



2026:DHC:7447-DB



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

Reserved on: 25.08.2026
Pronounced on: 03.09.2026

CNR No. DLHC010223332023
+ **CRL.A. 453/2023**
KAMRAN ASHRAF RESHIAppellant
Through: Mr.Kartik Murukutla and
Mr.Abu Bakr Sabbaq, Advs.

CNR No. DLHC010236102026
+ **CRL.A. 528/2026**
SOBIYA AZIZAppellant
Through: Mr.Kartik Venu, Mr.Arjan Ajai
Singh Chonker, Mr.R. Jude
Rohit, Mr.Agrim Tandon and
Ms.Alisha Sharda, Advs.

versus

NATIONAL INVESTIGATION AGENCYRespondent
Through: Mr.Amit Tiwari, SPP with
Ms.Ayushi Srivastava,
Mr.Kushagra Malik, Mr.Arpan
Narwal and Mr.Ujjwal Tyagi,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. These appeals have been filed by the appellants- Sobiya Aziz (Crl.A. 528/2026) and Kamran Ashraf Reshi (Crl.A. 453/2023) under



Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as, 'NIA Act') challenging the order(s) dated 14.05.2026 (for Sobiya Aziz) and dated 17.03.2023 (for Kamran Ashraf Reshi) passed by the learned Additional Sessions Judge-03, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as, the 'Trial Court') in SC No.2/2022, titled "***NIA v. Tariq Ahmed Dar & Ors.***" (emanating from RC No.29/2021/NIA/DLI dated 10.10.2021 registered at Police Station NIA, New Delhi), whereby the learned Trial Court dismissed the bail applications filed by the appellants herein.

2. These appeals are being taken up for disposal together as many of the submissions of the learned counsels for the parties were common.

CRL.A. 528/2026

3. The appellant Sobiya Aziz has been arrayed as accused no.17 in the chargesheet dated 08.04.2022 filed by the respondent in the above case.

4. It is the case of the prosecution that reliable information was received that the cadres of proscribed terrorist organizations such as Lashkar-e-Taiba ('LeT'), Jaish-e-Mohammed ('JeM'), Hizb-ul-Mujahideen ('HM'), Al Badr and other similar outfits and their affiliates such as The Resistance Front ('TRF'), People Against Fascist Forces ('PAFF'), Mujahideen Gazwatul Hind ('MGH'), etc. are all active in Jammu & Kashmir ('J&K') and are being orchestrated from Pakistan. These organisations and their affiliates are conspiring



both physically and in cyberspace and are planning to undertake violent terrorist acts in J&K and in major cities of India, including New Delhi. They, in cohorts with their Pakistan based handlers and commanders, along with the network of Over-Ground Workers ('OGWs'), are also indulging in radicalization of impressionable local youth for the purpose of recruiting and training them in handling of arms, ammunition and explosives. The members of the proscribed terrorist organizations and their affiliates have also conspired to commit terrorist acts, recruited local youth to become members of terrorist organizations, and procured arms and ammunition for terrorism purposes. The members of the above-said proscribed organizations have conspired to wage war against the Government of India.

5. Based on the above information, FIR No. RC-29/2021/NIA/DLI dated 10.10.2021 was registered by the National Investigation Agency (hereinafter referred to as, 'NIA') under Sections 120B, 121A, 122 and 123 of the Indian Penal Code, 1860 (hereinafter referred to as, 'IPC') and Sections 18, 18A, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as, 'UAPA').

6. The appellant was arrested on 22.10.2021 and a search was conducted at her residence, where, it is alleged, incriminating material in the form of several diaries wherein she had made handwritten notes pertaining to establishment of Shariyat Law, Islamic State Ideology and other Jihadi material were recovered. It is further alleged that an Islamic State Flag was also recovered from her house.

7. Based on further investigation, the NIA filed the first



chargesheet on 08.04.2022, naming 26 accused persons, out of which one was separately charge-sheeted, being a juvenile. Out of the 26 accused persons, the appellant herein was arrayed as accused no.17 and was charged with Sections 120B and 121A of the IPC read with Sections 18, 20, 38 and 39 of the UAPA.

8. A supplementary chargesheet under Sections 120B, 121A, 122, 123 of the IPC read with Sections 18, 18A, 18B, 20, 38 and 39 of the UAPA was filed by the NIA on 20.03.2023. *Vide* the said supplementary chargesheet, the NIA cited 51 additional witnesses and 55 additional documents in support, and named one additional accused.

9. The first application filed by the appellant seeking bail was withdrawn by her on 18.01.2022. Her second application was dismissed on merits by the learned Trial Court by a speaking order dated 03.02.2023, wherein the learned Trial Court found a *prima facie* case against the appellant.

10. The appellant thereafter filed a third application seeking bail on 20.12.2025, which was dismissed by the learned Trial Court *vide* the impugned order dated 14.05.2026.

11. The learned Trial Court, while dismissing the third bail application, observed that there was no material change in circumstances since the dismissal of the appellant's second bail application and that there was a *prima facie* case against the appellant indicating that she had conspired with the co-accused persons for the commission of a terrorist act. The learned Trial Court also observed that the trial had proceeded in a reasonable manner and, therefore, the



appellant's long incarceration was rejected as a ground for grant of bail.

Submissions of the learned counsel for the appellant-Sobiya Aziz

12. The learned counsel for the appellant Sobiya Aziz submits that the appellant Sobiya Aziz is presently 33 years old and has no other criminal antecedents. The appellant Sobiya Aziz has already spent almost 5 years of incarceration and there is no chance of the trial ending soon. He submits that only on this ground, she is entitled to be released on bail. In this regard, he places reliance on the judgments of the Supreme Court in ***Gulfisha Fatima v. State (Govt. of NCT Delhi)***, 2026 SCC OnLine SC 10; ***Syed Iftikhar Andrabi v. National Investigation Agency, Jammu***, 2026 SCC OnLine SC 881; and, ***Union of India v. K.A. Najeeb***, (2021) 3 SCC 713.

13. He submits that being a woman, the appellant Sobiya Aziz even otherwise is entitled to bail. In support, he places reliance on the judgment of the Supreme Court dated 12.01.2026 in SLP (CRL.) No.11095/2025, titled "***Alemla Jamir v. NIA***".

14. He submits that the appellant is also suffering from various ailments, as is reflected from her medical report dated 20.08.2026 submitted by the Superintendent, Central Jail No.6, Tihar, in compliance with the directions of this Court in its order dated 17.08.2026.

15. He submits that though the appellant stands charged under Sections 120B and 121A of the IPC and Section 18 of the UAPA, she has been discharged of offences under Sections 20, 38 and 39 of the



UAPA *vide* the order dated 20.08.2024 passed by the learned Trial Court. She has been suffering incarceration since 22.10.2021 and presently, out of the 359 cited witnesses, only 21 witnesses have been examined by the prosecution.

16. He submits that the allegations made by the prosecution in the chargesheet, or in the testimonies of PW-250/*Khursheed Ahmad Ganie Ganie @ Jahangir Ahmad Ganie*, PW-256/*Tariq Ahmed Hajam*, PW-268/*Rukiyah Jan* and the protected witness, PW-X5, or in the documents D-38, D-163 and D-184, that is, the statements of the co-accused Bilal Ahmed Mir, or in the diaries recovered from the appellant Sobiya Aziz, do not make out a *prima facie* case against the appellant Sobiya Aziz. He submits that the appellant Sobiya Aziz has been involved in this case only because she happens to be the sister of a militant who died in an encounter. Only for this reason, the appellant cannot be made to suffer such long incarceration. In support, he places reliance on the judgments in ***Dr. Anand Teltumbde v. National Investigation Agency & Anr.***, 2022 SCC OnLine Bom 5174, and ***Ammar Abdul Rahiman v. National Investigation Agency***, 2024:DHC:3637-DB.

17. He submits that one of the grave allegations made against the appellant Sobiya Aziz is that she was involved in transporting a militant, however, the same is only based on the statement of PW-X5 who, at best, can state that she was also present in the car along with PW-X5 in which some arms were being transported. He submits that, however, just like PW-X5, the appellant was not aware of the contents of the box which was lying in the car, and there exists no evidence to



show that she was aware of the same.

18. Placing reliance on the judgment of the Supreme Court in ***Sujit Tiwari v. State of Gujarat & Anr.***, (2020) 13 SCC 447; the judgments of this Court in ***Galiv Hussain v. State GNCT of Delhi***, 2023:DHC:2788, and ***Saneesh Soman v. Narcotics Control Bureau***, 2025 SCC OnLine Del 4994; and of the High Court of Gujarat in ***Union of India v. State of Gujarat***, 2022 SCC OnLine Guj 1533, he submits that as far as the statements of PW-250/*Khursheed Ahmad Ganie Ganie @ Jahangir Ahmad Ganie*, PW-256/*Tariq Ahmed Hajam*, and PW-268/*Rukiyah Jan* are concerned, they do not, in any manner, sustain the case of the prosecution.

19. Regarding the recovered diaries, he submits that even if there was some complained material written in the personal diary by the appellant Sobiya Aziz, the same also does not further the allegations raised against her, as there is no evidence that she had ever disseminated or shared such objectionable writings in public domain.

20. He submits that there are other co-accused who had been released on bail, not only by the learned Trial Court but by this Court as well. In this regard, he places reliance on the judgment of the Supreme Court dated 22.05.2026 in SLP (CRL.) 83/2024, titled ***Suhail Ahmad Thokar v. National Investigation Agency***; the judgment of this Court in ***Haris Nisar Langoo v. National Investigation Agency***, 2026:DHC:2317-DB; and the orders dated 02.01.2023, 03.05.2023, 26.07.2023 and 20.04.2024 of the learned Trial Court in SC No. 02/2022 and RC No. 29/2021/NIA/DLI, titled ***NIA v. Tariq Ahmad Dar & Ors.***



Submissions of the learned SPP

21. On the other hand, Mr.Tiwari, the learned SPP for the respondent, vehemently submits that the appellant Sobiya Aziz is part of a larger conspiracy to wage war against India and to help and support terrorist activities. He takes us through the statements of PW-250/*Khursheed Ahmad Ganie Ganie @ Jahangir Ahmad Ganie*, PW-256/*Tariq Ahmed Hajam*, PW-268/*Rukiyah Jan* and the protected witness, PW-X5, the disclosure statements of co-accused Bilal Ahmed Mir contained in D-38, and D-184, the contents of the diaries of the appellant Sobiya Aziz, as also the handwriting expert report, to submit that the charge against the appellant Sobiya Aziz is substantiated.

22. He submits that even otherwise as the charge stands framed against the appellant, this Court would not be justified in finding that no *prima facie* case exists against the appellant, which is a condition precedent under Section 43D(5) of the UAPA for grant of bail.

23. He further submits that PW-21/*Tariq Ahmed Hajam* has stated before the learned Trial Court during his further examination-in-chief on 19.08.2026 that he has received information from an official of the Deputy Inspector General of Police that there is a death threat to him, as a hit order has been issued against him by the TRF. He submits that therefore, the appellant should not be enlarged on bail as there is a possibility of her threatening the witnesses and prejudicing the trial.

ANALYSIS AND FINDINGS

24. We have considered the submissions made by the learned counsels for the parties.



25. It remains undisputed that the appellant Sobiya Aziz has been in custody since 22.10.2021 and has, therefore, already suffered incarceration for almost 5 years. Presently, only 21 witnesses have been examined, out of total cited 359 witnesses. Therefore, there is no chance of the trial concluding anytime soon.

26. In ***Khuram Parvez*** (supra), we had considered the law relating to the effect of delay in the trial on the Fundamental Rights of the accused under Article 21 of the Constitution of India, and the balance to be achieved between this Right and the restrictions on bail contained in Section 43D(5) of the UAPA. We would quote from the said judgment as under:

*“52. In **K.A. Najeeb** (supra), the Supreme Court considering the balance to be achieved between the Fundamental Right of an accused for a speedy trial vis-à-vis the restrictions imposed under Section 43D(5) of the UAPA on release of the accused on bail, held that these restrictions do not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. It held that whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail, however, these restrictions will melt down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. It was further held that Section 43D(5) of UAPA is comparatively less stringent than Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, where the 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. Instead, Section 43D(5) of the UAPA merely provides another possible ground for*



the court to refuse bail, in addition to the well-settled considerations like gravity of offence, etc.. We quote from the judgment as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the 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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. 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.

19. 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 Act. Unlike the NDPS Act 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 precondition under UAPA. Instead, Section 43-D(5) of the 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.”

53. The above judgment and various others of the Supreme Court were considered by the Supreme Court in **Gulfisha** (supra), and the Supreme Court framed the question to be considered as “in prosecution under the UAPA, when delay and prolonged incarceration are invoked as grounds for bail, what is the principled approach by which a constitutional court is to examine such a plea.”

54. In answer to the above question, the Supreme Court held as under:

“30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by



law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

31. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair. The expression “procedure established by law” reflects that balance. The UAPA, as a special statute enacted to address offences alleged to affect the security of the State and the stability of civic life, represents a legislative judgment as to the conditions under which bail may be granted at the pre-trial stage. Section 43D(5) of UAPA embodies the exercise of that judgment.

32. In *Union of India v. K.A. Najeer*, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.

33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere



passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

34. The constitutional inquiry into delay is not an inquiry into guilt. It is an inquiry into whether continued detention remains constitutionally permissible in the circumstances of the case. That inquiry is necessarily contextual. Context includes the nature of the allegation, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to delay, and the risks attendant upon release. Delay cannot be detached from these considerations and treated as a solitary determinant.

35. The proper constitutional question, therefore, is not whether Article 21 is superior to Section 43D (5). The proper question is how Article 21 is to be applied where Parliament has expressly conditioned the grant of bail in relation to offences alleged to implicate national security. The law does not contemplate an either-or approach. Nor does it contemplate an unstructured blending of statutory and constitutional considerations. What is required is disciplined judicial scrutiny that gives due regard to both.

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101. It is well recognised that Article 21 rights, though not absolute, require the State and the Court to justify continued custody with reference to the specific individual before it. Treating all accused identically irrespective of their roles would risk transforming pre-trial



detention into a punitive mechanism divorced from individual circumstances. The constitutional mandate demands a differentiated inquiry: where prolonged custody disproportionately burdens those whose roles are limited, the balance between individual liberty and collective security may call for conditional release, while the same balance may tilt differently for those alleged to have orchestrated the offence.”

55. The Supreme Court also examined the principles governing the scope of judicial inquiry under Section 43D(5) of the UAPA at the bail stage, and held as under:

*“80. From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. **First**, the provision embodies a deliberate legislative departure from ordinary bail jurisprudence, premised upon the distinctive nature of offences under Chapters IV and VI of the Act. **Second**, the expression “prima facie true” mandates a threshold judicial inquiry which is neither perfunctory nor adjudicatory, requiring the Court to examine whether the prosecution material, taken at face value, discloses the essential statutory ingredients of the alleged offence. **Third**, the inquiry is necessarily accused-specific, directed to the role and attribution qua the individual, and does not admit of collective or undifferentiated treatment merely because allegations arise from a common transaction or conspiracy. **Fourth**, the bail stage under Section 43D(5) is not a forum for evaluating defences, weighing evidence, or conducting a mini-trial; judicial*



restraint at this stage is not an abdication of duty but a fulfilment of the statutory mandate. These propositions, read together, define the contours of judicial power and responsibility under the provision.

81. *The correct application of Section 43D(5), therefore, requires the Court to undertake a structured inquiry confined to the following:*

i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;

ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and

iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full-fledged trial.

82. *Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.”*

56. *The correctness of the above judgment, insofar as interplay between Article 21 of the Constitution of India and Section 43D(5) of the UAPA is concerned, has been doubted by*



the Supreme Court in **Syed Iftikhar Andrabi v. National Investigation Agency, Jammu**, 2026 INSC 503. It explained **K.A. Najeeb** (supra), as under:

“31. In *K.A. Najeeb*, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will ‘melt down’ where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

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35. *The often invoked phrase ‘bail is the rule and jail is the exception’ is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, we have no manner of doubt in stating that even under the UAP Act, ‘bail is the rule and jail is the exception’; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.”*

57. Further, while highlighting the low conviction rate in UAPA, the Supreme Court opined that:-

“42.3. Thus, from the aforesaid figures, it is evident that the country-wide percentage of conviction under the UAP Act for the five years comprising the period 2019-23 hovers between 2% to 6%. In other words, there is 94% to 98% possibility of acquittal in such cases in the country. When it comes to the Union Territory of Jammu and Kashmir, the percentage of conviction is abysmal, to say the least. For the aforesaid period, the annual rate of conviction is always less than 1%. It means that at the end of the trial, there is 99% possibility of



acquittal in such cases. With these kind of statistics staring at our face, the question is, should we continue the detention of the appellant or defer the consideration to a later stage, simply because the charges are serious?”

58. We must also note that this issue concerning the interplay between Article 21 of the Constitution and Section 43D(5) of the UAPA Act, has now been referred to a larger Bench in **Tasleem Ahmed v. State Govt. of NCT of Delhi** (order dated 22.05.2026 passed by the Supreme Court in SLP (Crl.) 2867/2026). In the said order, the Supreme Court has observed that delay cannot be the sole ground for releasing the accused on bail and that the inquiry into delay is contextual and must take into account the nature of the allegations, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to the delay, the role attributed to the accused, the prima facie material, the availability of intermediate safeguards, and the risks attendant upon release. It has further observed as under: -

“20. We are also conscious that an unqualified reading of the proposition that lapse of time by itself must compel bail in every case under the UAPA may have serious consequences. Such an approach may leave little room for courts to examine the nature of allegations, centrality of role, protected witnesses, risk of intimidation, possibility of reactivation of networks, nature of delay and whether such delay is attributable to the accused himself/herself, public order concerns and national security implications. On the other hand, an equally unqualified insistence on Section 43D(5) without regard to prolonged incarceration would imperil Article 21. The Constitution does not command either extreme. It is this



precise issue that may warrant attention of the appropriate bench dealing with the issues.

21. The question, therefore, is not whether Article 21 survives Section 43D(5). It undoubtedly does. The true question is how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life.

22. We clarify that nothing in this order is intended to whittle down, dilute, read narrowly, or detract from the authority of K.A. Najeeb. ... ”

59. In the said order, after having referred the issue to the larger Bench, the Supreme Court still went on to consider the case of the appellant therein for bail and, taking into account the substantial period of incarceration already undergone by the appellant therein, released the appellant on interim bail for a period of 6 months.

*60. In **Union Territory of Ladakh and Ors. v. Jammu and Kashmir National Conference and Anr.**, (2024) 18 SCC 643, the Supreme Court has also held that merely because a question of law is referred to a larger Bench, the High Court must not refrain from considering the matter before it in accordance with the law binding on it. It has opined as under:*

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across



*examples of High Courts refusing deference to judgments of this Court on the score that a later coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Co. Ltd. v. Pranay Sethi*. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”*”

27. In ***Alemla Jamir*** (supra), the Supreme Court, taking into account the long period of incarceration of the appellant therein and the fact that the appellant was a lady, granted bail to the appellant therein.

28. In the medical report of appellant Sobiya Aziz dated 20.08.2026 received from the Superintendent, Central Jail No.6, Tihar, it has been reported that the appellant has a follow-up case of ‘*Chronic Headache (on & off) /Moderate Anemia/ Uterine Fibroids with abnormal uterine bleeding, recurrent Urinary tract infection and Left Thyroid nodules.*’ Though the said report states that the appellant has stable vitals, is being regularly followed-up by Jail visiting specialists and doctors



from AIIMS Hospital, and is being given all prescribed medicines, the fact remains that, admittedly, she is suffering from various ailments.

29. The co-accused, namely, Mohd. Manan Dar (accused no. 13), Mateen Ahmed Bhatt (accused no. 10), Rauf Ahmad Bhat (accused no. 16), and Adil Ahmed War (accused no. 26) have been granted bail by the learned Trial Court, while co-accused Haris Nisar Langoo (accused no. 15), and Zamin Adil Bhat (accused no. 14) have been granted bail by this Court and co-accused Suhail Ahmad Thokar (accused no. 25) has been released on bail by the Supreme Court after taking into consideration his long period of incarceration and the fact that conclusion of the trial may take some considerable time.

30. Keeping in view the fact that the appellant Sobiya Aziz has been in long incarceration of almost 5 years; is a lady; is suffering from various ailments; and the trial is not likely to conclude anytime soon, we are of the opinion that the appellant is entitled to be released on bail.

31. Even otherwise, we find that in the chargesheet, the appellant Sobiya Aziz has been made an accused on the following averments:

“17.28 During the investigation it has been established that the arrested accused Bilal Ahmed Mir @ Bilal Fafoo (A-3) had a close association with arrested co-accused namely Sobiya Aziz Mir (A-17), who is the sister of killed terrorist of Islamic State Jammu & Kashmir (ISJK). Bilal Ahmed Mir @ Bilal Fafoo (A-3), later conspired with Sobiya Aziz Mir (A-17), to establish contacts with other cadres of Islamic State Jammu & Kashmir (ISJK) and provide necessary over ground support to the active cadres. Investigation has also brought on record that Bilal Ahmed Mir



@ Bilal Fafoo (A-3) also assisted Sobiya Aziz Mir (A-17) in transportation of a active terrorist namely, Zahid Das to Srinagar.

17.29 During the search of premises of the accused Sobiya Aziz Mir (A-17) several diaries having incriminating handwritten content with regard to establishment of Shariat Law, Islamic State (IS) ideology and other Jihadi content were recovered. During the investigation, handwriting sample of the arrested accused Sobiya Aziz Mir (A-17) was taken and sent for forensic examination and matching. Furthermore, an Islamic State (IS) flag was also recovered from the possession of accused Sobiya Aziz Mir (A-17) which establishes strong inclination of the accused towards violent Jihadi ideology.

Image:- Islamic State Flag recovered from premises of accused A-17



17.30 During the investigation, it has emerged by way of statement of number of witnesses that the arrested accused Bilal Ahmad Mir @ Bilal Fafoo (A-3) along with Mohammad Abbas Sheikh were involved in a deep-rooted conspiracy with the co-accused Tariq Ahmed Dar (A-5), Tariq Ahmed Bafanda (A-6), Haneef Chairalu (A-8) and Sobiya Aziz Mir (A-17) in order to facilitate movement of weaponry, assist active cadres to operate and for motivation of local youths to join the so



called armed struggle for Freedom of Kashmir.

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17.114 Role and activities of / offences established against Sobiya Aziz Mir (A- 17)

Accused Sobiya Aziz Mir (A-17) knowingly entered into a conspiracy hatched by terrorist commander based across the border as well as active terrorist commanders and their associates i.e. co-accused person in the valley along with other co-accused persons to commit multiple terrorist attacks in the valley. The accused Sobiya Aziz Mir (A-17) was actively working for the ideology of terrorist organisation and advocates the ideology of proscribed terrorist organization. The accused Sobiya Aziz Mir (A-17) was also involved in provide shelters to active cadres of banned terrorist outfits. Therefore, as per the averments made hereinabove/ in the pre-paragraphs, it is established that the accused Sobiya Aziz Mir (A-17) criminally conspired with co-accused persons and others and in pursuance of the said conspiracy. Sobiya Aziz Mir (A-17) indulged herself in the criminal conspiracy hatched by the terrorist organisations to create unrest and strike terror in the Kashmir valley and in others parts of the country.”

32. To substantiate the above allegations against the appellant Sobiya Aziz, the prosecution primarily placed reliance upon the disclosure statement of the appellant (D-100), read with the disclosure statement of co-accused Bilal Ahmed Mir (D-38), and his explanatory memorandum statement (D-163); the diaries and documents recovered from the house of the appellant Sobiya Aziz, and the statements of the PW-250/Khursheed Ahmad Ganie Ganie @ Jahangir Ahmad Ganie; PW-256/Tariq Ahmed Hajam; PW-268/Rukiyah Jan, and PW-X5.



33. Having perused the above material, we find that though the prosecution may say that there is some *prima facie* material to proceed against the appellant, however, in our view, the appellant still has an arguable case for grant of bail.

34. As far as the allegation of a death threat to PW-21/*Tariq Ahmed Hajam* is concerned, there is no positive link shown between the threat to him and the appellant Sobiya Aziz. We are further informed that PW-21/*Tariq Ahmed Hajam* has been partly examined before the learned Trial Court.

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35. As far as this appeal is concerned, the appellant Kamran Ashraf Reshi has been arrayed as accused no.11 in the chargesheet dated 08.04.2022 filed by the respondent.

36. The appellant Kamran Ashraf Reshi was arrested on 20.10.2021, when he was aged only around 21 years. As per his nominal roll, he has spent almost 5 years in custody.

37. The allegations against him in the chargesheet are as under:

“17.18 Investigation has brought on record that A-2 on directions of A-1, directly conspired with arrested accused persons A-3, A-5, A-6, A-8, A-17, A-20, A-22, A-23 and A-24 to assist active cadres associated with proscribed terrorist organizations and their newly formed frontal organizations, whereas the other arrested accused persons A-4, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-18, A-20, A-21, A-25, A-26 and A-27, acting as hybrid cadres or lone wolf operators, got associated with online propaganda groups floated by various Pakistan based handlers of proscribed terrorist organizations on



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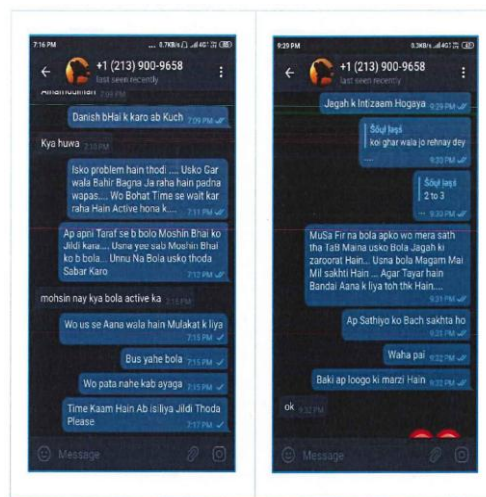


directions of A-1, A-2 and other commanders of the 'United Jihad Council'. Due care was taken by A-1 and A-2 to ensure that all the other terrorists in this conspiracy did not know much about each other so that even if one of these was arrested, security agencies could not identify and locate other conspirators involved in the larger conspiracy.

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17.65 Investigation has also brought on record that the Pakistan based handler, namely "Haq Parast @ Abu Hamza", LeT Commander associated with the frontal organization, The Resistance Front (TRF), for whom the accused Rayid Bashir was working as an Over Ground Worker / hybrid cadre, was also handling other co-accused persons namely Kamran Ashraf Reshi (A-11) of Hazratbal, Rouf Ahmed Bhat (A-16) of Anantnag and co-accused Adil Ahmed War (A-26) of Soura, Srinagar.

Image: Screenshots of the chats retrieved from the digital device of the accused A-12.



17.66 During the investigation it has also emerged that the accused Kamran Ashraf Reshi (A-11) was also associated with several online propaganda groups linked to frontal



organizations of the proscribed terrorist organization, namely, The Resistance Front (TRF) and was in association with a number of Pakistan based handlers of proscribed terrorist organizations Lashkar-e-Taiba (LeT) and Hizbul Mujahideen (HM) including one LeT commander "Haq Parast".

17.67 Investigation has also revealed that arrested accused Kamran Ashraf Reshi (A-11) was associated with one Ashraf Mallah resident of Ganipura Khimber, Srinagar who was an active terrorist of Hizbul Mujahideen, who used to hand over the posters of Hizbul Mujahideen and Al-Jihad to paste in his locality to threaten the Government officials, local shopkeepers and police informers. Several incriminating documents including posters have been seized from the premises search of arrested accused Kamran Ashraf Reshi (A-11) which corroborate the fact that the accused was associated with terrorist offshoots 'Kashmir Janbaaz Force' and 'Al-Jihad', another terrorist offshoot of Hizbul Mujahideen and used to paste the posters containing threats to pro-Indians/Govt. officials.

Image: Screenshots of the poster recovered from premises of the accused A-11.



17.68 During the course of investigation, it



has been revealed that the accused Kamran Ashraf Reshi (A-11) also attended radicalizing lectures of Moulvi Bashir in Iqra Masjid, Firdausabad, Batmaloo on the instance of active militant namely, Ashraf Mallah, where he got associated with arrested co-accused Arif Farooq Bhat (A-27) and Manan Gulzar Dar (A-13). The moulvi namely, "Bashir Moulvi" in Iqra Masjid used to radicalise the youths towards armed Jihad for cause of Kashmir."

Submissions of the learned counsel for the appellant

38. The learned counsel for the appellant Kamran Ashraf Reshi, while reiterating the submissions made by the learned counsel for appellant Sobiya Aziz on the ground of delay in the trial as also on the other co-accused persons being enlarged on bail, further submits that there is no material on record to associate appellant-Kamran Ashraf Reshi with the Telegram group, namely, Abu Zamzam. He submits that there is also no evidence on record to show that the appellant has ever shared any Jihadi videos or radical messages on the group. It is also not alleged that the appellant was involved in any terrorist activity or any 'operational participation'. He submits that there is no evidence of any contact between the appellant and the accused nos.1 or 2 or with 'Haq Parast @ Abu Hamza'. There is no proof of the appellant being a part of the online groups linked to frontal organizations or terrorist organisations, or any contact being made between the co-accused persons and the appellant. He submits that, at best, the case of the prosecution against the appellant Kamran Ashraf Reshi is of predominantly digital and non-violent in nature, which



cannot justify such long period of incarceration during trial.

39. As far as the seizure memo regarding a threatening pamphlet seized from the premises of appellant Kamran Ashraf Reshi is concerned, the learned counsel submits that the same was seized from his house and not from the possession of the appellant. He submits that it is only a single sheet of paper and cannot lead to a long incarceration of the appellant. He submits that there is no evidence that the appellant Kamran Ashraf Reshi had any role in preparing the said pamphlet or even of its circulation.

40. Regarding the allegations of the appellant Kamran Ashraf Reshi being involved in online propaganda groups, he submits that merely because in the contact directory of the appellant's phone, there were certain Pakistani numbers saved, cannot be a proof of the fact that these belong to any proscribed organisations or that any actual contact was made by the appellant to these numbers. He submits that, in fact, the main plank of the case of the prosecution is that the appellant Kamran Ashraf Reshi was part of a Telegram group called 'Abu Zamzam', however, in the said group, the phone number of the appellant Kamran Ashraf Reshi is not seen.

41. He submits that the appellant has been charged only on the basis of vague testimonies of PW-274/*Sahil Farooq*, PW-280/*Amaan Manzoor Najar* and PW-283/*Ubaid Ahmed Kagazgar*, which also cannot lead to any criminal charge against the appellant Kamran Ashraf Reshi.

42. He submits that the other evidence relied upon by the prosecution, that is, PW-281/X-14 and PW-296/X-9 also is vague and



does not in any manner implicate the appellant Kamran Ashraf Reshi in any offence under the UAPA.

43. On the statement of PW-314/*Abdul Majeed Nayak* and PW-315/*Mehraj-ud-Din Reshi*, he submits that Mudasir Wagay is not an accused nor is any allegation made in the chargesheet against him. He submits that PW-315/*Mehraj-ud-Din Reshi* is, in fact, the uncle of the appellant whose testimony, if considered in proper context, will show that PW-315/*Mehraj-ud-Din Reshi* is more of an accused than a witness.

Submissions of the learned SPP

44. On the other hand, Mr. Tiwari, the learned SPP for the NIA, while reiterating his submissions that mere ground of delay in trial cannot lead to the appellant being enlarged on bail, given the allegations against him and the fact that the charges also stand framed against him in the trial, further reiterates that merely because other co-accused have been enlarged on bail, also cannot give a ground to the appellant to seek bail especially when the allegations against him are distinct and more serious in nature.

45. He submits that from the appellant Kamran Ashraf Reshi, two mobile phones and one threatening pamphlet were recovered. In the contact book of the mobile phone, he had saved mobile numbers from Pakistan which are believed to be belonging to proscribed organisations threatening the sovereignty of the country. He submits that there is also evidence of the appellant visiting Batmaloo in August, 2021 along with the co-accused, including Zamin Adil Bhat,



and attending radicalising lectures of Moulvi Bashir. He also refers to the statements of PW-280/*Amaan Manzoor Najar*, PW-281/X-14, PW-314/*Abdul Majeed Nayak*, PW-315/*Mehraj-ud-Din Reshi*, PW-274/*Sahil Farooq*, PW-283/*Ubaid Ahmed Kagazgar* and PW-296/X-9 to submit that these witnesses have stated about the close connection between the appellant and other terrorists. They have also spoken about the appellant being highly radicalised and motivated and being part of groups that provide provocative material to the administrators of those groups for further dissemination. The appellant was also in contact with a person named Arslan Feroz with whom he used to disseminate radicalising material on the Abu Zamzam Telegram group. There is also evidence of him being close to Haq Parast @ Abu Hamza, a commander of LeT and being a part of Abu Zamzam, a Pakistani Telegram channel.

46. He submits that given the material against the appellant Kamran Ashraf Reshi, the appellant should not be enlarged on bail.

Analysis and Findings:

47. As far as the long period of incarceration pending trial acting as a ground for grant of bail is concerned, we have already summarised the law herein above. In the present case as well, the appellant has already suffered a long period of custody of almost 5 years pending trial. There is no chance of the trial ending soon.

48. We have also minutely perused the allegations against the appellant Kamran Ashraf Reshi, as also the material relied upon by the NIA against him. While we refrain from giving a detailed account of



the same, as we fear that it may prejudice the trial, we are of the opinion that given the long period of incarceration of the appellant juxtaposed against the material alleged against him by the NIA, the appellant has been able to make out a case for being released on bail.

49. Keeping in view the above, we direct that the appellant(s), **Sobiya Aziz** and **Kamran Ashraf Reshi**, be released on bail in RC No. 29/2021/NIA/DLI, Police Station NIA, Delhi, in SC No.2/2022 titled “*NIA v. Tariq Ahmad Dar & Ors.*”, subject to the following conditions:

- i. The appellant(s) shall execute a personal bond each in the sum of Rs. 2,00,000/- with two sureties each in the like amount to the satisfaction of the learned Trial Court;
- ii. The appellant(s) shall surrender their passport, if any, before the learned Trial Court. In case they do not hold a passport, an affidavit to that effect shall be filed before the learned Trial Court;
- iii. The appellant(s) shall not leave India without the prior permission of the learned Trial Court. Any application seeking permission to travel shall disclose the destination, duration, and purpose of travel, along with complete contact details during such travel;
- iv. The appellant(s) shall use only one mobile phone and/or one landline number during the course of trial, which shall always be kept in the switched-on mode. They shall furnish their current residential address, mobile/landline contact number, and e-mail address to the Investigating Officer as also to the learned



Trial Court. The appellant(s) shall not change their place of residence or contact particulars without giving at least seven days' prior written intimation to the Investigating Officer and the learned Trial Court;

- v. The appellant(s) shall cooperate with the trial and appear before the learned Trial Court on each date of hearing, unless exempted by the learned Trial Court from such appearance.
- vi. The appellant(s) shall not exhibit any conduct that has the effect of delaying the trial proceedings;
- vii. The appellant(s) shall not directly or indirectly contact, influence, threaten or communicate with any prosecution witness, protected witness, complainant or person acquainted with the facts of the case;
- viii. The appellant(s) shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
- ix. The appellant(s) shall not make any public statement, including through print, electronic media or social media, touching upon the merits of the case, the evidence, the witnesses or the pending trial;
- x. The appellant(s) shall not participate in any activity which may prejudice public order or the integrity of the trial;
- xi. The appellant(s) shall not join any WhatsApp group or other social media platforms where anti-national material is uploaded or circulated or propagated. They shall also not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise. They shall also



furnish an undertaking to this effect before the learned Trial Court;

- xii. The appellant(s) shall report to the Investigating Officer once every fortnight, or at such intervals as may be directed by the learned Trial Court. The Investigating Officer shall maintain a separate register of attendance with respect to each appellant.

50. In the event of the appellant(s) violating any of the conditions mentioned above, the prosecution will be at liberty to seek cancellation of bail before the appropriate Court.

51. The impugned orders rejecting the appellants' bail applications are, accordingly, set aside. The appeals are disposed of in the above terms.

52. It is made clear that the observations made herein shall not be construed as observations on the merits of the case, as the same have been made only for the purpose of consideration of bail.

53. A copy of this judgment be sent to the learned Trial Court as also to the concerned Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 3, 2026/ns/Yg