



2026:DHC:7994-DB



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

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CNR No. DLHC010019802022
+ CRL.A. 493/2023
CNR No. DLHC010020042022
+ CRL.A. 538/2023
CNR No. DLHC010020052022
+ CRL.A. 539/2023
CNR No. DLHC010020062022
+ CRL.A. 540/2023
CNR No. DLHC010020072022
+ CRL.A. 541/2023
CNR No. DLHC010381882024
+ CRL.A. 569/2024
CNR No. DLHC010387712024
+ CRL.A. 577/2024

JAGTAR SINGH JOHAL @ JAGGIAppellant

Through: Mr.Jawahar Raja,
Ms.Maulshree Pathak, Ms.Aditi
Saraswat, Ms.Nitai Hinduja &
Mr.Ishaan Goel, Advs.

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr.Rajkumar Bhaskar Thakare,
ASG with Ms.Shilpa Singh,
SPP & Ms.Priyam Agrawal,
Adv. for NIA along with Dysp
Ram Gopal Sharma, IO/NIA.

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 appellant challenging the orders passed by the learned Additional Sessions Judge-03, New Delhi, in the FIR(s), details of which, for the sake of reference, are given in a tabular form hereinbelow:-

S.No.	Appeal No.	Impugned Order of the learned Trial Court	RC and FIR No.	Sections
1.	Crl.A. 569/2024	Order dated 25.04.2024 in SC No. NIA/07/2022	RC No. 27/2017/N.I.A/D LI FIR No 06/2017 – PS Division 8 Ludhiana, Punjab	Sec. 120-B, 302, 34, 379, 416 IPC, Sec. 16, 17, 18, 18A, 18B, 20, 21 and 23 of UAPA, 1967 S.25 & 27 of the Arms Act, 1959
2.	Crl.A. 577/2024	Order dated 25.04.2024 in SC No. N.I.A/07/2022.	RC No. 07/2019/N.I.A/D LI FIR No 113/2017 PS Division – 04, Jalandhar District, Punjab	Sec. 120-B, 302, 34, 379, 416 of IPC Sec. 16, 17, 18, 18A, 18B, 20, 21 and 23 of UAPA. Sec. 25 & 27



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				<i>of the Arms Act, 1959</i>
3.	Crl.A. 493/2023	Order dated 07.09.2022	N.I.A RC No.18/2017/N.I. A/DLI FIR No. 442/2017 PS Jhodewal, District Ludhiana, Punjab	<i>Sec.120B/ 302/ 34/ 379/ 416 IPC, R/W. Sec.16/ 17/ 18/ 18A/ 18B/ 20/ 21 & 23 UAPA & Sec.25/27 Arms Act</i>
4.	Crl.A. 538/2023	Order dated 07.09.2022	RC 22/2017/N.I.A/D LI FIR No 218/2017 PS Salem Tabri, District Ludhiana, Punjab	<i>Sec.120B/302 /34/379/416 IPC, R/W. Sec.16/ 17 /18/ 18A/ 18B/ 20/ 21 & 23 Of UAPA & S.25/27 of the Arms Act</i>
5.	Crl.A. 539/2023	Order dated 07.09.2022	RC- 26/2017/N.I.A/D LI. FIR No 7/2016 PS Division-2, Ludhiana, Punjab	<i>Sec.120B/302 /34/379/416 IPC, R/w. Sec.16/17 /18/18A/ 18B/20/21 & 23 Of UAPA & Sec.25/27 of the Arms Act</i>



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6.	Crl.A. 540/2023	Order dated 07.09.2022	RC- 23/2017/N.I.A/D LI FIR No 13/2017 PS Maloud, District Khanna, Punjab	<i>Sec.120B/302 /34/379/416 IPC, R/w Sec.16/17 /18/18A/ 18B/20/21 & 23 Of UAPA & Sec.25/27 of the Arms Act</i>
7.	Crl.A. 541/2023	Order dated 07.09.2022	RC- 25/2017/N.I.A/D LI FIR No 119/2016 PS City Khanna, District Khanna, Punjab	<i>Sec.120B/302 /34/379/416 IPC, R/w. Sec.16/17 /18/18A/ 18B/20/21 & 23 of UAPA & Sec.25/27 of the Arms Act</i>

2. As the allegations against the appellant in the above RCs are similar and common submissions have been made not only by the learned counsel for the appellant, but also by the learned ASG, these appeals are being considered and disposed of by this common judgment.

3. Before proceeding further with the adjudication of these appeals on merits, we would note and highlight that by a judgment dated 18.09.2024, passed by a Coordinate Bench of this Court, Crl.A. No.



493/2023, 538/2023, 539/2023, 540/2023 and 541/2023, had been dismissed on the ground of limitation, while Crl.A. Nos. 569/2024 and 577/2024 had been dismissed on merits, declining bail to the appellant. This judgment was challenged by the appellant before the Supreme Court by way of SLP (Crl.) Nos. 3968-74/2025, which were converted into Crl.A. Nos. 3377-83/2026. The said Criminal Appeals were disposed of by the Supreme Court *vide* a common judgment dated 15.07.2026 in the following terms:-

“.....Considering the submissions made and taking note of the fact that the present appeals are pending before us from the year 2025, we deem it appropriate to give one more opportunity to the appellant to argue all the appeals before the High Court on merits and in accordance with law.

In such view of the matter, the impugned order is set aside and the matters are remitted to the High Court to be decided afresh on merits and in accordance with law without going into the question of condonation of delay. We request the High Court to make an endeavour to dispose of the said appeals within a period of two months from the date of receipt of a copy of this order.

All issues are left open to be raised and argued by the contesting parties.”

4. The present appeals have been listed before this Bench pursuant to the above order of the Supreme Court.

5. For the sake of convenience, we shall be considering the allegations made against the appellant in the charge-sheet filed in RC No. 27/2017/NIA/DLI (Amit Sharma Murder Case) SC No. N.I.A./07/2022. As noted hereinabove, the allegations in the other



RC(s) are almost identical.

ALLEGATIONS IN THE CHARGE-SHEET:

6. In the charge-sheet, the appellant has been arrayed as accused no. 6 and the allegations against him are as under:-

“The Conspiracy: Pre-incident Stage

17.22 In the year 2006, when Hardeep Singh (A-1) was about six years old, he was adopted by his 'taya', Daljit Singh and taken to Italy. The two passports recovered from Hardeep Singh (A-1) bear the name of Daljit Singh under the head, "Name of Father/Legal Guardian" as opposed to the name of his biological father, Balwinderpal Singh. Hardeep Singh (A-1)'s mother's name mentioned in his passports is Kulwinder Kaur, the wife of his 'taya' Daljit Singh and not Surinder Kaur, his biological mother. Hardeep Singh (A-1) subsequently became a permanent resident of Italy.

17.23 In or around June, 2013 when Hardeep Singh (A-1) was staying with his 'taya's' family in Solarolo Rainerio, Cremona, Italy, one Gurjinder Singh @ Shastri (A-15) approached Daljit Singh, and asked him if 'a guest' could stay at their house for a few days. This 'guest' was Harminder Singh @Mintoo (A-5). It has been established that Harminder Singh @ Mintoo (A-5) is a founder member and, after 2010, the self-styled chief of the terrorist gang, KLF.

17.24 During his stay at the house of Daljit Singh, Harminder Singh @ Mintoo (A-5) interacted closely with Hardeep Singh (A-1). He saw in Hardeep Singh (A-1) a potential recruit of the KLF and started motivating him towards that end. It has been established during the investigation that Harminder Singh



@ Mintoo (A-5) convinced the impressionable Hardeep Singh (A-1) of the need to commit violence in the name of 'Khalistan'.

17.25 In between his stay at Daljit Singh's house, Gurjinder Singh @ Shastri (A-15), Harminder Singh @ Mintoo (A-5) and Hardeep Singh (A-1) took a tour of France and Germany by road. When they were in Paris, France, Harminder Singh Mintoo (A-5) and Gurjinder Singh @ Shastri (A-15) went to Paris airport and received Jagtar Singh Johal (A-6), who had arrived from the U.K.. Jagtar Singh Johal (A-6), a U.K. national had been sent to France from the U.K. by Gursharanbir Singh (A-16) to deliver GBP 3000 to Harminder Singh @ Mintoo (A-5); a part of this money was given by Harminder Singh @ Mintoo (A-5) to Hardeep Singh (A-1) to motivate him to join the KLF and recruit him for executing the conspiracy.

17.26 It has been established that Jagtar Singh Johal (A-6) is a close confidante of Harmeet Singh PhD (A-14) and Gursharanbir Singh (A-16). The statements of witnesses have established that Jagtar Singh Johal (A-6) is a member of the KLF and that he actively participated and had complete knowledge of the conspiracy.

17.27 That before leaving Daljit Singh's house, after a day of about fifteen days, Harminder Singh Mintoo (A-5) shared a Skype ID billoobakra with Hardeep Singh (A-1) for the purpose of maintaining contact with him. Harminder Singh Mintoo (A-5) was deported from Thailand and arrested by Indian authorities in November, 2014. When hearing of the news of Harminder Singh Mintoo (A-5)'s arrest, Hardeep Singh (A-1) tried to contact him on the above mentioned Skype ID, the call was answered by Harmeet Singh PhD (A-14).”
(emphasis supplied)



SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

7. The learned counsel for the appellant submits that the appellant has been in custody since 04.11.2017 and has, therefore, undergone incarceration for a period of more than 8 years. He submits that, in spite of repeated orders of the Supreme Court directing the learned Trial Court to expedite the trial, only 40 witnesses have so far been examined. He submits that around 123 more witnesses are yet to be examined by the prosecution and, therefore, there is no possibility of the trial concluding any time soon. Placing reliance on the judgments of the Supreme Court in ***Union of India v. K.A. Najeeb***, (2021) 3 SCC 713; ***Sheikh Javed Iqbal v. State of Uttar Pradesh***, (2024) 8 SCC 293; ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)***, 2026 SCC OnLine SC 10; and, ***Syed Iftikhar Andrabi v. National Investigation Agency, Jammu***, 2026 SCC OnLine SC 881, he submits that the appellant is entitled to be released on bail on the ground of inordinate delay in conclusion of the trial.

8. He submits that even otherwise, the allegations made against the appellant do not stand much water inasmuch as, on the same allegations, by a judgment dated 04.03.2025 passed by the learned Additional Sessions Judge, Moga, Punjab in CIS No. SC/71/2018 titled ***State of Punjab v. Taljeet Singh @ Jimmy & Ors.***, wherein the appellant was arrayed as accused no. 2, the appellant has been acquitted of all charges.



9. He further places reliance on the order dated 15.03.2022 passed by the High Court of Punjab and Haryana in CRA-D-405-2020 titled ***Jagtar Singh Johal Alias Jaggi v. National Investigation Agency***, whereby, in RC No. 24/2017/NIA/DLI in SC No.08/2022, which again contained similar allegations against the appellant, the appellant was directed to be released on bail. He submits that the said order was challenged by the respondent before the Supreme Court by way of an SLP (Crl.) No. 6717/2022, however, the same was dismissed by the Supreme Court *vide* order dated 08.08.2023. He submits that, therefore, the appellant should be released on bail in the RC(s) involved in the present appeals as well.

10. He submits that in the judgment dated 18.09.2024, while dismissing the bail application of the appellant, the Coordinate Bench of this Court had noticed that there were two protected witnesses, whose statements had to be recorded by the learned Trial Court. With the passage of time, one of the protected witnesses, that is, protected witness 'N' (PW-50), has been dropped by the prosecution as he has since expired. As far as protected witness 'P' (PW-49) is concerned, though almost 2 years have since passed, and in spite of directions of the Supreme Court contained in the orders dated 20.05.2025, 11.12.2025 and 08.05.2026 passed in Crl.A. Nos. 3377-83/2026, the statement of the said witness has not been recorded. He submits that, therefore, this also cannot act as a ground to deny bail to the appellant.

11. He submits that the appellant had never met Hardeep Singh @ Shera @ Pahalwaan (A-1) or Ramandeep Singh @ Canadian @ Bagga



(A-2). He further submits that the appellant has not been named in connection with any of the activities relating to the incidents in question, except for the allegation that the appellant carried GBP 3,000 from the United Kingdom to France to be delivered to Harminder Singh @ Mintoo (A-5). Neither was the appellant named in connection with the purchase of the weapons allegedly used in the said incidents, nor was he stated to have been involved in the collection of funds for the said incidents during the period from 2016 to 2017. He further submits that the appellant was not named in connection with the seizure of the said weapons in the charge-sheets filed against him in any of the aforesaid RCs. He, therefore, submits that the appellant is entitled to be released on bail.

SUBMISSIONS OF THE LEARNED ASG APPEARING FOR THE RESPONDENT:

12. On the other hand, the learned ASG, appearing for the respondent, submits that the reliance of the appellant on the order passed by the High Court of Punjab and Haryana is ill-founded as, at that time, not even a single witness had been examined by the prosecution. Much water has since flown as charges now stand framed against the appellant, which would also entail the effect that the appellant would not satisfy the conditions contained in Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (in short, 'UAP Act'), disentitling him from being released on bail. Further, 40 witnesses already stand examined and the trial is moving at an expedited pace because of the orders passed by the Supreme Court.



13. He submits that the reliance of the appellant on the judgment dated 04.03.2025 passed by the learned Additional Sessions Judge, Moga, Punjab, is also ill-founded as each of these cases will depend on the evidence led in them and there cannot be a precedential value attached to the orders passed in other trial. He also submits that the said judgment passed by learned Sessions Judge, Moga acquitted the appellant under Sections 17, 18, 19 and 20 of UAP Act on the primary premise that the sanction which was accorded under Section 45(2) of the UAP Act was not a valid sanction.

14. He further submits that in the present case, the appellant is a foreign national and is a flight risk. In spite of the delay, even the Supreme Court did not consider this to be a fit case for releasing the appellant on bail, but instead remanded the matter back to this Court for a fresh consideration on merits.

15. On merits, he submits that the appellant is being charged with offences for encouraging terrorism, separatism and killing of persons belonging to a particular community. These are serious offences and for which, the appellant should not be released on bail. He submits that there are also complaints from the witnesses of them being threatened and, in case the appellant is released on bail, the trial itself will get prejudiced.

16. Placing reliance on the order dated 14.07.2026, passed by the learned Trial Court, he submits that the learned Trial Court has, for the protected witnesses, directed the matter to be placed on 15.09.2026 for compliance with the terms of Practice Direction No. 5 in Guidelines



on Mutual Legal Assistance, and on 14.10.2026 for recording the evidence of the said witness. He submits that, therefore, the appellant be not released on bail.

17. While placing reliance on ***Gulfisha Fathima*** (supra), he submits that where the prosecution material discloses reasonable grounds for believing the allegations to be *prima facie* true, the statutory restraint must apply to the same. He further submits that as charges have already been framed in the trials, a *prima facie* case has been made out against the appellant and therefore, he is not entitled to be released on bail.

ANALYSIS & FINDINGS:

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

19. At the outset, we would note the effect in law of delay in conclusion of the trial and the long period of incarceration of the appellant in custody, affecting his fundamental rights under Article 21 of the Constitution of India *vis-à-vis* the restriction contained in Section 43D(5) of the UAP Act. This was considered by us in a judgment titled ***Khuram Parvez v. National Investigation Agency***, 2026:DHC:5092-DB, wherein we observed 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 absconson, 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. Najeed*, 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 Ifikhar 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.”

20. Applying the above tests to the facts of present case, we find that the appellant has remained in custody for more than 8 years. Though the charges stand framed against the appellant in the aforesaid RCs, only 40 witnesses have so far been examined and we are informed that there are another 123 witnesses whose testimony is yet to be recorded. Out of these witnesses, there are about 63 common witnesses to the above RC(s), however, in spite of that, the trial is certainly not likely to conclude any time soon. We are reinforced in this belief as, in spite of the orders dated 20.05.2025, 11.12.2025 and 08.05.2026 passed by the Supreme Court in Criminal Appeal Nos. 3377-83/2026, the pace of the trial has not really picked up and even the statement of the protected witnesses has not been recorded.

21. The High Court of Punjab and Haryana, in its order dated 15.03.2022, when the appellant had undergone custody of only about 5 years, and only on the ground of delay, held it to be a fit case to direct the release of the appellant on bail in RC No. 24/2017/NIA/DLI, which contained similar allegations against the appellant. We quote



from the said judgment as under:-

“Undoubtedly the bail proceedings under a special enactment will have to be viewed as distinct and the Courts are duty bound to refuse bail where the suspect is prima facie believed to be guilty. We are conscious that the charges levelled against the appellant are grave and in the nature of making an attempt to destabilise public order in the State of Punjab. Be that as it may, we are refraining from making any observations on merits lest it may prejudice the trial. In the same vein we are of the view that Constitutional Courts ought to exercise their power to grant bail notwithstanding the limitations specified under special enactments keeping in view the right of an accused to speedy trial and access to justice.

xxxxx

Adverting to the facts of the present case it has gone uncontroverted that the appellant has been charged under Sections 16,17,18 of the 1967 Act and Section 120-B of the IPC but not under Section 307 IPC. Appellant has suffered incarceration for a period of almost five years. It has gone uncontroverted that the prosecution has cited 197 witnesses and the trial is yet to commence. We are aware that even a sentence of life imprisonment can be imposed for the offence with which the appellant has been charged under the 1967 Act and the IPC but we cannot ignore the fact that the sentence could range between 5 years to imprisonment for life. Concededly appellant has already undergone incarceration of almost 5 years with the trial yet to commence.

Under such peculiar circumstances and keeping in view the dictum laid down by the Apex Court in Union of India vs. K.A.Najeeb (supra) we are inclined to accept the instant appeal.

For the reasons recorded above the impugned order dated 24.06.2020 passed by



the Special Judge, NIA, SAS Nagar, Mohali is set aside. Appellant is held entitled to regular bail during pendency of the trial.”

22. The learned Additional Sessions Judge, Moga, Punjab, in the judgment dated 04.03.2025, on a similar allegation against the appellant, has also acquitted the appellant not only on the ground of lack of proper sanction under Section 45(2) of the UAP Act, but also on merits. We quote from the said order as under:-

“112. To prove charges under Section 120-B IPC, let first of all discuss ingredients of above said Section, which is reproduced as under :-

Section 120-A IPC. Definition of criminal conspiracy: *When two or more persons agree to do, or cause to be done:-*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

However, from the above discussed evidence, the prosecution has miserably failed to prove that all the accused hatched criminal conspiracy with one another to indulge in terrorist activities and collected raised funds for the activities of said unlawful association/assembly and conspired with each other to commit terrorist acts and harbored Tarlok Singh @ Laadi, who is terrorist and indulged in terrorist activities. The prosecution has also failed to lead any evidence that the accused were members of terrorist organization which was involved in terrorist activities and also failed to lead cogent and convincing evidence that Hardeep Singh @ Shera @ Bhalwan in connivance with co-accused impersonated himself as Kamaljit Singh @ used his driving license/ID for receiving money/funds through Western Union for using the same for terrorist activities & for



unlawful association/assembly and induced Western Union to deliver the fund to him and cheated the employees of Western Union and forged driving license of Kamaljit Singh, which is a valuable document and used the same as genuine one knowing well that the same is forged one. As such, the accused are entitled to acquittal under Sections 17,18,19,20 of Unlawful Activities (Prevention) Act and 120-B,419,420,467,468,471 IPC.”

23. We are informed that the said order of acquittal has attained finality and has not been challenged by the prosecution.

24. Though the learned ASG may be correct in his submission that the above order of acquittal cannot act as a *res judicata*, the fact remains that on similar averments, the appellant is being implicated in these RCs as a co-conspirator. Therefore, at least for enlarging the appellant on bail, this order shall have a strong persuasive value.

25. As regards the submission of the learned ASG that the appellant, being a foreign national, is a flight risk, we are of the opinion that the liberty of the appellant cannot be curtailed only on this ground. Instead, we shall impose conditions that should ensure that he does not become a flight risk.

26. Similarly, the allegation of the learned ASG that certain witnesses have complained to the learned Trial Court of being threatened and, in case the appellant is released on bail, there being a chance of him influencing the trial, also does not persuade us to deny bail to the appellant, especially given the long period of incarceration and the factors we have noticed herein above. There are various



accused who are facing trial in the above RC(s), and no document has been produced before us to substantiate that the threats are in any manner emanating from the appellant or at his behest.

27. Given the above factors, the impugned orders passed by the learned Trial Court cannot be sustained and are accordingly set aside. The appellant is directed to be released on bail in the above RC(s) on the following conditions:-

- i. The appellant shall execute a personal bond in the sum of Rs.5,00,000/- with two sureties each in the like amount to the satisfaction of the learned Trial Court;
- ii. The appellant shall surrender his passport, if any, before the learned Trial Court. In case he does not hold a passport, an affidavit to that effect shall be filed by him before the learned Trial Court;
- iii. The appellant 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. He shall furnish his residential address, mobile/landline contact number, and e-mail address to the Investigating Officer as also to the learned Trial Court. The appellant shall not change his place of residence or contact particulars without giving at least seven days' prior written intimation to the Investigating Officer and the learned Trial Court;
- iv. The appellant 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.
- v. The appellant shall not exhibit any conduct that has the effect of delaying the trial proceedings;
 - vi. The appellant 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;
 - vii. The appellant shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
 - viii. The appellant 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;
 - ix. The appellant shall not participate in any activity which may prejudice public order or the integrity of the trial;
 - x. The appellant shall not join any WhatsApp group or other social media platforms where anti-national material is uploaded or circulated or propagated. He shall also not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise. He shall also furnish an undertaking to this effect before the learned Trial Court;
 - xi. The appellant shall report to the concerned Investigating Officer once every fortnight, or at such intervals as may be directed by the learned Trial Court.
28. In the event of breach of any condition, it shall be open to the



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prosecution to seek cancellation of bail before the appropriate court.

29. The appeal is disposed of in the above terms.

30. 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 18, 2026/rv/as