

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)

Pronounced on : 14.10.2026
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Case : Bail App No. 320/2024
CrlM No. 2067/2024

Hamid Hussain

.....Appellant/Petitioner(s)

Through: Mr. S. A. Hashmi, Advocate

Vs

UT of J&K

..... Respondent(s)

Through: Mr. Adarsh Bhagat, GA

CORAM: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Through the medium of the instant successive bail petition having been filed in terms of the provisions of Section 439 of the erstwhile repealed Code of Criminal Procedure, 1973, (hereinafter referred to as the "Code", for short), corresponding to Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, ("BNSS", for short), the bail on behalf of the petitioner/accused in case FIR No. 19/2016 of Police Station Thathri, Doda has been sought on the grounds *inter alia* that he has been facing trial in the aforementioned case FIR since last about nine years; that the charges in the case FIR concerned were framed against him by the learned trial court on 22.02.2017 and despite considerable lapse of time, the trial in the case has shown no substantial progress; that out of fifty listed prosecution witnesses, only nineteen witnesses have been examined over the past nine years at a cumbrous trial; that the failure on the part of the prosecution to ensure the timely presence and examination of its witnesses has resulted in prolonged incarceration of the petitioner; that mere perusal of the charge sheet reveals that the allegations lack substance and there is no *prima facie* case made out against the petitioner; that the learned trial court rejected his bail application solely on the basis of presumptions and

assumptions which are not sustainable in the eyes of law; that he has been subjected to a prolonged trial without any substantial progress which has violated his right to a speedy trial guaranteed under Article 21 of the Constitution of India; that he along with other co-accused has been falsely implicated in the case FIR concerned which was registered under Sections 302 and 109 of the Ranbir Penal Code; that he was arrested on 29.04.2016 and has been facing continuous incarceration since then; that right to speedy trial has been held to be a silver line of criminal justice system and his indefinite detention is perverse to the criminal jurisprudence; that every passing day behind the four walls of the jail amounts to his pending trial punishment; that over the past three and a half years, between 10.09.2021 and 24.12.2024 covering nearly fifty hearings, the prosecution has been able to examine only five witnesses out of the calendar of fifty witnesses; that even prior to the aforesaid period, the trial against him suffered a sluggish pace on account of COVID-19 pandemic; that the case of the prosecution hinges on circumstantial evidence and no motive could be attributed sustainability to the accused for the alleged commission of the offences charged against him; that the independent civilian witnesses mostly cited by the prosecution happen to be all the close relatives of the deceased residing in different villages and localities from the place of occurrence; that actually the complainants have attempted to implicate his entire family without any substantive evidence against them; that the prosecution witnesses themselves have stated that at the time of occurrence when the fire broke out in his house, they were in the mosque offering Friday prayers; that the co-accused have already been granted bail by this Court in a Criminal Revision Petition; that the deceased died due to the fire that occurred in the house at about 1:00 PM and there is no whisper of any legal evidence to suggest that the death of the deceased was homicidal in nature; that a bare perusal of the prosecution case reveals that the investigation is unclear on the issue whether the breaking out of the fire and death of the deceased was accidental or homicidal in nature; that basic flaws in the case of prosecution coupled with the protracted trial makes it a fit case for grant of bail in the interest of justice;

that he earlier filed bail application before the trial court of Additional Sessions Judge, Doda on 29.12.2023 which came to be dismissed by the learned trial court vide its order dated 17.12.2024; that while dismissing the earlier bail petition, the learned trial court has appreciated the fact of the trial being protracted, but despite refused to enlarge him in a cryptic and mechanical manner without returning any finding on the case; that the learned trial court while dismissing his earlier bail application on 17.12.2024 incorrectly mentioned the number of witnesses yet to be examined till that time as the said order incorrectly stated that only eighteen witnesses including those related to the circumstantial evidence, medical testimony, seizure memo, disclosure statements, identification, Investigating Officers, patwari and Tehsildar were yet to be examined till that time, when factually up to the dismissal of the earlier application by the learned trial court, thirty witnesses were yet to be examined; that the trial in the case against him is not being conducted effectively, which has resultantly become oppressive against him; that he is presumed to be innocent under law until proved guilty at the trial; that he shall not misuse the concession of bail in any manner including the tampering of prosecution evidence or absconding at the trial and that he shall abide by all the conditions that may be imposed by this Court while enlarging him on bail.

2. The respondent, i.e., UT of Jammu and Kashmir through the learned Government Advocate resisted the bail application on the grounds that same is not maintainable as the petitioner has committed the most heinous offence punishable under Section 302 RPC. That the heinous offence committed by the petitioner/accused is not only against the victim/deceased but affects the Society as well as the State.
3. That the Hon'ble Supreme Court of India has laid down various guidelines for consideration of the courts of the Country in connection with the consideration of bail applications especially in cases cited as "*Kalyan Chandra Sarkar Vs Rajesh Ranjan alias Papu Yadav and another (2004) 7 SCC 528, State Vs Captain Jagjit Singh AIR 1962 (SC) 253, Gurcharan Singh Vs State Delhi Administration AIR 1978 (SC)*

179, which prominently include the nature and seriousness of the offences committed by the accused, character of the evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the witnesses being tempered with and above all, larger interests of the public and the State.

That the evidence recorded during trial cannot be appreciated while adjudicating a bail application.

That having regard to the seriousness of the allegations against the petitioner/accused; the grant of concession of bail in his favour would not serve the ends of justice.

That it is a settled legal position that bail can be refused if there is likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. That the petitioner/accused along with other co-accused, who happened to be his family members have committed the murder of the daughter of the complainant on 29.04.2016, who was married to the petitioner/accused. That pursuant to the report of the complainant case FIR No. 19/2016 came to be registered with Police Station, Thathri under Section 302 read with 109 RPC. That a SIT was constituted to investigate the matter. That during investigation, the petitioner/accused Hamid Hussain confessed in police custody that on the day of occurrence at about 1:00 PM on Friday he pressed the neck of his wife leading to her half consciousness and then burnt her to death by pouring kerosene oil over her. That pursuant to his disclosure his clothes bearing traces of kerosene oil came to be recovered. That other co-accused Nagina Begum also made some disclosure regarding the theft of ornaments of the deceased which also came to be recovered and seized in the case.

That during investigation, it was found that the deceased was married to the petitioner/accused and in the month of March, 2016 a dispute arose between them. That the deceased alleged that her husband, i.e., the petitioner/accused used to talk to other ladies. That the petitioner/accused on the day of occurrence i.e. on 29.04.2015 Friday at

about 1:00 PM with criminal intention to murder the deceased pressed her throat, made her unconscious and poured kerosene oil over her and burnt her to death. That the commission of the offences under Sections 302 and 109 RPC were found against the petitioner/accused as well as the co-accused, Khurshid Ahmed, Nagina Begum, Hayat Mohd., Mohd. Jafar and Azgar Hussain. That the investigation in the case culminated into the filing of the charge sheet which was produced before the learned trial court.

4. I have heard learned counsel for the parties.
5. The learned counsel for the petitioner/accused while reiterating his stand taken in the instant bail petition submitted that the petitioner has been languishing in custody for the last nine years and despite lapse of significant time, the trial in the case has not progressed meaningfully, reflecting the failure of the prosecution to conduct the trial expeditiously.

The learned counsel while placing reliance on the authoritative judgment of the Hon'ble Supreme court passed in "*sangram sadashivsuryavanshi v. state of Maharashtra (criminal Appeal No. 4758 of 2024)*" contended that prolonged incarceration without substantial progress in trial constituted a valid ground for granting bail. He contended that the Hon'ble Apex Court *inter alia* held in the referred case, "in law and on facts, an accused is entitled to bail on the ground of long incarceration without the trial making any progress, the court must grant bail. Option of expediting trials is not the solution."

He further contended that the Hon'ble Supreme Court while deciding the Criminal Appeal No. 5387 of 2024 titled "*Athar Parwez Vs Union of India*" held that, "long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the Constitutional Courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time. Gross delay in conclusion of the trial would justify such invocation leading to a conclusion of violation of Part III of the Constitution of India, which may be taken as a ground to release an under trial on bail".

The learned counsel further contended that the statutory restrictions do not oust the ability of the Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution. While referring to the judgment of the Hon'ble Apex Court passed in "*Union of India Vs K.A.Najeeb*", the learned counsel contended that the restrictions under a Statute as well as the powers exercisable under the Constitutional Jurisdiction can be well harmonized. He contended that it has been held by the Hon'ble Apex Court in the afore-referred case that whereas at the commencement of the 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 the trial being completed within a reasonable time and the period of incarceration already undergone had exceeded a substantial part of the prescribed sentence.

The learned counsel further contended that it has also been held by the Hon'ble Supreme Court in "*SHEIKH JAVED IQBAL @ASHFAQ ANSARI @ JAVED ANSARI Vs STATE OF UTTAR PRADES*, Criminal Appeal No. 2790 of 2024," "If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime".

The learned counsel further contended that the Hon'ble Apex Court in several landmark judgments emphasized that the option of merely expediting the trial is not a sufficient solution to address the infringement of the fundamental rights of the accused due to extended detention.

6. The learned counsel for the petitioner submitted that he prays for grant of bail in favour of the petitioner/accused mainly on account of his long incarceration of about eleven years without completion of trial against him. He contended that the co-accused have already been bailed out in the case.

The learned counsel for the petitioner in support of his arguments also placed reliance on the authoritative judgments of the Hon'ble Supreme Court passed in *Indrani Pratim Mukerjea Vs Central Bureau of Investigation and anr*, SLP (Crl) No. 1627/2022 dated 18.05.2022; *Saudan Singh Vs State of Uttar Pradesh (Crl) Appeal Nos. 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 334, 336, 325, 322, 323 & 324 of year 2022, arising out of SLPs (Crl) Nos. 4033, 4635, 4634, 4636, 4213, 4638, 4643, 4642, 4849, 4641, 4396, 4847, 4844, 4848, 5472, 6928, 4639, 4332, 4640, 6449 of 2021, decided through common order dated 25.02.2022*; *Neeraj Vs The State of Uttar Pradesh SLP (crl) No. 11458/2022 dated 16.01.2023*; *Hussainara Khatoonand Ors Vs Home Secretary, State of Bihar, Pattna, Writ Petition No. 157 of 1979 decided on 12.02.1979*; *Supreme Court Legal Aid Committee Vs Union of India (UOI) and Ors, Writ Petition (Crl) No. 307 of 1993 decided on 07.10.1994*; *Umarmia Vs State of Gujrat Crl Appeal No. 1650 of 2011 decided on 01.02.2017*; *Union of India (UOI) Vs K.A Najeed Crl Appeal No. 98 of 2021 decided on 01.02.2021 & Ashim Vs National Investigation Agency Crl Appeal No. 1525 of 2021 decided on 01.12.2021.*

The learned counsel in support of his arguments also placed reliance on the judgments of this Court passed in “*Manzoor Ahmad Mir Vs UT of J&K*” bail app. No. 109/22 decided on 30.12.2022 and in *Bansi Lal Vs UT of J&K and ors* bail app. No. 30/2024 decided on 03.07.2024.

The learned counsel also placed reliance on a latest judgment of Hon'ble Apex Court titled “*Tapas Kumar Palit Vs State of Chhattisgarh (Crl Appeal No. 738/25) decided on 14.02.2025*”.

The learned counsel submitted that the Hon'ble Apex court has been pleased to grant bail to the appellants/accused in the relied upon cases who were facing trial in respect of cases for different periods ranging from 5 years to 10/15 years without completion of trial against them while observing that they have fundamental right to speedy trial

guaranteed under Article 21 of the Constitution of India which stands compromised due to their long incarceration without expeditious trial against them.

7. Per contra, the learned State counsel vehemently opposed the bail application on the grounds that the same does not merit any consideration having regard to the heinousness of the crime committed by the petitioner and other co-accused. He submitted that most of the witnesses have been examined at the trial, who have incriminated the petitioner/accused. That the petitioner/accused is facing charge for the offence of murder of his wife. That the motive behind the crime and the circumstances in which he committed the crime is gruesome.
8. That the offence of murder punishable under Section 302 RPC already charged against the petitioner carries a punishment of death with alternate punishment of imprisonment for life, thereby attracting the bar in terms of the provisions of the Code/BNSS.
9. That the enlargement of the petitioner/accused will flash a bad signal to the Society and will encourage the like-minded persons. That the petitioner/accused is likely to misuse the concession of bail by influencing the remaining prosecution witnesses and also by absconding at the trial under the fear of conviction.

The learned Government Advocate, in support of his arguments, placed reliance on the authoritative judgments cited as “Kusha Duruka Vs State of Ordisa 2024 (2) SCC (Crl) 466; Sudha Singh Vs State of UP 2012 (2) SCC (Crl) 505; Jadunath Singh Vs Arvind Kumar’s & Anr 2024 (3) SCC (Crl) 108; State of Tamil Nadu Vs S.A Raja 2005 (8) SCC 380 and Vijay Madan Lal Choudhary & Ors Vs Union of India & Ors 2020 (4) Crl. CC 126.”

10. I have perused the instant successive bail application, the objections filed in rebuttal and the scanned copy of the trial court record, especially the evidence of the prosecution witnesses recorded at the trial.
11. I have also accorded an in-depth consideration to the rival arguments

advanced on both the sides.

12. The petitioner/accused is facing trial on the charge of murder of his wife on 29.04.2016. That after the culmination of the investigation in FIR No. 19/2016 of Police Station, Thathri, Doda, the final report/challan came to be presented before the learned trial court against the petitioner and co-accused. The petitioner and co-accused came to be charged in the case vide order dated 22.02.2017 of the learned trial court for the commission of offences under Sections 302 and 109 RPC.

The prosecution evidence was called by the learned trial court on the same date, i.e., 22.02.2017, when the accused persons including the present petitioner pleaded not guilty and claimed to be tried. So the prosecution evidence is in the process of being recorded at the trial since last more than ten years. The petitioner is reported to be facing detention in the case since last more than ten years.

13. As on the date of the rejection of earlier regular bail application of the petitioner/accused by the learned trial court i.e. 17.12.2024, out of fifty listed prosecution witnesses, only nineteen witnesses had been examined.
14. Till now a total of twenty three prosecution witnesses are reported to have been examined at the trial of the case and, as such, more than twenty five witnesses are yet to be examined. The examination of the left over witnesses and the further trial proceedings is likely to take a considerable time.
15. Although, the petitioner has taken the grounds on merit also in his bail application, yet he has mainly sought the grant of bail on account of his long incarceration of eleven years with no hope of conclusion of trial at an earliest.
16. This Court has gone through the evidence recorded by the trial court so far which is merely of circumstantial nature. The Court hesitates to comment on the nature of the evidence at this awaited stage of the conclusion of the trial to prevent any prejudging in the matter.

17. While keeping the evidence adduced at the trial in mind, the another question for addressal of this court arises as to whether the accused having allegedly committed a heinous offence of murder is entitled to be enlarged on bail on the ground of his long incarceration of about eleven years. The matter has been the subject matter of the discussion before the Hon'ble Apex Court in a number of cases.
18. One of the earliest judgments on the concept of speedy trial was delivered by the Hon'ble Supreme Court in the case of Hussainara Khatoon vs. Home Secretary, State of Bihar, (1980) 1 SCC 81. In the said case, the Hon'ble Court deprecated the delay in commencement of trials, which would apply equally to long pendency of trials. The Court observed that un-necessarily prolonged detention in prison of under trials before being brought to the trial, is an affront to all civilized norms of human liberty. The Court observed as under:

“There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

So also Article 3 of the European Convention on Human Rights provides that:

"every one arrested or detained.....shall be entitled to trial within a reasonable time or to release pending trial."

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with

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

The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21 ? That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date....”

19. In Supreme Court Legal Aid Committee vs. Union of India, (1994) SCC 731, the Supreme Court dealt with the issue of delay in trial in the following manner:

“.....In substance the petitioner now prays that all under-trials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Words and Phrases, Section 309 of the Code. It is also true that this Court has emphasized in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just,

fair and reasonable, i.e., a procedure which promotes speedy trial....

Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*¹⁰. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S. Nayak*¹¹, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us....”

20. Again, in *Umarmia vs. State of Gujarat*, (2017) 2 SCC 731, the Supreme Court, while granting bail to an under trial who had been in custody for about 12 years, observed as under:-

“.....This appeal is filed against the judgment dated 16-6-2010 in Criminal Misc. Sr. No. 44 of 2010 by which the Court of Designated Judge (TADA) at Porbandar (hereinafter referred to as “the Designated Court”) rejected the bail application filed by the appellant under Section 439 Cr P C and Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as “the Act”). Crime No. I-43 of 1994 was registered under Section 154 Cr P C for the offences committed under Sections 121, 121-A, 122, 123, 124-B read with Section 34 of the Penal Code, 1860, Sections 25(1-A), (1-B) and 25(1-AA) of the Arms Act, Section 9-B of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosive Substances Act and Sections 3, 4 and 5 of the Act.

2. The statement of one Suresh recorded under Section 108 of the Customs Act revealed that explosive substances, powder RDX boxes, bags containing firearms, 45 bags of weapons, 15 boxes of RDX and 225 pieces of silver ingots were smuggled into the country and taken to Zaroli and Dhanoli Villages of Valsad District. The first charge-sheet was filed on 12-1-1995 in which the name of the appellant is found at Serial No. 1 in Column 2 which refers to persons who were absconding. The 11th supplementary charge sheet was filed on 6-6-2005 wherein it was mentioned that the appellant was arrested at 1700 hrs on 10-12-2004.

10. After considering the submissions of both sides, we are of the opinion that the appellant is entitled to be released on bail for the following reasons:

A. The prior approval required under Section 20-A(1) of the TADA Act was not taken from the District Superintendent of Police before the FIR was recorded.

B. Admittedly, the appellant had been suffering incarceration for more than 12 years. C. Only 25 out of 192 witnesses have been examined so far.

D. There is no likelihood of the completion of trial in the near future.

E. Though there is a confessional statement of the appellant recorded under Section 15 of the TADA, the same cannot be looked into by us in view of the violation of Section 20-A(1) of the TADA Act.

11. This Court has consistently recognized the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See Supreme Court Legal Aid Committee v. Union of India [Supreme Court Legal Aid Committee (Representing Under trial Prisoners) v. Union of India, (1994) 6 SCC 731: 1995 SCC (Cri) 39] and Shaheen Welfare Assn. v. Union of India [Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366] .) The accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. [See Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252: 1999 SCC (Cri) 1156] and Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118.

12. Though the appellant is involved in serious offences and has absconded for a period of 10 years before he was arrested in 2004, we see no reason to confine him to jail as he has already suffered more than 12 years in custody and the trial may not be completed in the near future. Taking note of the above, we grant relief of bail to the appellant subject to the following conditions.....”

21. In the case of Union of India vs. K. A. Najeeb, (2021) 3 SCC 713, a three Judge Bench of the Hon’ble Supreme Court, while considering the long incarceration as also the effect of rigour of Section 43-D(5) of the UAPA Act, observed 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 harmonized. 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.”

22. In yet another judgment in the case of Ashim alias Asim Kumar Haranth Bhattacharya vs. National Investigation Agency, (2022) 1 SCC 695, the Hon’ble Supreme Court observed as under:

“9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW 1/de facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter-affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7- 2012 and has completed nine-and-half years of incarceration as an under trial prisoner.

10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the under trials cannot indefinitely be detained pending trial. 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 him on bail.

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

23. Again, in the case of Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu &anr. 2021 Live Law (SC) 376, the Hon’ble Supreme Court, relying up the ratio laid down in K. A. Najeeb’s case (supra), observed that no accused can be subjected to unending detention pending trial, especially when law presumes him to be innocent until proven guilty. It has been further observed that even when statutory provisions expressly bar the grant of bail

after a reasonably long period of incarceration, such stringent provision will melt down.

24. The Hon'ble Supreme Court in Saudan Singh vs. State of Uttar Pradesh (Criminal Appeal No. 308/2022) while deciding bunch of petitions granted bail to the petitioners who were suffering from incarceration during different periods ranging from 5 to 10/15 years. The petitioner also has been suffering detention in the case FIR since last about eleven years and still the trial of the case is likely to take some more time to conclusion. The co-accused has already been enlarged on bail.

25. The Hon'ble Supreme Court in case titled Tapas Kumar Palit vs. State of Chhattisgarh Crl Appeal No.738/25 decided on 14.02.2025 enlarged the appellant to bail on account of his continued incarceration. It is profitable to reproduce the paras 5 to 15:

5. The appellant was arrested on the very same date i.e. 24th March, 2020. At the end of the investigation charge-sheet came to be filed.
6. The trial is in progress. Till this date the prosecution has been able to examine 42 witnesses. The prosecution intends to examine as many as 100 witnesses. We are conscious of the Order passed by us taking the view that once the trial commences and the witnesses are being examined then in serious crimes like murder, dacoity, rape, etc, the Court ordinarily should not exercise its discretion for the purpose of grant of bail, more particularly, looking into the evidence which has come on record.
7. However, this is a case in which the appellant is in custody as an under trial prisoner since 24th March, 2020. He has no other antecedents. The panch witnesses to the recovery panchnama have also turned hostile.
8. It's been now 5 years that he is in judicial custody. The learned counsel appearing for the State has no idea as regards the time likely to be consumed to complete the recording of the oral evidence.
9. In such circumstances, we are left with no other option but to order release of the appellant on bail. We do not undermined the seriousness of the crime that has been alleged.

10. However, many times we have made ourselves very clear that howsoever serious a crime maybe the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.
11. Before we close this matter, we would like to observe as to why the Public Prosecutor wants to examine 100 witnesses. Who are these 100 witnesses? We are aware that it is the public prosecutor who could be said to be in-charge of the trial and he has to decide who is to be examined and who is to be dropped. But at the same time, no useful purpose would be served if 10 witnesses are examined to establish one particular fact.
12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion in so far as examination of the witnesses is concerned.
13. Where the number of witnesses is large, it is not, in our opinion, necessary that everyone should be produced. In this connection, we may refer to *Malak Khan vs. Emperor* [AIR 1946 Privy Council 16] where their Lordships observed as follows at page 19:-

“It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a Court ought, and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it must judge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses.”

14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witnesses might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an under trial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of

long trials on accused persons – who remain innocent until proven guilty – can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”
26. In the backdrop of the aforementioned discussion, this Court is of the considered opinion, that it may meet the ends of justice in case the petitioner-accused is admitted to bail in the case, subject to some reasonable terms and conditions.
27. Accordingly, the petition is allowed and the petitioner, namely, Hamid Hussain S/o Khurshid Ahmed R/o Tehsil Thathri, District Doda is admitted to bail in the case FIR No. 19/2016 subject to his furnishing of surety and personal bonds each in the amount of Rs.2/- lacs respectively to the satisfaction of the Registrar Judicial, Jammu Wing and the Superintendent of Jail concerned in which he is presently lodged. The bail order, however, shall be subject to the following conditions:-
 - i) In case the petitioner has a Passport, he shall surrender the same before the trial court and shall not travel out of the India without permission of the trial court.
 - ii) That he shall not cause any threat, intimidation or undue

influence on un-examined prosecution witnesses so as to dissuade them from making their statements before the trial court.

iii) That he shall remain punctual at the hearings of the trial case unless exempted for any hearing by the learned trial court.

iv) That he shall not confront the family or relatives of the deceased until the conclusion of the trial.

28. This Court makes it clear that if the petitioner commits breach of any of the aforementioned conditions imposed by this Court, the prosecution shall have the right to approach this Court seeking cancellation of bail. It is needless to mention that the learned trial court is within its powers to proceed against the petitioner/accused in terms of the provisions of Sections 491 and 492 of the BNSS, in the event of violation of any of the bail conditions.

29. In case the requisite surety bond is furnished on behalf of the petitioner/accused to the satisfaction of the Registrar Judicial of Jammu Wing, the Registry shall issue a formal release order directing the Superintendent of the Jail concerned to release the petitioner/accused from his custody in the instant case FIR No. 19/2016 of Police Station, Thathri, Doda after obtaining the requisite personal bond from him to the tune of Rs. 2 lacs.

30. Disposed of.

(Mohd. Yousuf Wani)
Judge

SRINAGAR:
14.10.2026
Pawan Chopra/Secy

Whether the Judgment is reportable? Yes
Whether the Judgment is speaking? Yes