ABC 2025 (II) 645 P&H

ACQUITTAL & BAIL CASES

HIGH COURT OF PUNJAB AND HARYANA

(Deepak Sibal & Lapita Banerji,JJ.)

Criminal Appeal No. OF 2024 (O&M)

Decided On 12 September 2025

ASHISH KUMAR ***Appellant(s).***

Versus

STATE OF PUNJAB ***- Respondent(s).***

Law Covered:- ***(A) Constitution of India – Article 21 – Speedy Trial – Right to – Bail under Unlawful Activities (Prevention) Act, 1967 – Long Incarceration as Ground for – The fundamental right to a speedy trial under Article 21 of the Constitution is overarching and sacrosanct – Where an accused charged under the UAPA has undergone a long period of incarceration and there is no likelihood of the trial concluding in a reasonable time, continued detention violates Article 21 – The restrictive provisions of Section 43-D(5) of the UAPA cannot oust the constitutional courts' power to grant bail to remedy such infringement – Long custody by itself is a valid ground for granting bail in UAPA cases by invoking Article 21. (Paras 3, 13, 18)***

(B) Unlawful Activities (Prevention) Act, 1967 – Section 43-D (5) – Grant of Bail – Restrictions & Constitutional Override – Proviso to Section 43-D(5) UAPA imposes a stringent embargo: if the Court finds reasonable grounds to believe the accusation is prima facie true, bail "shall not" be granted – However, this statutory restriction does not completely negate the power of constitutional courts to grant bail under Article 21 where the right to a speedy trial is infringed due to prolonged incarceration and inordinate delay in trial – Section 43-D(5) provides an additional ground for refusal, not the sole metric. (Paras 7, 13, 15)

(C) Unlawful Activities (Prevention) Act, 1967 – Sections 10, 13, 18, 20 – Bail Considerations – Prima Facie Case & Evidentiary Link – For rejecting bail u/s 43-D(5) UAPA, the prosecution must show reasonable grounds to believe the accusation of commission of offences under Chapters IV & VI is prima facie true – Mere association with a banned organization or recovery of arms, without specific link evidence connecting the accused to advocating, abetting, advising, inciting, or conspiring to commit a terrorist act, is insufficient to establish a prima facie case under UAPA for the

purpose of denying bail – Statements of chance witnesses and secret information, without corroborative material, are inadequate. (Paras 2, 4, 6, 12, 24)

(D) Indian Penal Code, 1860 – Section 120-B (Bharatiya Nyaya Sanhita, 2023 – Section 61) – Criminal Conspiracy – Proof of – Direct evidence of conspiracy is rarely available – It must be inferred from circumstances indicating a meeting of minds and an agreement to commit an offence – The circumstances must give rise to a conclusive or irresistible inference of such an agreement – A few disjointed bits of evidence are insufficient – The prosecution must show all acts done were in furtherance of the conspiratorial object. (Para 4)

(E) Bail Jurisprudence – Seriousness of Allegations – Not Sole Ground for Denial – The gravity and seriousness of allegations, by themselves, cannot be the only reason to deny bail – Courts must balance the nature of the allegations with other factors, including the period of incarceration undergone, the progress of trial, and the right to speedy trial – Continued detention must be proportionate and justified. (Para 14)

(F) Criminal Trial – Delay in Conclusion – Duty of Prosecution & Court – Inordinate delay in trial, where only a miniscule number of witnesses have been examined out of a long list over many years, infringes the accused's right to speedy trial – The prosecution and the trial court have a duty to ensure expeditious proceedings – The Public Prosecutor must exercise discretion to examine only essential witnesses to avoid redundant testimony and protracted trials. (Paras 23, 25)

Facts:- *The appellant challenged the dismissal of his bail application by the Additional Sessions Judge. He was booked alleging he was an illegal arms supplier linked to a banned terrorist organization (Khalistan Liberation Force). The only recovery from him was a .30 bore pistol with four cartridges. After over five years of custody, only one out of forty prosecution witnesses had been examined. The State opposed bail citing the gravity of offences and the embargo u/s 43-D(5) UAPA. The High Court, relying on a catena of Supreme Court precedents including Union of India v. K.A. Najeeb, Vernon, and Shoma Kanti Sen, held that prolonged incarceration without a timely trial violates Article 21. It found no prima facie link evidence connecting the appellant to specific terrorist activities under UAPA beyond the arms recovery. Consequently, the appeal was allowed, the impugned order set aside, and the appellant was granted regular bail with stringent conditions.*

Law of relief:- ***While entertaining bail application, Courts must balance the nature of the allegations with other factors, including the period of incarceration undergone, the progress of trial, and the right to speedy trial.***

Counsel:-

For Appellant(s): *Mr. Amit Agnihotri, Advocate with Mr. Mani Makkar, Advocate with Ms. Anju Sharma Kaushik, Advocate with Mr. Abhishek Jindal, Advocate.*

For Respondent(s): *Mr. Shekhar Verma, Addl. AG, Punjab.*

Cases Referred:-

1. *Union of India v. K.A. Najeeb: (2021) 3 SCC 713 (Para 2)*
2. *Shoma Kanti Sen v. State of Maharashtra and another: 2024 SCC OnLine SC 498 (Para 2)*
3. *Vernon v. The State of Maharashtra and another: 2023 SCC OnLine SC 885 (Para 2)*
4. *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh: 2024 SCC OnLine SC 1755 (Para 2)*
5. *Javed Gulam Nabi Shaikh v. State of Maharashtra and another: 2024 SCC OnLine SC 1693 (Para 2)*
6. *Tapas Kumar Palit v. State of Chhattisgarh: 2025 SCC OnLine SC 322 (Para 35)*
7. *Mukesh Salam v. State of Chhattisgarh and another: SLP (Criminal) No.3655 of 2024 (Para 34)*

JUDGMENT

Lapita Banerjiisra, J.: -

1. The appellant, namely Ashish Kumar, has challenged the order dated January 08, 2024, passed by Additional Sessions Judge, SAS Nagar, Mohali, whereby his bail application in FIR No.02 of 05.02.2020 registered under Section 120-B of Indian Penal Code (hereinafter referred to as "IPC"), Section 25 of the Arms Act, Sections 10,13,18,20 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "the UAPA"), at Police Station State Special Operation Cell, District SAS Nagar, Mohali, has been dismissed.

2. Learned counsel for the appellant submits that although it has been alleged that the accused-appellant was involved in unlawful activities under the UAPA, but except for alleged recovery of one .30 bore pistol along with 04 live cartridges, no other incriminating material was alleged to have been recovered from him which could

connect or link him to any offence under the UAPA. Apart from the purported statements of chance witnesses- Kulwinder Singh @ Kala, Amrik Singh and Nishant Sharma, there was no evidence collected by the prosecution to connect the appellant to commission of any crime, more so to an offence under the UAPA. Furthermore, he submits that only 01 out of 40 prosecution witnesses have been examined so far despite passage of more than 05 years of incarceration of the appellant.

3. In support of his submissions, he has placed reliance upon the judgments of the Supreme Court in the cases of Union of India v. K.A. Najeeb, (2021) 3 SCC 713, Shoma Kanti Sen v. State of Maharashtra and another, 2024 SCC OnLine SC 498, Vernon v. The State of Maharashtra and another, 2023 SCC OnLine SC 885, Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 SCC OnLine SC 1755 and Javed Gulam Nabi Shaikh v. State of Maharashtra and another, 2024 SCC OnLine SC 1693, wherein it has been held that long custody by itself would entitle the accused being tried under UAPA to the grant of bail by invoking Article 21 of the Constitution of India.

4. He also places reliance upon State of Kerala v. P. Sugathan and another, (2000) 8 SCC 203, to submit that even if a .30 bore pistol along with 05 live cartridges was recovered from the appellant, still nothing has been brought on record to establish criminal conspiracy between the present appellant and the other co-accused. The relevant extract of the titled case is reproduced hereinafter:

> *"xxxWe are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of interference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Adam.) held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more person to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when*

taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

In Kehar Singh v. State (Delhi Adam.) it was noticed that Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the later does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code.

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5. Relying on the State's status report dated March 18, 2024 filed by the Deputy Superintendent of Police, Anti Gangster Task Force, Punjab, learned State counsel submits that the appellant was involved in anti-national activities. Based on secret information received by Harinderdeep Singh, the then DSP SSOC, SAS Nagar, FIR No.0002 dated 05.02.2020 was registered against the accused persons, namely Dharminder Singh @ Guggni, Javed, Arshad Ali @ Munshi, Parveen and Sushil along with Ashish Kumar (present appellant). He submits that upon investigation, it was found that Ashish Kumar, who had been recently arrested by the Punjab Police, was a close associate of accused Dharminder Singh @ Guggni, who is confined in Tihar Jail, Delhi, being a member of Khalistan Liberation Force (KLF). The said organisation is banned under Section 2(1) (m) and 35 of the UAPA.

6. Learned State counsel further submits that appellant is involved in regular supply of weapons to hardcore criminals in Punjab through Dharminder Singh @ Guggni and on his directions, he had supplied three weapons to his close associates in November, 2019. The said weapons are being used by the pro-khalistani elements and criminal gangs in Punjab which disturb peace and tranquillity in the State. The said weapons are used for commission of serious offences like murders, dacoity, loots and extortion in Punjab, including target killings of prominent leaders. Therefore, in view of the gravity and nature of offence, the appellant should not be enlarged on bail. Since all the accused had common intention of committing terrorist act/s, none of them should be released on bail.

7. He also relies on decision of Apex Court dated February 07, 2024 in Gurwinder Singh v. State of Punjab and another, (2024) 2 SCC Criminal 676, to submit that Section 43-D (5) of the UAPA Act puts a complete embargo on the powers of Special Court to release the accused on bail and that the exercise of general power to grant bail under UAPA is severely restricted in scope. The relevant extract is reproduced hereinafter:

> *"xxx_25. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, 'on perusal of the case diary or the report made under section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D (5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.*
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> *The conventional idea in bail jurisprudence vis-a-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase – 'bail is the rule, jail is the exception' – unless circumstances justify otherwise – does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the*

words used in proviso to Section 43D (5) – 'shall not be released' in contrast with the form of the words as found in section 437 (1) CrPC, – 'may be released' – suggests the intention of the Legislature to make bail, the exception and jail, the rule.

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In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub -section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail. Xxx"

8. This Court has heard learned counsel for the parties and perused the material on record.

9. The allegation against the appellant is that he was a supplier of illegal arms and weapons to co-accused Dharminder Singh @ Guggni and his associates for commission of serious offences like murders, dacoity, loots, extortion etc.

10. One .30 bore pistol along with 04 live cartridges was recovered from him. The weapons were sent for FSL examination and as per the report, they were in working condition and the cartridges were live and usable. It has also been alleged that on disclosure statement of the appellant, the recovery was made.

11. From perusal of the affidavit filed on behalf of State, it is transpired that the appellant had been apprehended only on the basis of secret information given by one of the police officials. The only evidence that has been brought on record at this stage are the statements made by the chance witnesses.

12. It appears from the affidavit that no incriminating material has been found against him, at this stage. Furthermore, no link evidence has also been established to connect the appellant to the commission of any crime, more so, to a crime/offence showing his involvement under the UAPA. Apart from the statements of chance witnesses, learned State counsel was unable to show any further evidence collected against the appellant connecting to an offence

under the UAPA. The appellant has undergone an actual sentence of 05 years 02 months and 30 days.

13. Article 21 of the Constitution of India enshrines the fundamental right to protection of life and liberty which also includes the right to a speedy trial. It has been held by the Supreme Court in a catena of judgments that long custody by itself would entitle the accused under UAPA to the grant of bail by invoking Article 21 of the Constitution of India. The Constitutional Court would like to prevent a situation where the lengthy and arduous process of trial becomes the punishment in itself. Reference can be made to the judgment of the Supreme Court in K.A. Najeeb's case (supra), wherein it has been held that long custody would be an essential factor while granting bail under UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under UAPA. It has also been held that the embargo under Section 43-D of UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India. Section 43-D of UAPA is reproduced hereinafter for ready reference:

"43 D. Modified application of certain provisions of the Code.— (1) Nonwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly. (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2), —

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:— "Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit

stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that –

(a) the reference in sub-section (1) thereof –

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act

(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.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

The relevant extract of the aforesaid judgment is as follows:

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per se does not oust the ability of

Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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Instead, Section 43-D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc."

14. The Supreme Court in the case of Vernon (supra) has held that serious allegations against accused by itself cannot be a reason to deny bail to the accused. The relevant extract thereof is reproduced hereunder:

"44. In the case of Zahoor Ahmad Shah Watali (supra) reference was made to the judgment of Jayendra Saraswathi Swanigal v. State of Tamil Nadu [(2005) 2 SCC 13) in which, citing two earlier decisions of this court in the cases of State v. Jagjit Singh (AIR 1962 SC 253) and Gurcharan Singh v. State of (UT of Delhi) [(1978) 1 SCC 118), the factors for granting bail under normal circumstances were discussed. It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. Juxtaposing the appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967 Act, we have referred to the materials available against them at this stage. These materials cannot justify continued detention of the appellants, pending final outcome of the case under the other provisions of the 1860 Code and the 1967 Act."

15. In the case of Shoma Kanti Sen (supra), the Supreme Court has held that generally pre-conviction detention at the investigation stage is necessary to maintain purity in the course of trial and also to

prevent an accused from being a fugitive from justice or to prevent further commission of an offence. Once it is apparent that a timely trial is not possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge them on bail as any form of deprival of liberty must be proportionate to the facts of the case and also follow a just and fair procedure. A balance must be made between the prosecution'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 the Constitution. The relevant extract is reproduced hereinafter:

"xxx

In the case of K.A. Najeeb v. Union of India [(2021) 3 SCC 713], a three Judge Bench of this Court (of which one of us Aniruddha Bose, J was a party), has held that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail in the 1967 Act and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time, relying on Article 21 of Constitution of India. This decision was sought to be distinguished by Mr. Nataraj on facts relying on judgment of this Court in the case of Gurwinder Singh v. State of Punjab [2024 INSC 92]. In this judgment it has been held:-

"32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's 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 KA Najeeb's 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. As already discussed, the

material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the adversaid argument on the behalf of the appellant cannot be accepted."

38. Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of Najeeb (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-charge sheet stage has the sanction of law broadly on these reasonings. But any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-charge sheet stage."

As regards second part of Mr Nataraj's argument which we have noted in the preceding paragraph, we accept it with a qualification. The reasoning in Najeeb (supra) case would also have to be examined, if it is the constitutional court which is examining prosecution's plea for retaining in custody an accused charged with bail-restricting offences. He cited the case of Gurwinder Singh (supra) in which the judgment of K.A. Najeeb (supra) was distinguished on facts and a judgment of the High Court rejecting the prayer for bail of the appellant was upheld. But this was a judgment in the

*given facts of that case and did not dislocate the axis of reasoning on constitutional ground enunciated in the case of Najeeb (supra). On behalf of the prosecution, another order of a coordinate Bench passed on 18-1-2024, in the case of Mazhar Khan v. NIA was cited. In this order, the petitioner's prayer for overturning a bail-rejection order of the High Court under similar provisions of the 1967 Act was rejected by the coordinate Bench applying the ratio of the case of Watali (supra) judgment and also considering the case of Vernon (supra). We have proceeded in this judgment accepting the restrictive provisions to be valid and applicable and then dealt with the individual allegations in terms of the proviso to Section 43-D (5) of the 1967 Act. Thus, the prosecution's case, so far as the appellant is concerned, does not gain any premium from the reasoning forming the basis of Mazhar Khan (supra).'_*

[emphasis supplied].

16. The case of *Gurwinder Singh* (supra) was clearly distinguished in the present case under discussion and it has been observed that in the said case the trial was already going on and 22 witnesses, including the protected witnesses had already been examined. The observations made in *Gurwinder Singh's case* (supra), therefore, had to be restricted to the context in which they were made.

17. In the case of *Javed Gulam Nabi Shaikh* (supra), the Supreme Court has observed that criminals are not born but made out. Howsoever serious a crime may be, an accused has a right to a speedy trial as enshrined under the Constitution of India. Moreover, the purpose of bail is only to secure the attendance of the accused at the trial and bail is not to be withheld as a form of punishment. The relevant extract thereof is reproduced hereunder:

"13. The aforesaid observations have resonated, time and again, in several judgments, such as Kadra Pahadiya & Ors. v. State of Bihar reported in (1981) 3 SCC 671 and Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225. In the latter the Court reemphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given

one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In Mohd Muslim @ Hussain v. State (NCT of Delhi) reported in 2023 INSC 311, this Court observed as under:

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State reported in 1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self -perception changes.

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

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18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic,

may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations."

18. In the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari (supra)*, it has been held 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. Furthermore, it was held that the view taken in *K.A. Najeeb's case (supra)* rendered by a three Judge Bench of the Apex Court was binding on a Two Judge Bench like *Gurwinder Singh's case (supra)* or the present case under discussion. The relevant extract of *Sheikh Javed Iqbal's case (supra)* is reproduced hereunder:-

"31. In Gurwinder Singh's case (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb's case (supra) holding that the appellant in K.A. Najeeb's case (supra) was in custody for five years and that the trial 25 of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

19. This Court has, time and again, emphasized 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's case (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

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*Continued incarceration of the appellant cannot be justified xx*x."

19. In Jalaluddin Khan v. Union of India reported in (2024) 10 SCC 574, the appellant was, inter-alia, charged under Sections 13, 18, 18-A and 20 of the UAPA. He was arrested on July 12, 2022 and a charge-sheet was filed on January 07, 2023. The relevant part of the charge-sheet reads as follows:

"*xxx*

17.1 Bihar Police had received information about a plan to disturb the proposed visit of Hon'ble Prime Minister to Bihar by some suspected persons who had assembled in Phulwarisharif area. On 11.07.2022 at about 19:30 hrs, on secret information, a raid was carried out by the police officers of PS Phulwarisharif, Patna at the rented house/premises of Athar Parvej (A-1) and recovered 05 sets of documents "India 2047 Towards Rule of Islamic India, Internal Document: Not for Circulation", Pamphlets "Popular Front of India 20-2-2021" – 25 copies in Hindi and 30 copies in Urdu, 49 cloth flags, 02 magazines "Mulk ke live Popular Front ke saath" and one copy of rent agreement on non-judicial stamp by Farhat Bano w/o Md. Jalaluddin Khan (A-2) with tenant Athar Parvej (A-1) son of Abdul Qayum Ansari. The recovered articles and a Samsung mobile phone having SIM card of accused Md. Jalaluddin (A-2) were seized in the instant case. They were related to anti-India activities."

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20. The Hon'ble Supreme Court was of the opinion that nothing in the charge-sheet showed that the appellant had taken part in or committed unlawful activities as defined in UAPA. No material was produced on record to show that the appellant advocated, abetted, advised or incited the commission of terrorist acts or preparatory activity. Succinct reasoning leading to the grant of bail is reproduced herein under:

"*xxx*

30. Therefore, on plain reading of the charge-sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the

accusation against the appellant of commission of offences punishable under UAPA is prima-facie true. We have taken the charge-sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a prima-facie finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under UAPA was prima-facie true. No antecedents of the appellant have been brought on record.

The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.

Before we part with the judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge-sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law.

Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

xxx"

21. In the case of "Mukesh Salam v. State of Chhattisgarh and another" SLP (Criminal) No.3655 of 2024, vide an order dated August 30, 2024, the petitioner was charged under Sections 10, 13, 17, 38 (1) (2), 40, 22-A and 22-C of UAPA and directed to be released on bail as he was in custody since May 06, 2020 and 40 out of 100 prosecution witnesses had been examined. The Apex Court observed that continued detention of the petitioner would not subserve the ends of justice as there was no likelihood of early conclusion of the trial. However, along with the conditions that may be imposed by the Special Judge (NIA Act) following two conditions were imposed as the conditions for grant of bail:

6 (i) The petitioner shall report to the nearest police station once every week and

(ii) The petitioner shall remain present before the trial Judge on every date of the trial without fail, unless his presence is dispensed with by the trial Court, and shall cooperate in the early conclusion of the trial."

22. In a recent case in Tapas Kumar Palit v. State of Chhattisgarh, reported in 2025 SCC OnLine SC 322, by a judgment dated February 14, 2025, the Supreme Court set-aside the impugned order passed by the High Court, rejecting the bail of the appellant. As per the prosecution's case, the appellant was travelling in a vehicle carrying articles which could be ordinarily related to Naxalite activities. Upon search being conducted, it was alleged that the appellant was in conscious possession of the following articles:

"xxx

The search was undertaken and the following articles were recovered from the car alleged to be in conscious possession of the appellant herein:
(i) 95 pair of shoes
(ii) Green black printed cloth
(iii) Two bundles of electric wire each of 100 metre
(iv) LED lens and
(v) Walki talki and other articles.
xxx"

23. In that case, the appellant was arrested on March 24, 2020. After filing of the charge-sheet, the prosecution was only able to examine 42 witnesses and intended to examine as many as 100 witnesses. It was observed that even after the passing of five years of the appellant being in judicial custody, learned counsel appearing for the State had no idea regarding time that would be consumed to complete the recording of oral evidence. The Supreme Court recorded that in the aforesaid circumstances, it was left with no other option but to get the appellant released on bail despite the seriousness of the crime alleged. Furthermore, it was of the view that the Public Prosecutor who was in charge of the trial, had to decide which of the witnesses were to be examined and who were to be dropped as no useful purpose would be served if several witnesses were examined for establishing the same fact. The relevant extract of the said judgment is reproduced hereinafter:

"xxx

10. However, many times we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.

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12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion insofar as examination of the witness is concerned.

XXx

_14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witness might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons- who remain innocent until proven guilty- can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job for accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.

xxx"

24. In the present case, even if one assumes that the co-accused were indulging in terrorist acts or were participating in acts preparatory to the commission of terrorist acts, relevant material at this stage connecting the accused to advocating, abetting, advising, inciting or conspiring to commit any terrorist act had to be brought on record to justify rejection of bail especially after a long period of incarceration. However, no worthwhile record has been brought on record by the prosecution.

15. It is pertinent to note that for more than five and half years, no effort was made by the State to interrogate the main accused Dharminder Singh @ Guggni who is serving his sentence in connection with a different case in Tihar Jail, Delhi. The main co-accused is yet to be arrested in the present case despite challan being filed on March 01, 2021. No reasonable explanation has been provided

as to why the main co-accused has not been arrested in the present case and why custodial interrogation has not been done till date. The charges under Section 120-B IPC, Section 25 of the Arms Act and Sections 10, 13, 18, 20 of the UAPA were framed on April 24, 2024 and only one witness out of 40 prosecution witnesses has been examined till date. Learned State counsel is also unable to give any reasonable estimate of the time that may be required for completion of the trial. Therefore, the Court is left with no other option but to release the appeal on bail.

26. In view of the aforesaid discussion and the law laid down by the Supreme Court, especially when the appellant is in custody for 05 years, 06 months and 18 days and the end of the trial is not in sight, considering only 01 out of 40 witnesses has been examined so far, the appeal is allowed and the impugned order dated January 08, 2024 is set aside. The appellant is ordered to be released on regular bail subject to following conditions besides furnishing of requisite bail bonds to the satisfaction of the trial Court/ Duty Magistrate concerned:

(i) He shall furnish bond of ₹10 lakh with two sureties of ₹10 lakh each;

(ii) He shall surrender his passport in the Trial Court, if he is holding the same and is still with him;

(iii) He shall appear before the Trial Court on each and every date, unless exempted by the Court;

(iv) He shall appear before the Investigating Officer, as and when summoned;

v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness;

vi) He shall not involve in any criminal activity and if during the pendency of trial, he is found involved in commission of any offence punishable under UAPA, the prosecuting agency would be free to approach this Court for recalling this order and cancellation of his bail;

vii) He shall not sell, transfer or in any other manner create third party right over his immovable property;

viii) He shall furnish an undertaking to the effect that in case of his absence, Trial Court may proceed with the trial and he shall not claim re-examination of any witness.

ix) At the time of release of the appellant, the concerned SHO shall be informed. He shall appear before the SHO on every alternate Monday till the conclusion of the trial.

27. In the event there is a breach of any of the abovementioned conditions, or of the conditions to be imposed by the Trial Court independently, it would be open to the prosecution to seek cancellation of the bail of the defaulting appellant without any further reference to this Court. Similarly, if the appellant seeks to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the concerned appellant by making appropriate application before the Trial Court.

***Result*:-** Appeal is allowed and the impugned order dated January 08, 2024 is set aside. The appellant is ordered to be released on regular bail subject to following conditions besides furnishing of requisite bail bonds to the satisfaction of the trial Court/ Duty Magistrate concerned.