for the accused persons against whom the statutory prescription is against under Section 43-D, proviso of sub section (5) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA,1967'). The relevant portion of sub-section (5) with proviso thereof reads as under :-

"(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

7. At the same time, we fail to understand as to why in such facts and circumstances, learned trial court has not adopted the provision of section 309 Cr.P.C.(Provision of Section 346 BNSS) wherein it has been categorically

indicated that for the serious offense including those offense which have been indicated in such section, day-to-day trial may be conducted and if the prosecution fails to produce prosecution witnesses before the learned trial court to be examined or cross-examined, any coercive order may be passed including the order imposing cost upon the prosecution.

8. In the present case, when the prosecution could not produce the P.W.-2 in so many dates which have been indicated in the earlier order, at least some cost should have been imposed upon the prosecution for delaying trial. In the present case, there are total 18 prosecution witnesses and out of those 18 prosecution witnesses, the examination of only 5 prosecution witnesses have been completed and remaining 13 prosecution witnesses are yet to be examined.

9. The present appellants are in jail with effect from 17.02.2021, therefore, more than 5 years and 4 month period have passed and the progress of trial is so poor. Keeping in a view the pace of trial, there is no likelihood that the trial would be concluded in near future.

10. In given circumstances, the dictum of three judges Bench of Hon'ble Apex Court in re: **Union of India Versus K.A. Najeed** reported in (2021) 3 SCC 713 would come into picture which clearly held that if the period of incarceration of the accused is long; there is no good progress in trial and there is no likelihood to conclude the trial in near future, then the right of the accused/detenué enshrined under Article 21 of the Constitution of India, i.e. right to speedy trial would come into picture and in that case such accused persons may be enlarged on bail. The dictum of Apex Court has been consistently followed by the Apex Court in subsequent judgments and by the various High Courts. Even there are some cases wherein the provisions of UAPA,1967 are involved and rider of proviso clause of sub section (5) of section 43-D of the UAPA,1967 has been shown. Hon'ble the Apex Court has held that the decision of in re: **K.A. Najeed** (supra) would be followed in its letter and spirit. In a recent judgement of Apex Court in re: **Syed Iftikhar Andrabi Versus National Investigation Agency, Jammu** reported in 2026 SCC OnLine SC 881 , the case is related to the offense of UAPA,1967 and Hon'ble Apex Court has held that the dictum of **K.A. Najeed** (supra) would be followed in its letter and spirit. For convenience paras no. 2, 37 and 41 reads as

under:-

"2. The present case raises an important question concerning the interface between Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 and the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. More particularly, the issue concerns the propriety of smaller Benches progressively hollowing out the constitutional force of a larger Bench decision without ever expressly disagreeing with it.

37. The logic underlying all these judgments traces back to Najeed, which is now the law of the land governing the grant of bail under the UAP Act in a situation of prolonged detention. In that context, it is noteworthy that while Gulfisha Fatima relied on Gurwinder to adopt a narrower reading of Najeed, neither Gulfisha Fatima nor Gurwinder engage with this subsequent line of authority of case law.

41. However, we need to keep in mind one important over-riding consideration and we reiterate this. While Gurwinder Singh and Gulfisha Fatima are by Benches of two Hon'ble Judges, K.A. Najeed is a judgment by three Hon'ble Judges. It is evident from a reading of the two judgments in Gurwinder Singh and Gulfisha Fatima that the two-Judge Bench has made a clear departure from the ratio laid down in K.A. Najeed. Judicial discipline and certainty demands that Benches of smaller strength are mindful of the decisions rendered by larger Benches and are bound to follow the same. If the smaller Benches are unable to agree with the ratio laid down by the larger Bench then the proper and the only course of action open is to make a reference to the Hon'ble Chief Justice of India for placing the matter for consideration by a still larger Bench. Being in a combination of two Judges, we are bound by the ratio laid down by the three-Judge Bench in K.A. Najeed. We say this and no more. "

11. By means of aforesaid judgement, the Hon'ble Apex court has clarified the decision in re: **Gulfisha Fatima Versus State (Govt. of NCT Delhi)** reported in **2026 Live Law (SC) 1**, by saying that the directions being issued by the Apex Court in re: **K.A. Najeed** (supra) may not be ignored, though the Apex Court in re: **Gulfisha Fatima** (supra) has observed that if the accused has committed serious offense under UAPA, 1967, the benefit of **K.A. Najeed** (supra) would not be available. The judgment in re: **Gulfisha Fatima** (supra) is dated 05.01.2026 whereas the judgement in re: **Syed Iftikhar Andrabi** (supra) is dated 18.05.2026.

12. Having considered the submissions of learned counsel for the parties, having perused the aforesaid case laws being cited by the parties, the material available on record and the orders being passed by this Court which have been

referred in the earlier order dated 03.08.2026 as well as the report of learned trial court dated 07.08.2026, we find it appropriate that the present appellants may be enlarged on bail for the reason that despite the specific order having been passed by this Court twice to conclude the trial with expedition, only 5 prosecution witnesses which are mainly formal in nature have been examined, the examination of remaining 13 prosecution witnesses are to be completed, the main prosecution witness i.e. P.W.-2 has not turned up for cross examination in so many dates, despite some coercive orders have been passed and he has been given an opportunity to be cross examined through video conferencing, in view of the aforesaid facts and circumstances of the case, there is no likelihood to conclude the trial in near future and keeping in a view the pace of trial the present appellants are entitled to get the benefit of dictum of Apex Court in re: **K.A. Najeeb** (supra).

13. Accordingly, the impugned order dated 14.05.2024 passed by In-charge Special Judge- NIA, Lucknow is hereby set aside/ quashed.

14. The appeal is **allowed** in view of the aforesaid terms.

15. Let appellants - **Ansad Badruddin and Firoz Khan** convict of the aforesaid case crime number be released on bail on furnishing two sureties of Rs.5,00,000/- and a personal bond to the equal amount on the following conditions:-

(i) Passport(s) of the appellants, if any, shall be deposited before the learned trial court concerned.

(ii) Both the appellants shall mark their attendance before Police Station, ATS Gomtinagar, Lucknow on fortnightly between 11 A.M. to 4.00 P.M. till conclusion of trial and shall not leave the State without seeking prior permission of learned trial court, failing which this bail order may be cancelled or withdrawn on the application being filed by the prosecution.

(iii) The appellants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The appellants shall remain present before the trial court on each date

fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code/ 269 of the B.N.S., 2023.

(v) In case, the appellants misuse the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C./ 84 of the B.N.S.S., 2023 is issued and the appellants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code/ 208 of the B.N.S., 2023.

(vi) The appellants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C./ 351 of the B.N.S.S., 2023. If in the opinion of the trial court absence of the appellants is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

16. Before parting with, learned Trial Court is directed to expedite the trial and conclude the same with expedition invoking Section 309 Cr.P.C./346 of BNSS and no unnecessary adjournment shall be given to any of the parties.

(Ram Manohar Narayan Mishra,J.) (Rajesh Singh Chauhan,J.)
August 10, 2026
dk/