2026 INSC 503

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CRIMINAL) NO. 1090 OF 2026)

SYED IFTIKHAR ANDRABI **APPELLANT(S)**

VERSUS

NATIONAL INVESTIGATION AGENCY, JAMMU **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. The present case raises an important question concerning the interface between Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 and the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. More particularly, the issue concerns the propriety of smaller Benches progressively

hollowing out the constitutional force of a larger Bench decision without ever expressly disagreeing with it.

3. The above question arises in the context of the challenge by the appellant to the judgment and order dated 19.08.2025 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu (briefly 'the High Court' hereinafter) in Criminal Appeal (D.) No. 20/2024 (*Syed Iftikhar Andrabi Vs. National Investigation Agency, Jammu).*

3.1. It may be mentioned that by order dated 10.08.2024, the third Additional Sessions Judge, Jammu designated as the Special National Investigation Agency (NIA) Court rejected the bail application of the appellant in R.C. No. 03/2020/NIA/JMU registered under Sections 17, 38 and 40 of the Unlawful Activities (Prevention) Act, 1967 read with Sections 8, 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 120B of the Indian Penal Code, 1860 (IPC). By the impugned judgment and order dated 19.08.2025, the High Court upheld the order passed by the Special NIA Court and

dismissed the appeal filed by the appellant under Section 21 of the National Investigation Agency Act, 2008.

4. At the outset, relevant facts may be noted.

5. Appellant was a government employee in the Rural Development Department, serving at Kupwara. It is pleaded that appellant is an ardent advocate of the constitutional, federal and democratic set up of our country and is a supporter of Jammu & Kashmir People's Conference, a registered mainstream political party.

5.1. Appellant was taken into preventive detention on 07.08.2019 under the Jammu & Kashmir Public Safety Act, 1978 after abrogation of Article 370 and was lodged in Central Jail, Srinagar. Thereafter, he was shifted to and lodged in Central Jail, Agra. In the dossier and the grounds of detention, it was mentioned that appellant was a government employee and posted as a Village Level Worker in the Rural Development Department. He is a political activist associated with People's Conference and has close connection with the people. To ensure that there was no mayhem, disorder and law and order problem in view of the

fragile law and order situation following abrogation of Article 370, the Superintendent of Police, Handwara recommended detention of the appellant under the provisions of the Jammu & Kashmir Public Safety Act, 1978.

5.2. Appellant challenged the order of preventive detention dated 07.08.2019 before the High Court in W.P. (Crl.) No. 261/2019. The case was heard on 12.03.2020 and the judgment was reserved.

5.3. In the meanwhile, it is stated that the preventive detention of the appellant was revoked by the Government on 25.04.2020 and he was released from custody. High Court also delivered the judgment on 26.06.2020 quashing the order of preventive detention dated 07.08.2019. High Court noted in the said judgment that though the District Magistrate had relied upon 'other incriminating material' to arrive at the satisfaction that appellant had to be preventively detained, nothing was mentioned as to what were the 'other incriminating material'. Those were also not furnished to the appellant which prevented him from making an effective representation, rendering the preventive detention of the appellant untenable.

5.4. A first information being FIR No. 183/2020 was lodged by the police at Handwara Police Station on 11.06.2020 under Sections 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly 'the NDPS Act' hereinafter). The allegation in the FIR is that police during checking of the vehicles and pedestrians at Kuhroo Bridge stopped a white coloured vehicle (Creta model) without registration, which was on its way from Baramulla to Handwara. During checking of the vehicle, a black bag was found under the front seat of the vehicle. In the course of search of the recovered bag, a large number of Indian currency notes of 500 denomination were found; that apart, six packets of suspected narcotic substances were found from the dicky of the vehicle. The driver Abdul Momin was taken into custody. In connection with the aforesaid police case, appellant was brought to the police station for investigation whereafter he was arrested on 11.06.2020. As per the disclosure memo of the accused appellant, it is stated that during investigation of FIR No. 183/2020, the accused appellant in the presence of Handwara Police Special Investigation Team (SIT) disclosed that he had taken heroin

from Abdul Momin Peer and that he could recover the same by pointing out.

5.5. It appears that Central Government *vide* letter dated 22.06.2020 directed the National Investigation Agency (NIA) to conduct investigation into FIR No. 183/2020. Accordingly, NIA re-registered the same as FIR No. RC-03/2020/NIA/JMU. In the newly registered FIR, NIA mentioned about interception of the white colored Creta vehicle without registration number at Kuhroo Bridge while it was on its way to Handwara which led to seizure of a large amount of cash in 500 rupee denomination alongwith six packets of heroin like substance. The driver Abdul Momin was arrested and based on the information provided by him, further raids at different locations in Handwara were carried out leading to recovery of 15 kgs of contraband and cash amounting to Rs. 1.15 crores. It was further mentioned that one of the arrested persons i.e. the appellant is a close relative of Mohd. Qasim Geelani and Mohd. Yusuf Geelani who are currently in Pakistan; being commanders of proscribed terrorist organization LeT and presently operating from across the border.

5.6. NIA filed chargesheet before the Special NIA Court on 05.12.2020 being Chargesheet No. 08/2020. Insofar as the appellant is concerned, he is arrayed as accused No. 2 and the allegation against him is that on information provided by him, cash amounting to Rs. 35,17,970.00 and three packets of heroin totalling 3.2 kgs were recovered from the bedroom of accused No. 1; besides two mobile phones were also recovered. It is stated that during investigation, it was revealed that in 2017 accused No. 1 Abdul Momin Peer came in contact with his brother-in-law Saleem Andrabi, accused No. 5, who is the son of the appellant-accused No. 2, and all of them started heroin smuggling. It is further stated that the phone numbers appearing in his mobile phones establish his linkage with Pakistan based LeT/HM (Hizbul Mujahideen) operatives viz Wahid Geelani, Ajaz and others. It is also stated that accused No. 2 (appellant) had visited Pakistan in 2016 and 2017 and had met one Saifudeen alias Saifulla, a brother of Wahid Geelani. PW-33 in his statement before the police mentioned about the involvement of appellant-accused No. 2 in drug racketeering and his association with LeT/HM

operatives based in Pakistan. It is further stated that it has come on record that accused No. 2 (appellant) used to supply drugs/heroin by using his car and that he had visited Pakistan in 2016 and 2017 *via* Wagah-Attari border. The chargesheet mentioned that appellant-accused No. 2 worked as an overground worker for LeT and HM. Thus, appellant-accused No. 2 has been accused of committing offences under Sections 8, 21, 25 and 29 of the NDPS Act read with Sections 17, 38 and 48 of the Unlawful Activities (Prevention) Act, 1967 (briefly 'the UAP Act' hereinafter) read with Section 120B IPC.

5.7. Thereafter NIA filed supplementary chargesheets.

5.8. In the meanwhile, appellant sought for bail on medical grounds. Special NIA Court *vide* the order dated 04.01.2022 granted interim bail to the appellant on medical grounds initially till 23.01.2022 and, thereafter, extended upto 10.03.2022. On expiry of the bail period, appellant surrendered before the Special NIA Court on 10.03.2022.

5.9. Charge in this case was framed by the Special NIA Court on 15.11.2023. Insofar as the appellant is

concerned, he has been charged with having committed offences under Sections 8, 21, 25 and 29 of the NDPS Act read with Sections 17, 38 and 40 of the UAP Act read with Section 120B IPC.

6. Appellant sought for regular bail before the Special NIA Court. However, the learned Special Judge *vide* the order dated 10.08.2024 rejected the bail application of the appellant.

7. Assailing the aforesaid order dated 10.08.2024, appellant preferred an appeal under Section 21 of the National Investigation Agency Act, 2008 ('NIA Act' hereinafter) before the High Court which was registered as Criminal Appeal (D) No.20 of 2024. By the impugned judgment and order dated 19.08. 2025, the High Court dismissed the said appeal of the appellant.

8. Aggrieved by the impugned judgment and order dated 19.08.2025, appellant has preferred the instant special leave petition before this Court. By order dated 07.01.2026, this Court had issued notice whereafter parties have exchanged affidavits. The matter was heard on

11.03.2026 and thereafter on 13.04.2026. Both the sides have also filed written submissions following closure of the hearing.

9. Mr. Shadan Farasat, learned senior counsel for the appellant submits that both the trial court as well as the High Court erred in denying bail to the appellant. He submits that appellant has been in custody since 11.06.2020, enduring over 5 years 9 months of incarceration. Though the chargesheet *qua* the appellant was filed way back on 05.12.2020, the trial is moving at a slow pace. There are more than 350 prosecution witnesses still to be examined and early conclusion of the trial is well nigh impossible.

9.1. Learned senior counsel submits that speedy trial is a valuable fundamental right of an accused. Both liberty and speedy trial are anchored in Article 21 of the Constitution of India. Deprivation of personal liberty of an accused or under trial for a considerable period of time without any speedy trial or without any prospect of conclusion of trial amounts to gross violation of Article 21. He asserts that Article 21 being over-arching and

sacrosanct, a constitutional court cannot be restrained from granting bail to an under trial, regardless of statutory restrictions. In this connection, learned senior counsel has placed reliance on a number of decisions of this Court including *Shaheen Welfare Association Vs. Union of India*[1], *Union of India Vs. K.A. Najeeb*[2] *and Sheikh Javed Iqbal Vs. State of U.P.*[3] He, therefore, submits that if there is no likelihood of conclusion of trial within a reasonable period, a constitutional court would be obligated to enlarge the accused on bail. Adverting to *K.A. Najeeb,* he submits that rigors of bail under special criminal statutes will melt down when 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. To support such a contention, he has cited examples of several accused persons incarcerated under special criminal statutes who have been granted bail by this Court considering their long incarceration.

[1] (1996) 2 SCC 616
[2] (2021) 3 SCC 713
[3] (2024) 8 SCC 293

9.2. Learned senior counsel also submits that the seriousness of the alleged offence cannot continue to be a dominant factor to be considered for bail in case of delay in conclusion of trial. Bail cannot be denied on the ground of seriousness of alleged offence when the accused has undergone prolonged incarceration and the trial is unlikely to be completed within a reasonable time.

9.3. Insofar as the present case is concerned, the impugned judgment and order erroneously attributes the delay in trial to the appellant which is contrary to the record. As a matter of fact, the trial court in orders dated 06.08.2025 and 07.08.2025 has recorded that the prosecution's failure to produce witnesses has delayed the trial proceedings. It is submitted that the prosecution is responsible for a two-year delay in framing of charges; while arguments on charge were concluded on 15.11.2021 when the order was reserved, charges could be framed only on 15.11.2023 due to non-appearance of the Chief Investigating Officer despite repeated reminders by the trial court. Pronouncement of order of charge was further delayed due to change of the public prosecutor and an application filed by the new senior

public prosecutor to further argue the case even after the order was reserved. On the contrary, appellant only filed four applications before the trial court, rather he was compelled to file the applications due to the conduct of the respondent which were clearly prejudicial to a fair trial. For example, it came to light during one of the hearings on 10.09.2025 that the prosecution had suppressed statements recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) of all the protected witnesses. Therefore, appellant was compelled to file the applications under Sections 91 and 173(8) Cr.P.C. read with Section 156(3) Cr.P.C. and for compliance of the directions of this Court in *Inadequacies and Deficiencies in Criminal Trials, In Re*[4].

9.4. Mr. Farasat submits that it was wrong on the part of the High Court to have dismissed the prayer for bail of the appellant on the ground *inter alia* that charges have already been framed against the appellant. He asserts that framing of charge does not bar grant of bail even under special criminal statutes like the UAP Act or the NDPS Act.

[4] (2021) 10 SCC 598

9.5. It has also been pointed out that in a case arising out of the same chargesheet, this Court has granted bail to a co-accused (A-11) Shri Romesh Kumar despite charges having been framed against him under Sections 118, 117 and 120B IPC read with Sections 17 and 40 of the UAP Act read with Sections 8, 21 and 29 of the NDPS Act predominantly on the ground of delay in trial. Referring to the said decision of this Court in *Romesh Kumar Vs. Union of India*, Special Leave Petition (Criminal) No. 13829 of 2024, decided on 07.02.2025, he submits that on the principle of parity, appellant should be extended the benefit of bail as he has undergone a longer period of custody than Shri Romesh Kumar.

9.6. Mr. Farasat has also touched upon the merit of the charges framed against the appellant. According to him, no *prima-facie* case has been made out against the appellant either under the UAP Act or under the NDPS Act. The alleged recovery of cash amounting to INR 35,17,970.00 and 3.2 Kgs of heroin pursuant to disclosure statement attributed to the appellant is legally inadmissible and wholly unsustainable for the following reasons:

(i) the disclosure memo fails to specify the precise place of concealment and it only states *I have taken narcotic substance from A-1. I can recover the same by pointing out.*

(ii) the disclosure memo is conspicuously silent with regard to the alleged recovery of cash rendering such recovery inadmissible in evidence and incapable of being attributed to the appellant.

(iii) the alleged disclosure is not supported by any pointing-out memo duly signed by the accused and two independent witnesses. The alleged recovery, therefore, not being a direct consequence of the disclosure statement of the appellant under Section 27 of the Indian Evidence Act, 1872 is inadmissible *qua* the appellant.

(iv) the site map and the recovery-cum-seizure memo do not have signatures of independent witnesses or even of the accused when it is the case of the prosecution that the disclosure, recovery and the

arrest of the appellant were made at the same site and at the same time.

9.7. There being no admissible evidence to establish any continuity or causal link between the disclosure allegedly made by the appellant and the subsequent recovery said to have been affected at his instance, there is no material on record to even show a *prima-facie* case against the appellant under the NDPS Act. As a matter of fact, the alleged recovery on 11.06.2020 had already been shown as seized from accused No. 1 at Bemina, Srinagar and reported in the public domain on 10.06.2020. Thus, there is no recovery either from the person of the appellant or from the residence of the appellant or from any working place of the appellant. On the contrary, the alleged recovery was already shown as seized from accused No. 1.

9.8. Learned senior counsel submits that the High Court has granted bail to a co-accused of the appellant being Islam Ul-Haq Peer (accused No. 3) who was arrested on an exactly identical disclosure. In Criminal Appeal (Diary) No. 12/2024 (*Islam Ul Haq Peer Vs. Union of India),* the High Court *vide* the order dated 18.02.2025, granted bail to the

said accused. This order dated 18.02.2025 has not been challenged by the respondent till date and has thus attained finality.

9.9. Referring to the chargesheet and the charges framed by the trial court, Mr. Shadan Farasat, learned senior counsel for the appellant submits that the gist of the allegations against the appellant is that he raised funds by selling narcotics which were then used for funding terrorism; in other words, the charges are of narco-terrorism. The charge of terror cannot stand independent of the charge under the NDPS Act. When there is no evidence of sale or purchase of narcotics nor is there any admissible evidence of any recovery of narcotics or funds from the appellant, not to speak of having found the appellant in conscious possession of any narcotic, the whole premise of terror funding charges against the appellant under the UAP Act collapses.

9.10. Insofar as the allegation that appellant is related to or has links with Mohd. Qasim Geelani and Mohd. Yusuf Geelani, learned senior counsel submits that the same is wholly untrue. The allegations of having such a link has

been made on the basis of appellant's statement made before the police and admittedly there has been no investigation in this regard. He submits that insofar as Mohd. Yusuf Geelani is concerned, he passed away in the year 2000 and in so far Mohd. Qasim Geelani is concerned, he is a government employee working as an Assistant Lineman in the Jal Shakti Department, Handwara.

9.11. The charge that the appellant is having link with the LeT/HM operative Wahid Geelani is based on the explanation memo of phone contacts and following the disclosure of the appellant himself before the police. Such an explanation memo is inadmissible in evidence, being in the nature of a confession before the police, thus, squarely prohibited under Section 25 of the Indian Evidence Act, 1872. Other than the appellant's confession before the police, there is no other material to show any linkage of the appellant with any terrorist. He submits that one of the phone numbers mentioned in the explanation memo is actually a toll free customer care number of Q Mobile, a network service provider. That apart, the CDR report of the electronic devices seized from the appellant reveals no

terrorist connection; the CDR report which is part of the chargesheet shows no phone calls between the petitioner and any terrorist.

9.12. It is also submitted that the respondent wrongly relied on an over ground worker (OGW) categorization certificate issued on 04.12.2020 to show that appellant is an over ground worker of the terrorists. He submits that not only the certificate was issued a day before filing the chargesheet but was also issued while the appellant was already in preventive detention for around six months under the Jammu and Kashmir Public Safety Act, 1978 when the dossier prepared in connection with that preventive detention matter did not even remotely make any reference to the appellant having any terror link. As a matter of fact, the said categorization certificate was issued by the very same Superintendent of Police, Handwara who in the dossier dated 17.08.2019 in the preventive detention case had described the appellant as a mainstream political worker of the People's Conference.

9.13. Learned senior counsel submits that serious allegations have been levied against the appellant without

any material to justify such accusations. The allegations are sweeping without any corroboration by the materials on record, rather in complete disregard to the materials on record.

9.14. He, therefore, submits that the present is a fit case where this Court may interfere with the impugned judgment and order and grant bail to the appellant.

10. *Per contra*, Mr. S.D. Sanjay, learned Additional Solicitor General of India referring to the counter affidavit as well as to the reply affidavit filed by the respondent to the rejoinder affidavit of the appellant submits that the charges against the appellant are extremely serious. He is accused of funding terrorists and anti-national activities by utilizing funds generated through sale of narcotics. Therefore, the Special NIA Court as well as the High Court were justified in denying bail to the appellant.

10.1. Appellant is a close relative of Md. Qasim Geelani and Md. Yusuf Geelani who are Pakistan based LeT terrorists. Appellant along with accused No.1 had visited Pakistan during 2016-17 to meet the said persons.

10.2. Appellant was engaged in the sale of drugs along with the other co-accused and the sale proceeds were suspected to be channeled to the proscribed terrorist organization LeT. Mr. Sanjay submits that accused No.1 is the son-in-law of the appellant.

10.3. Mr. Sanjay submits that at the instance of the appellant, cash amounting to Rs. 35,17,970.00 and three packets of heroin totaling 3.2 kgs were seized from the bedroom of accused No. 1.

10.4. It is submitted that during investigation, the mobile phones of the appellant were seized and sent to the appropriate authority in Delhi for data extraction. The extracted data was shown to the appellant who explained the various contacts appearing therein. The extracted data establishes his linkage with Pakistan based LeT/HM operatives.

10.5. Mr. Sanjay, learned Additional Solicitor General has referred to the statements made by various prosecution witnesses as well as the exhibited documents to drive home the point that the appellant was deeply connected with drugs

related and terrorist activities. Even the approver i.e. accused No. 8 has named the appellant and has stated that the appellant provides money to LeT.

10.6. Insofar as the ground of delay in trial is concerned, Mr. Sanjay submits that there is as such no delay in the trial proceeding. If at all any delay has occurred, the same is purely attributable to the appellant who has been filing one application after the other. He submits that there is no prolonged incarceration in the present case. A total of 38 witnesses have been examined till date. As such, there is no delay on the part of the prosecution. In any event, delay *per se* cannot be a ground to grant bail to an accused in such cases.

10.7. Learned Additional Solicitor General has strongly disputed the contention of the appellant based on annexure-P/26 to the rejoinder filed by the appellant that the recovery of the alleged contraband following the statement of the appellant was in fact already shown as seized from accused No. 1 at Bemina, Srinagar and reportedly in the public domain on 10.06.2020 itself. He

submits that these Facebook posts on various social media portals are manipulated and lack credibility.

10.8. Insofar as the death certificate attached as annexure-P/31 to the rejoinder of the appellant is concerned, Mr. Sanjay submits that the same does not pertain to the person named as Syed Md. Yusuf Geelani but a different person named Syed Md. Yusuf Shah and the surname 'Geelani' was put up later under brackets to make it look like the death certificate of the concerned person. It is submitted that the said certificate was issued on 29.05.2021, whereas the date of death is shown as 04.09.2000. Therefore, the certificate was procured subsequently and cannot be said to be an original certificate. However, on a pointed query by the Bench as to whether the date of death is correct, Mr. Sanjay submits that he is not aware of the same.

10.9. Learned Additional Solicitor General thereafter drew the attention of the Court to the WhatsApp chats of the appellant to contend that the appellant was in constant touch with the terrorists of LeT. Here also, when the Bench asked Mr. Sanjay to show the chats, he was unable to do so.

10.10. Insofar as granting of bail to co-accused Romesh Kumar (A-11) by this Court is concerned, he submits that the case of Romesh Kumar stands on a different footing from that of the appellant. Romesh Kumar was an officer belonging to the Narcotics Control Bureau (NCB) and is alleged to have colluded with the other accused persons.

10.11. Learned Additional Solicitor General further submits that Ms. Syeda Faiqa Andrabi is the daughter of the appellant. She has a bank account bearing No. 0667041000000712 at J&K Bank, Zachaldara, Kupwara. She is the sister of accused No.5 and sister-in-law of accused No.1. Her account number showed transactions of around ninety lakhs of rupees in the year 2018 but she could not justify such transactions though she had no source of income being in the age group of 18-19 years. Ms. Syeda Faiqa Andrabi has stated that her account was being operated by her father i.e. by the appellant and her brother accused No. 5. Therefore, the submission is that all the accused persons are related and the appellant has been using the bank account of his daughter. However, on a query by the Bench, learned Additional Solicitor General submitted

that the daughter of the appellant, Ms. Syeda Faiqa Andrabi, has not been made an accused in the case.

10.12. As regards the case of Islam-ul-Haq Peer, learned Additional Solicitor General submits that his case does not stand on the same footing as that of the appellant and, therefore, bail granted to the former would have no bearing on the case of the appellant. Principle of parity would not be applicable.

10.13. Finally, learned Additional Solicitor General submits that all endeavor would be made to expedite the trial which of course depends upon the co-operation of the appellant. He submits that if the trial is not concluded within a period of one year, then this Court may consider the bail prayer of the appellant after expiry of such period.

10.14. On a query by the Bench, Mr. Sanjay submits that prosecution has a very good case against the appellant and is confident of achieving conviction.

10.15. In any view of the matter, the question of granting bail to the appellant at this stage does not arise at all. He, therefore, seeks dismissal of the criminal appeal.

11. In his reply submission, Mr. Shadan Farasat, learned senior counsel for the appellant submits that there is no material against the appellant to connect him with any of the offences alleged either under the NDPS Act or under the UAP Act. Therefore, continued detention of the appellant has become wholly oppressive and untenable.

11.1. He has also drawn the attention of the Court to the fact that two more accused persons have been granted bail by the High Court after filing of the related special leave petition. In the case of *Mudasir Ahmed Dar Vs. NIA*, Criminal Appeal (Diary) No. 23/2025, decided on 18.09.2025, the High Court has granted bail to accused No. 12, Mudasir Ahmed Dar. The accusation against accused No. 12 is that he was actively engaged as a narcotic drug peddler providing logistic support to the co-accused; thus, indulging in narco-terror activities. The High Court has repelled such contention by holding that there is no material to suggest that accused No. 12 was indulging in the sale of narcotics. The High Court has taken the view that there are no reasonable grounds for believing that the accusations against accused No. 12 are *prima facie* true. Given the

materials available on record, he deserves to be released on bail. Accordingly, bail was granted to the said Mudasir Ahmed Dar.

11.2. Likewise, in the case of Amin Allaie, accused No.13, the High Court in Criminal Appeal (Diary) No. 26/2025 (*Amin Allaie Vs. NIA*) decided on 02.04.2026 also granted him regular bail. The High Court has noted that no recovery was affected from the said Amin Allaie, not to speak of participation or involvement in any transactions leading to recovery of narcotic substances. The High Court has held that the entire case against him rested upon the statement of the approver and alleged telephonic contacts without any corroborative evidence such as financial transactions, recovery or any overt act attributable to him. Holding that continued incarceration of the said accused would be inconsistent with the mandate of Article 21 of the Constitution of India, he has been enlarged on bail.

11.3. Learned senior counsel submits that while Mudasir Ahmed Dar (accused No. 12) was in custody for a period of 4 years 6 months at the time of grant of bail by the High Court, Amin Allaie (accused No. 13) had completed 5

years 1 month of incarceration. All the accused persons who have been granted bail till now have undergone lesser period of incarceration than the appellant facing similar accusations. Therefore, there is no reason why the appellant should be denied bail.

11.4. Learned senior counsel submits that the submission of learned Additional Solicitor General that the trial court should be directed to conclude the trial within a period of 1 year is wholly impractical considering the fact that more than 350 prosecution witnesses are yet to be examined. Placing reliance on the decisions of this Court in *Roop Bahadur Magar alias Sanki alias Rabin Vs. State of West Bengal*[5] and *High Court Bar Association, Allahabad Vs. State of Uttar Pradesh*[6], Mr. Farasat submits that directing the trial court for expeditious completion of trial is neither appropriate nor adequate. It cannot be a practical remedy for a person seeking bail suffering incarceration for a long period. If the bail of the appellant can be considered after one year, there is no reason why the same cannot be considered at the

[5] 2024 SCC OnLine SC 5575
[6] (2024) 6 SCC 267

present moment. He, therefore, submits that the present is a fit case for grant of bail to the appellant pending trial.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

13. At the outset, it would be appropriate to advert to the relevant statutory provisions under which appellant has been charged as well as the provisions relating to bail.

14. Section 8 of the NDPS Act prohibits certain operations. It says that no person shall -

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substances;

except for medical or scientific purposes and in the manner and to the extent provided by provisions of

the NDPS Act or the rules or orders made thereunder. Where any such provision imposes any requirement by way of licence, permit or authorization, such production, manufacture etc. shall also be in accordance with the terms and conditions of such licence, permit or authorization.

14.1. There are two provisos which, however, may not be necessary to be analysed in this case.

14.2. Section 21 of the NDPS Act lays down the punishment for contravention in relation to manufacture of drugs and preparations. As per Section 21, whoever in contravention of any provision of the NDPS Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punished in the manner prescribed thereunder. If the contravention involves small quantity, the punishment is rigorous imprisonment (RI) for a term which may extend to one year, or with fine which may

extend to ten thousand rupees, or with both; where the contravention involves quantity which is lesser than commercial quantity but greater than small quantity, the offender shall be punished with RI for a term which may extend to ten years and with fine which may extend to one lakh rupees; but where the contravention involves commercial quantity, the offender shall be punished with RI for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. However, as per the proviso, the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

14.3. Section 25 deals with punishment for allowing premises etc. to be used for commission of an offence. Section 25 says that whoever being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of the NDPS Act, he shall be liable for punishment provided for that offence.

14.4. Punishment for abetment and criminal conspiracy is provided for in Section 29. As per sub-section (1), whoever abets or is a party to a criminal conspiracy to commit an offence punishable under Chapter IV of the NDPS Act shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy and notwithstanding anything contained in Section 116 IPC be punishable with the punishment provided for the offence. Sub-section (2) clarifies that a person abets or is a party to a criminal conspiracy to commit an offence within the meaning of Section 29 who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which (a) would constitute an offence if committed within India; or (b) under the laws of such place is an offence relating to narcotic drugs or psychotropic substances.

14.5. Section 37 of the NDPS Act provides that offences under the aforesaid Act are cognizable and non-bailable. While clause (a) of sub-section (1) says that every offence punishable under the NDPS Act shall be cognizable, clause (b) lays down stringent conditions for bail. This clause

is negatively worded. Infact, the section itself starts with a *non-obstante* clause. Clause (b) of sub-section (1) says that notwithstanding anything contained in the CrPC, no person accused of an offence under Sections 19, 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless (i) the public prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Sub-section (2) clarifies that the limitations on granting of bail in terms of clause (b) of sub-section (1) are in addition to the limitations under the CrPC or any other law for the time being in force, on granting of bail. Section 37 reads thus:

> **37. Offences to be cognizable and non-bailable.**—
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
>
> (a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

15. We may now turn to the UAP Act. Section 17 of the UAP Act provides for punishment for raising funds for terrorist act. It says that whoever in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds whether from a legitimate or illegitimate source, from any person or persons or attempts to provide

to or raises or collects funds for any person or persons knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act; whether such funds are actually used or not for commission of such act is immaterial. Such an offender shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

15.1. There is an Explanation to Section 17. As per Explanation (a), participating, organizing or directing in any of the acts stated therein shall constitute an offence; Explanation (b) says that raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and Explanation (c) explains that raising or collecting or providing funds in any manner for the benefit of or to an individual terrorist, terrorist gang or terrorist organization for the purpose not specifically covered under Section 15 shall also be construed as an offence.

15.2. At this stage, we may mention that Section 15 explains and covers the entire spectrum of a terrorist act. Sub-section (1) of Section 15, which defines 'a terrorist act' is extracted hereunder:

> **15. Terrorist Act.**—(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—
>
> (*a*) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
>
> (*i*) death of, or injuries to, any person or persons; or
>
> (*ii*) loss of, or damage to, or destruction of, property; or
>
> (*iii*) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
>
> (*iii-a*) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian

paper currency, coin or of any other material; or

(*iv*) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(*b*) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(*c*) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act;

commits a terrorist act.

15.3. Offence relating to membership of a terrorist organization is dealt with in Section 38. Sub-section (1) says that a person, who associates himself, or professes to be associated with a terrorist organization with intention to further its activities, commits an offence relating to membership of a terrorist organization. The proviso thereto

explains that sub-section (1) shall not apply where the person charged is able to prove-

(a) that the organization was not declared as a terrorist organization at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organization at any time during its inclusion in the First Schedule (prior to 14.08.2019 only 'Schedule') as a terrorist organization.

15.4. A person who commits the offence relating to membership of a terrorist organization under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years or with fine or with both in terms of sub-section (2) of Section 38.

15.5. This brings us to Section 40 of the UAP Act which deals with the offence of raising fund for a terrorist organization. As per sub-section (1), a person commits the offence of raising fund for a terrorist organization who

with the intention to further the activity of a terrorist organization –

(a) invites another person to provide money or other property and intends that it should be used or has reasonable cause to suspect that it might be used for the purposes of terrorism; or

(b) receives money or other property and intends that it should be used or has reasonable cause to suspect that it might be used for the purposes of terrorism; or

(c) provides money or other property and knows or has reasonable cause to suspect that it would or might be used for the purposes of terrorism.

15.5.1. As per the Explanation, a reference to provide money or other property includes –

(a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency.

15.6. Sub-section (2) of Section 40 says that a person who commits the offence of raising fund for a terrorist organization under sub-section (1) shall be punishable with imprisonment for a term not exceeding fourteen years or with fine or with both.

15.7. Section 43D of the UAP Act declares that there shall be modified application of certain provisions of the CrPC or any other law to every offence punishable under the UAP Act. While every offence punishable under the UAP Act shall be deemed to be a 'cognizable offence', every case thereunder would be construed to be a 'cognizable case'.

15.8. Sub-section (5) of Section 43D deals with the provision for bail under the UAP Act. The said provision is extracted hereunder:

> **43D. Modified application of certain provisions of the Code.-**
>
> *** *** *** *** ***
>
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an

opportunity of being heard on the application for such release:

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

15.9. As noticed above, sub-section (5) starts with a *non-obstante* clause. It says that notwithstanding anything contained in the CrPC, no person accused of an offence punishable under Chapters IV and VI of the UAP Act (which includes the three substantive allegations against the appellant) shall, if in custody, be released on bail or on his own bond unless the public prosecutor has been given an opportunity of being heard on the application for such release. The proviso says that such accused person shall not be released on bail or on his own bond if the court, on a perusal of the case diary or the report made under Section 173 CrPC, is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

15.10. Thus, this section engrafts a restriction on the ordinary power of courts to grant bail in cases involving offences under Chapters IV and VI of the UAP Act, which concern mainly terrorist activities and membership or support of terrorist organisations. As noticed above, the section begins with a *non-obstante* clause overriding the ordinary bail framework under the CrPC and mandates that no accused person in custody shall be released on bail without first affording the public prosecutor an opportunity of being heard. The proviso to the section imposes a further limitation. It states that bail shall not be granted if, upon a perusal of the case diary or the police report submitted under Section 173 of the CrPC, the court is of the opinion that there exist reasonable grounds for believing that the accusation against the accused is *prima facie* true.

15.11. Sub-section (6) clarifies that the restrictions on granting of bail specified in sub-section (5) are in addition to the restrictions under the CrPC or any other law for the time being in force on granting of bail.

16. Section 120B IPC provides for punishment for committing the offence of criminal conspiracy which is defined in Section 120A. As per sub-section (1) of Section 120B, whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or RI for a term of two years or upwards, shall, where no express provision is made in the IPC for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

16.1. Sub-section (2) says that whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as stated in sub-section (1), shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both.

17. The NIA Act has been enacted to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties etc. and for matters connected therewith or incidental thereto.

17.1. As per Section 11, the Central Government has been empowered to designate a Court of Session as a Special Court after consultation with the Chief Justice of the High Court for such area or areas or for such case or class or group of cases as may be specified in the notification that may be issued in this regard and published in the official gazette.

17.2. Section 21(1) says that notwithstanding anything contained in the CrPC, an appeal shall lie from any judgment, sentence or order not being an interlocutory order of a Special Court to the High Court both on facts and on law.

17.3. Sub-section (2) clarifies that every such appeal is required to be heard by a Bench of two Judges of the High Court. Such appeal should be disposed of as far as possible within a period of three months from the date of admission of the appeal.

18. Having broadly taken note of the relevant statutory provisions, we may now consider a few of the judgments having a bearing on the present case.

19. A public interest litigation was filed by a petitioner called Shaheen Welfare Association before this Court seeking certain reliefs for undertrial prisoners who were charged with committing offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (briefly, 'the TADA' hereinafter). In *Shaheen Welfare Association,* this Court observed that the aforesaid petition posed the problem of reconciling conflicting claims of individual liberty on the one hand and the right of the community and the nation to safety and protection from terrorism and disruptive activities on the other hand. The conflict is generated on account of the gross delay in the trial of persons charged under enactments like TADA. Such delay may contribute to the absence of proper evidence at the trial so much so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. This Court noted that such persons suffer severe hardships and their families may be ruined. While stressing

upon the need for efficient investigation of such crimes and setting up of adequate number of Designated Courts, this Court observed that such steps would ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods. The Court, therefore, stressed upon the need for taking a pragmatic approach.

20. In *Lt. Col. Prasad Shrikant Purohit Vs. State of Maharashtra*[7], this Court was considering the prayer for bail of the appellant who was charged with committing offences under various provisions of the IPC, Explosive Substances Act, 1908, the Arms Act, 1959, the UAP Act as well as the Maharashtra Control of Organized Crimes Act, 1999.

20.1. While considering the bail prayer of the appellant in that case, this Court observed that while liberty of a citizen is undoubtedly important but that has to be balanced with the security of the community. A balance is required to be maintained between personal liberty of the accused and the investigational rights of the agency. This Court emphasized that such balance must result in minimum

[7] (2018) 11 SCC 458

interference with the personal liberty of the accused and the right of the agency to investigate the case.

20.2. Observing that at the stage of granting bail, a detailed examination of the evidence and elaborate documentation and merits of the case is not warranted, this Court held that right to bail is not to be denied merely because of the sentiments of the community against the accused. In the facts of that case, it was found that NIA had submitted supplementary chargesheet which was at variance with the chargesheet filed by the Anti-Terrorist Squad (ATS) and that the trial was likely to take a long time with the appellant in prison for about 8 years and 8 months at that point of time. Appellant was therefore granted bail by this Court subject to certain conditions.

21. *K.A. Najeeb* is a three-Judge Bench decision of this Court. In that case, this Court was considering an appeal filed by the Union of India against bail granted by the High Court of Kerala to the accused facing trial for allegedly committing offences, amongst others, under Sections 16, 18, 18-B, 19 and 20 of the UAP Act. It was noted that the accused in the said case was in jail for more than five years.

Charges were framed only on 27.11.2020 and there were 276 witnesses still left to be examined.

21.1. This Court referred to its previous decisions wherein it has been clarified that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. Undertrials 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 court would ordinarily be obligated to enlarge them on bail.

21.2. The Bench also critically examined the decision of this Cout in *NIA Vs. Zahoor Ahmad Shah Watali*[8] and opined that the High Court in that case had virtually conducted a mini trial and reappreciated the entire evidence on record to overturn the Special Court's conclusion of there being a *prima facie* case of conviction and the concomitant rejection of bail. In the process, the High Court had determined admissibility of certain evidence which exceeded

[8] (2019) 5 SCC 1

the limited scope of a bail petition. In *Watali,* this Court was of the view that the approach of the High Court was beyond the statutory mandate of a *prima facie* assessment under Section 43D(5) of the UAP Act which was pre-mature and would have prejudiced the trial itself. Therefore, the Bench in *K.A. Najeeb* noted that it was under such circumstances that in *Watali,* this Court had intervened and had cancelled the bail.

21.3. Regarding the stringent conditions to be met under Section 43D(5) of the UAP Act before an accused can be granted bail, this Court held thus:

> **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.

21.4. It is crystal clear that the above was not an equitable exception laid down only with reference to the facts of that case, but was an authoritative declaration of a constitutional limitation on the operation of the statutory embargo of Section 43-D(5) itself.

21.5. While noting that the charges levelled against the respondent were grave and a serious threat to societal harmony, the three-Judge Bench observed that had it been a case at the threshold, perhaps the Court would have rejected the prayer for bail. However, keeping in mind the length of the period spent in custody and unlikelihood of the trial being completed any time soon, the bail granted by the High Court was not interfered with. This Court held thus:

> **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.

22. In *Javed Gulam Nabi Shaikh Vs. State of Maharashtra*[9], this Court was examining the legality and validity of an order passed by the High Court of Judicature at Bombay by which the High Court declined to release the appellant on bail in connection with his prosecution under the provisions of the UAP Act. While reiterating the principle declared by this Court in one judgment after the other that the right to speedy trial of an offender facing criminal charges is implicit in the broad sweep and content of Article 21 of the Constitution of India, the Bench noted that the provisions of Section 19 of the NIA Act mandates that trial under the said Act by a Special Court shall be held on a day

[9] (2024) 9 SCC 813

to day basis on all working days and should have precedence over the trial of any other case. In this regard, Special Courts are to be designated for such offences by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the NIA Act. The Bench referred to the decision of this Court in *Satender Kumar Antil Vs. CBI*[10] which held that the general principle engrafted in Section 436A CrPC which requires *inter alia* the accused to be enlarged on bail if the trial is not concluded within the specified period would apply to the special enactments as well e.g. the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as liberty of a person is concerned. This Court emphasized that more the rigour, the quicker the adjudication ought to be.

22.1. Observing that the appellant in that case was still an accused and not a convict, the Bench held that the overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty

[10] (2022) 10 SCC 51

cannot be brushed aside likely, howsoever stringent a penal law may be. This Court held thus:

> **17.** 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.

23. Again in the case of *Sheikh Javed Iqbal Vs. State of Uttar Pradesh*[11], this Court considered the order of the High Court of Judicature at Allahabad, Lucknow Bench rejecting the bail application of the appellant. Be it stated that the appellant was facing trial under various provisions of the IPC as well as under the UAP Act.

23.1. The Bench noted that the appellant was in custody for more than nine years and that evidence of only two witnesses had been recorded till that point of time. Therefore, the Court was of the opinion that a reasonable

[11] (2024) 8 SCC 293

view could be taken that the trial was likely to take considerable time.

23.2. As regards, right of an accused to speedy trial, the Bench underscored such a need being an essential facet of Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude. The Bench held as under:

> **24.** It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23.3. As regards the decision of this Court in *Zahoor Ahmad Shah Watali,* the Bench analysed the decision in *K.A. Najeeb* where the three-Judge Bench had critically examined the decision in *Zahoor Ahmad Shah Watali.* While agreeing with the reasoning given in *K.A. Najeeb qua* the decision in *Zahoor Ahmad Shah Watali*, the Bench observed that *Zahoor Ahmad Shah Watali* has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused undertrial suffering long incarceration with no end in sight of the criminal trial. Relevant portion of the judgment in *Shaikh Javed Iqbal* reads as under:

> **33.** We are in respectful agreement with the reasoning given in *K.A. Najeeb* regarding the decision in *Zahoor Ahmad Shah Watali*. This decision i.e. *Zahoor Ahmad Shah Watali* has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

23.4. As to the restrictions imposed on granting bail to an accused under the stringent provisions of the UAP Act, this Court declared that such statutory restrictions would

not come in the way of a constitutional court from granting bail to an accused if it finds that the right of the accused under Article 21 of the Constitution of India has been infringed. The Bench reiterated that the decision in *K.A. Najeeb* was rendered by a three-Judge Bench and, therefore, would be binding on a Bench of two Judges. It has been held as under:

> **42.** This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeeb* being rendered by a

three-Judge Bench is binding on a Bench of two Judges like us.

23.5. In the facts and circumstances of the case, this Court held that continued incarceration of the appellant would not be justified and therefore granted bail to the appellant.

24. We may also take note of the case of *Arvind Dham Vs. Directorate of Enforcement*[12] in which case the appellant was granted bail, albeit in a case of economic offence under the Prevention of Money Laundering Act, 2002. However, Section 45 of the Prevention of Money Laundering Act, 2002 lays down stringent and restrictive conditions for grant of bail. In that case, the appellant was arrested on 09.07.2024. The Court noted that cognizance of the prosecution's complaint was yet to be taken. A total of 208 prosecution witnesses were cited. It was in that context this Court reiterated the declaration of law made in *Javed Gulam Nabi Shaikh* that 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

[12] 2026 SCC OnLine SC 30

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. This Court emphasized that right to speedy trial is not eclipsed by the nature of the offence. Prolonged incarceration of an under-trial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pre-trial detention into punishment. In the facts of that case, this Court directed the appellant to be released on bail during pendency of the trial.

25. In a case where the accused was arrested under various provisions of the NDPS Act i.e. Sections 8(b), 22(c), 25, 27A and 29, this Court in *Chintan Rajubhai Panseriya Vs. State of Maharashtra*[13] noted that though the charge against the accused involve seizure of Mephedrone to the extent of 2428 kilograms, petitioner had suffered custody of more than three and a half years. While the chargesheet was

[13] Special Leave Petition (Crl) No.439 of 2026 decided on 28.01.2026

submitted, charges were yet to be framed. There were as many as 159 witnesses cited. While granting bail to the petitioner, this Court observed thus:

> We do not undermine the seriousness of the alleged crime. We are mindful of the fact that the prosecution is for the offence punishable under Narcotic Drugs and Psychotropic Substances Act, 1985. At the same time, we should not overlook the fact that the petitioner is in judicial custody as an under-trial prisoner past 3 years and 6 months and prosecution intends to examine as many as 159 witnesses. Examination of 159 witnesses or even 50% of the same is going to take a pretty long time. At times, we wonder why prosecution wants to examine so many witnesses and thereby prolong the trial and delay the same. We have observed in number of orders that the prosecution should examine important witnesses and try to establish its case. There is no point in multiplying the witnesses on one and the same issue.

26. There are two judgments of this Court which we need to deal with before proceeding ahead. These two judgments, *Gurwinder Singh Vs. State of Punjab*[14] and *Gulfisha Fatima Vs. State (Govt. of NCT of Delhi)*[15], have taken a somewhat divergent view from the clear distinctive

[14] (2024) 5 SCC 403
[15] 2026 SCC Online SC 10

trajectory taken by this Court *qua* grant of bail even under special enactments like TADA, UAP Act and NDPS Act.

27. In *Gurwinder Singh,* the appellant was charged under various provisions of the IPC as well as under the UAP Act and the Arms Act. Prayer for bail of the appellant was rejected by the Special Court which was upheld by the High Court of Punjab and Haryana whereafter the matter travelled to this Court. Appellant was in jail for about five years and relied upon *K.A. Najeeb* for bail. A two-Judge Bench of this Court while rejecting the prayer for bail of the appellant distinguished *K.A. Najeeb* in the following manner:

> **45.** In *K.A. Najeeb* case, this Court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this Court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e. more than five years, this Court took it as a factor influencing its assessment to grant bail. Further, in *K.A. Najeeb* case, the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was

being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this Court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined.

27.1. The Bench held that Section 43-D(5) of the UAP Act creates a standalone and rigorous limitation upon the ordinary power of courts to grant bail and observed that, unlike the conventional approach under criminal law where 'bail is the rule and jail the exception,' the legislative intent underlying the UAP Act was the reverse, namely that 'bail must be rejected as a rule', and that the courts must give full effect thereto. The judgment formulated instead, what it described as a 'twin-prong test' of bail under the UAP Act. Interpreting *Najeeb*, the Court observed that the decision could not be read as mandating bail solely on account of prolonged incarceration.

27.2. In our view, the decision in *Gurwinder* inasmuch as it refuses to be bound by *Najeeb*, is difficult to be followed by us as a matter of precedent. It is plain that a judgment

rendered by a Bench of lesser strength is bound by the law declared by a Bench of greater strength. Judicial discipline mandates that such binding precedent must either be followed or, in case of doubt, be referred to a larger Bench. A smaller Bench cannot dilute, circumvent, or disregard the ratio of a larger Bench.

27.3. With respect, the reliance placed by *Gurwinder* on *Watali* is difficult to justify in light of the subsequent treatment of *Watali* by this Court itself, *firstly,* by a Bench of a higher strength in *Najeeb*, and *secondly*, by a coordinate Bench of this Court in *Sk. Javed Iqbal*.

27.4. In *Najeeb*, this Court clarified that *Watali* arose in a very specific factual context where the High Court had effectively conducted a mini-trial by reappreciating evidence and determining admissibility issues at the stage of bail and, therefore, this Court had to step in to cancel the bail granted by the High Court to the accused therein. The larger Bench in *Najeeb*, therefore, confined *Watali* to the impropriety of undertaking extensive evidentiary evaluation at the bail stage by the High Court. Importantly, *Najeeb* did not treat

Watali as establishing a general rule of near-automatic denial of bail under the UAP Act.

27.5. This view was followed even more explicitly in *Sk. Javed Iqbal*, where this Court, speaking through one of us (Justice Bhuyan), observed as under:

> **33.** …This decision i.e. *NIA Vs. Zahoor Ahmad Shah Watali* has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

27.6. The position of law emerging from *Najeeb* and *Sk. Javed Iqbal* is therefore clear: *Watali* cannot be invoked to justify indefinite incarceration of the accused under the UAP Act. For the aforesaid reasons, the attempt in *Gurwinder* to read *Watali* as laying down a general rule of denial of bail notwithstanding the period of incarceration is difficult to reconcile with this Court's own subsequent clarification of what the ratio in *Watali* actually meant.

27.7. We also note that the Bench in *Gurwinder* formulated the so-called 'twin-prong test' governing grant of

bail under the UAP Act. It held that the inquiry under Section 43-D(5) must proceed in two sequential stages: *first*, whether the accusation is *prima facie* true; and *second*, only if the first question is answered in favour of the accused, whether ordinary bail considerations, such as, flight risk, tampering with evidence, or influencing witnesses, justify release. If the first stage of this twin-prong test is satisfied against the accused, bail becomes absolutely impermissible.

27.8. With respect, this test flows neither from the text of Section 43-D(5) of the UAP Act nor from *Najeeb*. In fact, on the contrary, it is in teeth of *Najeeb* which categorically stated that Section 43-D(5) of the UAP Act provides no more than another possible ground, namely that the accusations against the accused are *prima facie* true, for the competent court to refuse bail, in addition to the well-settled considerations like possibility of tampering with evidence, influencing the witnesses, or the accused evading the trial by absconding etc. If this twin-prong test is accepted, the State need only satisfy a low *prima facie* threshold while the trial may continue for years with the result that pre-trial incarceration begins to acquire a post-trial punitive

character and even then, no court could ever grant bail no matter the length of period of such incarceration because the case stood *prima facie* made out against the accused. A plain reading of *Najeeb* will show that it was trying to prevent precisely this possibility from arising when it cautioned that Section 43-D(5) must not become '*the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.'*

27.9. Therefore, the caution of *Najeeb* is that continued incarceration cannot go unabated by a mere discharge by the State of the *prima facie* standard under Section 43-D(5). The judgment explicitly held that Section 43-D(5) will 'melt down' where prolonged incarceration and delayed trial produce a violation of Article 21. The constitutional inquiry in *Najeeb* therefore operated independent of, and notwithstanding, the statutory embargo of Section 43-D(5) in the realm of constitutional principles. That being the case, the formulation of *Gurwinder* becomes difficult to follow. Once the three-Judge Bench in *Najeeb* recognised that constitutional courts retain the authority to intervene despite the existence of a *prima facie* case against

the accused where prolonged incarceration and delayed trial would breach Article 21, the statutory embargo of Section 43-D(5) could no longer be treated as the gateway through which the prayer of bail must first pass.

27.10. As a matter of law, nothing further need be said except that in any case, constitutional courts can always intervene to grant bail despite satisfaction of *prima facie* threshold under Section 43-D(5), and the section need not control the grant of bail if the accused person's liberty is infringed for a prolonged period of time. The power of the constitutional court to grant such a prayer cannot in our view be diminished by exercise of legislative power.

27.11. The holding in *Najeeb* was never that mere passage of time automatically entitles the accused to bail. Instead, the larger Bench recognised that where incarceration becomes unduly prolonged and the trial is unlikely to conclude within a reasonable time, the continued application of Section 43-D(5) becomes constitutionally suspect given the mandate of Article 21. In that sense,

Najeeb articulated a constitutional limitation on the operation of the statutory embargo of Section 43-D(5).

27.12. To reiterate, in *Sheikh Javed Iqbal,* this Court while examining *Gurwinder Singh* observed that it was in the peculiar facts of that case that the two-Judge Bench held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. In the case of *Javed Gulam Nabi Shaikh*, this Court has declared in no uncertain terms that Article 21 of the Constitution applies irrespective of the nature of the crime. The fundamental right of an accused to speedy trial is not eclipsed by the nature of the offence. This principle has been reiterated in *Arvind Dham.* More importantly, *K.A. Najeeb* is a three-Judge Bench decision and, therefore, binding on a two-Judge Bench. We have already extracted the relevant portion of the judgment in *Sheikh Javed Iqbal* wherein this Court declared that *K.A. Najeeb* being rendered by a three-Judge Bench is binding on a Bench of two Judges.

28. A two-Judge of this Court considered a batch of criminal appeals which challenged the common judgment and order of the High Court of Delhi affirming the rejection

of the bail applications of the appellants by the Special Court. In *Gulfisha Fatima*, the appellants had been charged for committing various offences including offences under Sections 13, 16, 17 and 18 of the UAP Act. All the appellants were arrested on various dates in the year 2020 and have been in custody since the respective dates of their arrest. It was argued on behalf of the appellants that their prolonged incarceration coupled with the absence of any realistic prospect of early conclusion of trial rendered their continued detention constitutionally impermissible. It was in that context, that the two-Judge Bench posed the question, in prosecutions under the UAP Act when delay and prolonged incarceration are invoked as grounds for bail, what should be the principled approach of a constitutional court to examine such a plea?

28.1. The Bench referred to Article 21 and the right to speedy trial of an accused but observed that the constitutional promise under Article 21 is not that liberty will be unregulated but that deprivation of liberty will not be arbitrary, unconscionable or unfair. Thereafter, the Bench referred to *K.A. Najeeb* and observed that this decision operates

as a protection against unconscionable detention. However, the Bench put in a caveat that the decision in *K.A. Najeeb* 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. Such a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category cannot be supported. It has been observed that the constitutional inquiry into delay is contextual which includes the nature of the allegation, the statutory field, the stage of the proceedings, realistic trajectory of the trial, causes contributing to delay and the risk attendant upon release; delay cannot be detached from these considerations and treated as a solitary determinant.

28.2. In the facts of that case, the Bench held that while the constitutional concern arising from prolonged custody is acknowledged, it does not translate into a finding that continued detention has become punitive or unconscionable solely by reason of delay. The prolonged custody, though a matter of concern, does not operate as an automatic ground for grant of bail where the statutory

threshold continues to be attracted. At such a stage, the court is required to examine whether, notwithstanding delay, continued detention remains constitutionally justified having regard to the statutory context and the facts of the case. Such considerations would include gravity of the alleged offence in its statutory setting, the role attributed to the accused, *prima facie* strength of the accusation, integrity of the trial process, the risks associated with release etc.

28.3. The two-Judge Bench, thereafter, held that *K.A. Najeeb* must be understood as a principled safeguard against unconscionable detention. Though prolonged incarceration is a matter of serious constitutional concern and carries great weight, it is not, however, the sole determinant. The court must consider in totality whether continued detention has become constitutionally unjustifiable, having regard to the role attributed, the statutory context, the limited *prima facie* material, the trajectory of the trial, the causes of delay and the availability of intermediate remedies.

28.4. The Bench further held that to read *K.A. Najeeb* as mandating bail solely on account of prolonged incarceration, irrespective of the statutory context or the

nature of the allegations, would be to attribute to the decision a consequence it neither intended nor supports. Therefore, *K.A. Najeeb* cannot be used as a mathematical formula of universal application.

28.5. In the facts and circumstances of the case, this Court granted bail to five of the seven appellants but denied the same to two of the appellants taking the view that while the period of incarceration undergone by the two appellants is substantial, on the present record, their continued detention has not crossed the threshold of constitutional impermissibility so as to override the statutory embargo of Section 43D(5) of the UAP Act.

28.6. Underlying that the Court is mindful that pre-trial detention, even when justified by the statute, cannot be permitted to continue without regard to the progress of the trial, the Bench opined that on a completion of the examination of the protected witnesses relied upon by the prosecution or upon expiry of the period of one year from the date of the said order, whichever is earlier, the two appellants would be at liberty to renew their prayer for bail before the jurisdictional court.

29. We have serious reservations on various aspects of the judgment in *Gulfisha Fatima,* including foreclosing the right of the two appellants to seek bail for a period of one year. The judgment in *Gulfisha Fatima* would have us believe that *Najeeb* is only a narrow and exceptional departure from Section 43-D(5) justified in extreme factual situations. It is this hollowing out of the import of the observations in *Najeeb* that we are concerned with.

30. No reading of *Najeeb* suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release. The real concern addressed in *Najeeb* lay elsewhere. This Court was concerned with the manner in which Section 43-D(5) was, in practice, being deployed as an almost conclusive basis for denial of bail notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that this Court observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence. This Court in

Najeeb cautioned that such an approach was necessary to prevent provisions like Section 43-D(5) from being used as 'the sole metric for denial of bail or for wholesale breach of the constitutional right to speedy trial.'

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.

32. The reasoning first in *Gurwinder* and then in *Gulfisha Fatima*, appears to proceed against something invented and then destroyed. We are constrained to reiterate that *Najeeb* was not warning courts against treating incarceration as the sole factor favouring bail. Instead, it was warning against treating the statutory embargo as the sole factor justifying continued detention by ignoring constitutional principles. Therefore, the subsequent reading that *Najeeb* does not create an automatic entitlement to bail on account of delay answers a proposition that *Najeeb* itself never advanced.

33. The emphasis in *Najeeb* was constitutional in nature: it was directed towards preventing Section 43-D(5) from overpowering Article 21 considerations in cases of gross delay and prolonged incarceration. The constitutional force of *Najeeb* lies in its restoration of the hierarchy between a statute, namely, the UAP Act, and the Constitution. Section 43-D(5) remains subordinate to Article 21 at all times and a constitutional court need not hold back bail to the accused in the garb of Section 43-D(5). As this Court held in *Sk. Javed Iqbal* :

> **31**. … 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 them on bail.

34. Therefore, *Jalaluddin Khan Vs. Union of India*[16], is a timely warning to the courts. It says that when a case is made out for grant of bail, the courts should not have any hesitation in granting bail. The allegation of the prosecution may be very serious; but the duty of the courts is to consider a case for grant of bail in accordance with law. *'Bail is the*

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rule and jail is the exception' is a settled law. The Bench cautioned that if the courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

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.

36. As we have noted above, several subsequent decisions of this Court, rendered after *Gurwinder*, have continued to apply the approach articulated in *Najeeb* in granting bail under the UAP Act on grounds of prolonged incarceration, gross delay in conclusion of trial, and the absence of any realistic possibility of the trial concluding in the near future.

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

38. Thus it is clear beyond doubt that the preference for bail, or the often invoked principle '*bail is the rule and jail is the exception*' flows from the constitutional primacy of

personal liberty under Article 21 and, therefore, cannot be displaced by legislation.

39. In that spirit, we make it clear that *Najeeb* is binding law entitled to the protection of *stare decisis*. It cannot be diluted, circumvented, or disregarded by trial courts, High Courts or even by Benches of lower strength of this Court.

40. We do not want to join issue any further with the two-Judge Bench either in *Gurwinder Singh* or in *Gulfisha Fatima.* As noted supra, *Gurwinder Singh* has already been explained in *Sheikh Javed Iqbal* and in *Javed Gulam Nabi Shaikh,* reiterated in *Arvind Dham*, this Court has categorically held that Article 21 applies irrespective of the nature of the offence. Ideally, more serious the accusations are, the speedier the trial should be.

41. However, we need to keep in mind one important over-riding consideration and we reiterate this. While *Gurwinder Singh* and *Gulfisha Fatima* are by Benches of two Hon'ble Judges, *K.A. Najeeb* is a judgment by three Hon'ble Judges. It is evident from a reading of the two judgments in

Gurwinder Singh and *Gulfisha Fatima* that the two-Judge Bench has made a clear departure from the ratio laid down in *K.A. Najeeb*. Judicial discipline and certainty demands that Benches of smaller strength are mindful of the decisions rendered by larger Benches and are bound to follow the same. If the smaller Benches are unable to agree with the ratio laid down by the larger Bench then the proper and the only course of action open is to make a reference to the Hon'ble Chief Justice of India for placing the matter for consideration by a still larger Bench. Being in a combination of two Judges, we are bound by the ratio laid down by the three-Judge Bench in *K.A. Najeeb*. We say this and no more.

42. There is one more good reason why we should follow *K.A. Najeeb*. For this, let us refer to a few statistics. In response to a query by a Member of Parliament as to the total number of persons arrested and convicted under the UAP Act during the last 5 years with state-wise breakup, the Minister of State in the Ministry of Home Affairs, Government of India informed the Lok Sabha on 02.12.2025 that 'police' and 'public order' being State subjects under the Seventh Schedule to the Constitution of India, the primary responsibility for prevention,

detection, registration, investigation and prosecution of crimes including those under the UAP Act lies with the State Government and the Union Territory administrations. As per the data compiled by the National Crime Records Bureau (NCRB), the latest published data available is till the year 2023. The Hon'ble Minister furnished the state-wise and year-wise details of persons arrested and convicted under the UAP Act for the years 2019 to 2023.

42.1. From the details furnished, the following particulars regarding the number of persons arrested and convicted in India under the UAP Act during the period 2019-23 emerges:

Under the UAP Act (All India figures)

YEAR	PERSONS ARRESTED	PERSONS CONVICTED	PERCENTAGE OF CONVICTION
2019	1948	34	1.75
2020	1321	80	6.06
2021	1621	62	3.82
2022	2636	41	1.56
2023	2914	118	4.05

42.2. In so far the Union Territory of Jammu and Kashmir is concerned, the statistics read as under:

Under the UAP Act (Jammu and Kashmir)

YEAR	PERSONS ARRESTED	PERSONS CONVICTED	PERCENTAGE OF CONVICTION
2019	227	0	0
2020	346	2	0.58
2021	645	0	0
2022	1238	11	0.89
2023	1206	10	0.83

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?

43. This brings us to the Constitution Bench decision of this Court in the case of *High Court Bar Association*. We

are referring to this judgment because of a submission made by Mr. Sanjay, learned Additional Solicitor General that endeavor would be made to complete the trial within a period of one year and if the trial does not complete within such a period, then the Court may grant him bail after one year.

43.1. In *High Court Bar Association*, the Constitution Bench was called upon to decide the following two questions:

> (*a*) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of civil and criminal cases on the expiry of a certain period?
>
> (*b*) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can direct the High Courts to decide pending cases in which interim orders of stay of proceedings has been granted on a day-to-day basis and within a fixed period?

43.2. While dealing with the second question, Justice Oka speaking for the Bench after referring to earlier decisions of this Court opined that in the ordinary course, a constitutional court should not exercise the power to direct disposal of a case before any district or trial court within a time span. He noted that in many cases, while rejecting bail petitions, a time limit is fixed for disposal of trial on the ground that the accused has undergone incarceration for a long time without realizing that the concerned trial court may have many pending cases where the accused are in jail for longer periods. Therefore, constitutional courts should not normally fix a time bound schedule for disposal of cases pending in any court. Question of giving out of turn priority to certain cases should be best left to the courts concerned. Only in exceptional circumstances, an order fixing outer time limit for disposal of cases should be passed to meet extraordinary situations. Another reason for adopting such an approach is that not every litigant can approach the constitutional courts. Those litigants who can afford to approach the constitutional courts should not be allowed to take any undue advantage by getting an order directing out

of turn disposal of their cases while other litigants patiently wait in the queue for their turn to come. Sounding a note of caution, this Court declared that courts which are superior in the judicial hierarchy should not interfere with the day-to-day functioning of the other courts by directing that only certain cases should be decided out of turn within a time frame. Relevant portion of the aforesaid decision are extracted as under:

> **41.** Apart from dealing with huge arrears, our trial courts face the challenge of dealing with a large number of cases made time-bound by our constitutional courts. Therefore, in the ordinary course, the constitutional courts should not exercise the power to direct the disposal of a case before any District or trial court within a time span. In many cases, while rejecting a bail petition, a time-limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration for a long time without realising that the trial court concerned may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When we exercise such power of directing High Courts to decide cases in a time-bound manner, we are not aware of the exact position of pendency of old cases in the said courts, which require priority to be given. Bail petitions remain

pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

42. Therefore, constitutional courts should not normally fix a time-bound schedule for disposal of cases pending in any court. The pattern of pendency of various categories of cases pending in every court, including High Courts, is different. The situation at the grassroots level is better known to the Judges of the courts concerned. Therefore, the issue of giving out-of-turn priority to certain cases should be best left to the courts concerned. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

43. There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional courts. Those litigants who can afford to approach the constitutional courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other courts by directing that only certain cases should be decided out of turn within a time-frame. In a sense, no court of law is inferior to the other. This Court is not superior to the High Courts in the

> judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should be best left to the courts concerned unless there are very extraordinary circumstances.

44. The above view has been reiterated by a two-Judge Bench of this Court in *Rup Bahadur Magar*. While granting bail to the appellants who had at that point of time undergone incarceration for a period of 2 years 9 months with large number of witnesses still to be examined, it has been held as under:

> **7.** We have repeatedly observed that while rejecting bail applications, the High Courts are passing the orders directing disposal of trials within a time schedule. Apart from the fact that such directions are contrary to the law laid down by the Constitution Bench in the case of *High Court Bar Association*, such orders put undue pressure on the Trial Courts which are already flooded with a lot of work. Unless the factual situation is extra ordinary and exceptional, the High Courts should refrain from passing such orders, as held by the Constitution Bench in the aforesaid judgment.

45. Having surveyed and deliberated upon the relevant statutory provisions and the case laws, we may now deal with the case of the appellant. It was vehemently argued by learned senior counsel for the appellant that four of the co-accused have been granted bail; one by this Court and three by the High Court. Therefore, he submits that there is no reason why the appellant should continue to languish in jail. Let us briefly examine the orders whereby bail has been granted to the four co-accused.

46. In *Romesh Kumar,* the appellant was an officer of Narcotics Control Bureau (NCB). He was allegedly entrusted with under-cover duties but is now facing trial for offences punishable under Sections 8 and 21 of the NDPS Act as well as under Sections 17, 18 and 19 of the UAP Act read with Sections 100, 120-B and 121 of the IPC as accused No.11. While considering the prayer for bail of the appellant, this Court noted that he was arrested on 01.03.2021 and was in custody since then; thus, he was in custody for a little over 03 years 11 months. Out of the 361 prosecution witnesses, only six witnesses had been examined till that point of time. Therefore, this Court took the view that the trial was not

likely to be concluded within a reasonable period. This Court examined the statement of the approver Showkat Ahmad Parrey which was recorded on 16.11.2023 under Section 164 Cr.P.C. and found that there was no material to implicate the appellant. Though there was alleged recovery of Rs. 91,01,000.00 from the appellant, this Court found that nothing was shown to link the said money with the offence. Following the ratio laid down in *K.A. Najeeb,* this Court granted bail to the appellant Romesh Kumar.

47. Islam Ul Haq Peer is accused No. 3. He was in jail for a little over 4 years 8 months. He was granted bail by the High Court *vide* the order dated 18.02.2025. In *Islam Ul Haq Peer,* the High Court noted that the appellant is the real brother of a co-accused. The allegation against the appellant is that his brother gave him a packet of narcotics (3 Kgs of heroin) which he had concealed in his house. The contraband was subsequently seized following the statement of the appellant made under Section 27 of the Evidence Act. While *prima facie* doubting the legality and validity of the statement of the appellant made under Section 27 of the

Evidence Act, the High Court granted bail to accused No. 3 and held as under:

> **16.** This Court put forward a question to the learned counsel for the Union of India that besides his 27 statement what *prima-facie* evidence was in the possession of the prosecution to show the *mens rea* of the appellant that he was in conscious possession of the contraband? As mere possession will not be considered as an offence unless it was coupled with the knowledge of what was being possessed.
>
> **17.** Learned counsel for the Union of India has stated that besides 27 Memorandum, there is no independent evidence to establish, *prima-facie*, the *mens rea* of knowledge being possessed by the appellant herein with regard to the material he had concealed.
>
> **18.** Taking into consideration, the argument put before this Court and the material placed on record, undisputed by the Union of India, and on a purely *prima-facie* standard of appreciation, this Court is of the opinion that the appeal be allowed.

48. Accused No. 12 also sought bail which was rejected by the Special NIA Court. However, the High Court in *Mudasir Ahmad Dar,* set aside the order of the Special NIA Court and granted bail to accused No. 12 Mudasir Ahmed Dar. Be it stated that the said appellant was arrested on

01.03.2021 and was in custody for a period of 4 years 6 months at the time of his release. The accusation against Mudasir Ahmed Dar is that he was actively engaged as a narcotic drug peddler providing logistic support to the co-accused. The High Court noted that there is no material to suggest that the appellant himself indulged in the sale of narcotics, much less to identify to whom such sale was effected or whether he realised any funds therefrom. Distinguishing *Gurwinder Singh,* the High Court relied upon *K.A. Najeeb* and granted bail to the appellant. While granting bail, the High Court held as under:

> **16.** We are, thus, of the considered view that on examination of material on record, we find there are no reasonable grounds for believing that the accusation against the appellant are *prima-facie* true. We are conscious of the fact that at the stage of grant or refusal of bail, the scope of inquiry is limited and there cannot be any sifting of evidence. But given the material available on record, the appellant deserves to be released on bail and the trial court in our considered view failed to exercise discretion of bail in favour of appellant as the order of rejection of bail does not proceed on sound reasoning.

49. One more accused i.e. accused No. 13 Amin Allaie has also been granted bail by the High Court. He was arrested on 01.03.2021 and when he was granted bail on 02.04.2026, he was under detention for a period of 5 years 1 month. In *Amin Allaie*, the High Court held thus:

> **9.** Applying the aforesaid settled principles to the facts of the present case, it emerges that no recovery has been effected from the appellant, nor is there any material to demonstrate his conscious possession, direct participation, or involvement in any transaction leading to the recovery of narcotic substances from other co-accused. The entire case against him rests upon the statement of an approver and alleged telephonic contacts, without any corroborative evidence such as financial transactions, recovery, or overt acts attributable to him. Even the role attributed to the appellant, as borne out from the charge-sheet, appears to be peripheral and inferential in nature.
>
> **10.** In such circumstances, even if the prosecution material is taken at its face value, the same does not satisfy the threshold laid down in *Watali,* as there are no reasonable grounds to believe that the accusations against the appellant are *prima-facie* true. The absence of recovery, lack of direct nexus, and the reliance upon weak evidentiary material such as confessional statements further dilute the prosecution case. The continued incarceration of the appellant, particularly in the backdrop of prolonged custody,

would be inconsistent with the mandate of Article 21 of the Constitution, as recognized in *K.A. Najeeb.*

50. The core allegation against the appellant who is the accused No. 2 is that he is involved in narco-terrorism activities. He had confessed before the police on 11.06.2020 that he had taken heroin from accused No. 2 Abdul Momin Peer, who was the driver of the white-coloured vehicle from where a black bag was found containing cash and contraband. It is reported that appellant had disclosed before the Special Investigation Team (SIT) that he had taken heroin from accused No. 2 and that he could recover the same by pointing out.

50.1. On information provided by the appellant, cash amounting to Rs. 35,17,970.00 and three packets of heroin totaling 3.2 kgs were recovered from the bedroom of accused No. 1.

50.2. The phone numbers appearing in the two mobile phones of the appellant which were seized by the police establish his linkage with LeT/HM operatives like Wahid Geelani.

50.3. Appellant is a close relative of Mohd. Qasim Geelani and Mohd. Yusuf Geelani, who are currently in Pakistan, and who are commanders of the proscribed terrorist organization LeT.

50.4. In this connection, appellant had visited Pakistan in the years 2016 and 2017 and had met one Saifudeen @ Saifulla, a brother of Wahid Geelani.

50.5. PW-33, protected witness X-7, in his statement before the police, had mentioned about the involvement of the appellant i.e. accused No. 2 in drug racketeering and association with LeT/HM operatives based in Pakistan.

50.6. Even accused No. 8, who has turned approver, has named the appellant as providing money to LeT.

50.7. The allegation is that the appellant i.e. accused No. 2 worked as an over-ground worker for LeT and HM.

50.8. It is also the case of the prosecution that appellant operated through his daughter Ms. Syeda Faiqa Andrabi, who had a bank account at J & K Bank, Zachaldara, Kupwara. She is also the sister of accused No. 5 and sister-in-law of accused No. 1. Her aforesaid bank

account showed very high transactions in the year 2018 though she did not have any source of income being in the age group of 18 to 19 years. She herself stated that the account was being operated by her father and by her brother.

51. To the aforesaid allegations, the response of the appellant is that there is no material on record to show even a *prima facie* case against the appellant under the NDPS Act. The recovery of cash and contraband allegedly on 11.06.2020 from the bedroom of accused No. 1 was already reported in the public domain as having been recovered from the said accused No. 1 on 10.06.2020 at Bemina, Srinagar. In any view of the matter, there is no recovery either from the person of the appellant or from any premises used by the appellant as his residence or working place.

51.1. The charge of terror cannot stand independent of the charge under the NDPS Act. When there is no evidence of sale or purchase of narcotics nor is there any admissible evidence of recovery of narcotics or funds from the appellant, not to speak of having found the appellant in conscious possession of any narcotic; the whole premise of terror

funding charges against the appellant under the UAP Act collapses. The High Court has also noted that the factum of concealment of hard cash, on the face of it, does not emanate from the disclosure of the appellant. However, according to the High Court, it would be premature at this stage to hold that the said disclosure statement made by the appellant has no evidentiary value.

51.2. According to the appellant, he has no link with either Mohd. Qasim Geelani or Mohd. Yusuf Geelani. The allegation of having such link has been constructed on the basis of appellant's alleged confession made before the police which is inadmissible in evidence. That apart, there has been no follow-up investigation in this regard, post his alleged confession before the police. In any view of the matter, Mohd. Qasim Geelani is a government employee working as an Assistant Lineman in the Jal Shakti Department, Handwara. On the other hand, in so far Mohd. Yusuf Geelani is concerned, he passed away in the year 2000.

51.3. Appellant has also denied having any linkage with LeT/HM operative Wahid Geelani. The charge of the appellant having such a link is on the basis of the explanation memo of phone contacts which is based on the disclosure of the appellant himself before the police. Such an explanation memo is inadmissible in evidence, being in the nature of a confession before the police; thus, squarely prohibited under Section 25 of the Indian Evidence Act, 1872. Other than appellant's confession before the police, there is no other material to show any linkage of the appellant with any terrorist. Curiously, one of the phone numbers mentioned in the explanation memo of phone contacts is actually a toll-free customer care number of Q Mobile, a network service provider, in Karachi, Pakistan. The CDR report of the mobile phones seized from the appellant reveals no terrorist connection; there are no phone calls between the appellant and any terrorist. To this, the observation of the High Court is that the assertion of the counsel for the appellant may have some substance; however, since the trial is underway the prosecution is yet to

demonstrate and lead evidence regarding culpability of the appellant.

51.4. The High Court has recorded in the impugned order that from the deposition of the approver Showkat Ahmad Parrey, nothing incriminating has come up against the appellant. However, the respondents contended that notwithstanding the deposition of the approver, there are still material witnesses yet to be examined. Therefore, at this stage it would be premature to contend that the accusations against the appellant are untrue.

51.5. Appellant is not an over-ground worker of any terrorist organization. An alleged certificate in this regard was issued just a day before filing of the chargesheet by the same Deputy Commissioner, who in the dossier prepared in connection with the preventive detention matter of the appellant, had described him as a political worker. Infact, it is admitted that appellant has strong political views supporting the Jammu and Kashmir People's Conference, which is a registered mainstream political party.

51.6. In so far the allegation of the appellant having visited Pakistan during 2016-2017, it is stated that he had visited the said country to meet his relatives who live across the border. He had travelled on proper and valid documents through the official Attari-Wagha border observing all travel formalities. He has also returned back to India through the same station.

52. We are at the stage of considering the prayer for bail of the appellant. At this stage, it is neither desirable nor permissible to analyse and consider the merits of the accusations made against the appellant. The prosecution will have to prove its case against the appellant beyond all reasonable doubt in the trial. However, we have broadly noted the core charges against the appellant only with a view to contextualize the bail prayer of the appellant without expressing any opinion on the merits of those charges.

53. On due consideration, we are of the view that appellant has made out a case for grant of bail during pendency of the trial. We say so for the following reasons.

53.1. There is no recovery of cash and contraband from the person of the appellant or from the premises used by the appellant either as his residence or place of work.

53.2. All statements implicating the appellant have been made before the police including the confessions allegedly made by the appellant himself which *prime facie* are self-incriminating and hit by Section 25 of the Evidence Act, 1872.

53.3. Appellant has no prior antecedents of being connected with narcotic trade or in terrorist activities. At least, no such material has been placed on record.

53.4. On the contrary, it is stated that the appellant is an ardent advocate of the constitutional, federal and democratic set-up of India. He is a supporter of Jammu and Kashmir People's Conference, a registered mainstream political party. Following the abrogation of Article 370 from the Indian Constitution, appellant was taken into preventive detention on 07.08.2019 under the Jammu and Kashmir Public Safety Act, 1978. In the dossier prepared in connection with his preventive detention, it was mentioned

that appellant is a political activist associated with the People's Conference and has a close connection with the people.

53.5. It is also a fact that appellant was a government employee serving as Village Level Worker at Kupwara under the Rural Development Department, Government of Jammu and Kashmir.

53.6. Earlier, appellant had sought for interim bail on medical grounds. The Special NIA Court *vide* the order dated 04.01.2022 had granted interim bail to the appellant till 10.03.2022, on which date appellant surrendered before the said court. Thus, he had not misused the interim bail granted to him.

53.7. We have already noted that appellant was arrested in connection with the present case on 11.06.2020 and he has been in custody since then for more than 5 years 11 months. As per the prosecution, there are more than 350 witnesses still to be examined. It is thus clear that conclusion of the trial in the near future is well-nigh

impossible. In such a case, *K.A. Najeeb* will apply with full force.

53.8. The above view is further fortified by the poor conviction rate in cases involving the UAP Act, with chances of acquittal more than 90 to 95% whether it is on the basis of all India figures or Jammu and Kashmir.

54. That being the position, we direct that appellant shall be released on bail on such terms and conditions as the Special NIA Court may deem fit and proper. For this purpose, the appellant shall be produced before the Special NIA Court as early as possible but at any rate not later than 7 days from today.

55. In addition to such terms and conditions that the Special NIA Court may deem fit and proper to impose, we also direct that the appellant shall deposit his passport before the Special NIA Court and shall appear before Handwara Police Station once every fortnight (15 days) on the date and time that may be fixed by the police authorities of Handwara Police Station. He shall continue to cooperate

with the ongoing trial and shall not threaten or try to influence any of the witnesses.

56. We are aware that this bail order has become quite long. However, we feel that it has become necessary to clarify and reiterate the legal position following *K.A. Najeeb* lest there be any confusion in this regard.

57. Before parting with the record, it needs to be mentioned that though this judgment is authored by one of us (Ujjal Bhuyan, J.), it is based on invaluable inputs of B.V. Nagarathna, J.

58. Appeal is accordingly allowed. However, there shall be no order as to cost.

.....J.
[B.V. NAGARATHNA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MAY 18, 2026.