



2026:DHC:8533-DB



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

Reserved on: 09.09.2026

Pronounced on: 30.09.2026

Uploaded on: 30.09.2026

CNR No. DLHC010551352024

+ **CRL.A. 807/2024**

NAIM @MOHD. NAEEM

.....Appellant

Through: **Mr.Rajat Kumar, Ms.Priya Vats
and Mr.Geet Kumar Dahariya,
Advs.**

versus

NATIONAL INVESTIGATION AGENCY **.....Respondent**

Through: **Mr.Rahul Tyagi, SPP with
Ms.Priya Rai, Mr.Jatin,
Mr.Shubham Goyal,
Mr.Avinash Kumar Singh and
Mr.Priyansh Raj Singh, Advs.
DSP Abhinav Kajla, CIO and
Insp. Lalit Sharma, AIO.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act') challenging the rejection of the bail application of the appellant by the learned Additional Sessions Judge-03, Patiala House Courts, New Delhi (hereinafter referred to as the '*Trial Court*') vide order



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dated 06.06.2024 passed in FIR No. RC-38/2018/NIA/DLI, PS NIA HQ, New Delhi, titled **NIA v. Mohd. Naeem @ Naim, Etc.**, (hereinafter referred to as the '*Impugned Order*') registered under Sections 120B, 121, 121A and 122 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*') and Sections 17, 18, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the '*UAPA*') and Sections 4 and 5 of the Explosive Substances Act, 1908, and seeking grant of bail.

2. The learned counsel for the appellant submits that the appellant was arrested in the above FIR on 03.01.2019 and has been in custody for more than 7 years and 8 months. Charges against him were framed on 30.08.2022 and, as on 07.01.2026, 42 out of 112 witnesses (total from 168) have been examined. Placing reliance on the judgments in **Union of India v. KA Najeeb**, (2021) 3 SCC 713; **Ashim v. National Investigation Agency**, (2022) 1 SCC 695; **Javed Gulam Nabi Shaikh v. State of Maharashtra**, (2024) 9 SCC 813; **Sheikh Javed Iqbal v. State of Uttar Pradesh**, (2024) 8 SCC 293; **Mukesh Salam v. State of Chattisgarh & Anr.**, 2024 SCC OnLine SC 4021; **Manish Sisodia v. Directorate of Enforcement**, 2024 SCC OnLine SC 1920; **Vijay Nair v. Directorate of Enforcement**, 2024 SCC OnLine SC 3597; **Javed Ali@ Javed v. National Investigation Agency**, 2024 SCC OnLine Del 7874; **In re: Manirul Islam@Doctor**, CRM (DB) No. 667/2023, order dated 20.03.2023 (Calcutta High Court); **Padam Singhee v. Directorate of Enforcement**, 2024:AHC:178668; **Central Bureau of Investigation v. Dayamoy Mahato & Ors.**, 2025 SCC OnLine SC 2775; **Jalaluddin Khan v. Union of India**, (2024) 10 SCC 574;



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Kareem@Sadam v. State by National Investigation Agency, SLP (Crl) No. 11626/2025, judgment dated 07.10.2025; *Union of India v. Saleem Khan*, 2025 SCC OnLine SC 1754; *Tapas Kumar Palit v. State of Chattisgarh*, 2025 INSC 222; *Vernon v. State of Maharashtra & Anr.*, (2023) 15 SCC 56; *Niklesh Prakash Patil v. The State of Maharashtra*, 2025:BHC-AS:21761; *Chandeep Singh v. National Investigation Agency*, 2023 SCC OnLine P&H 6332; *Gulfisha Fatima v. State (Govt of NCT of Delhi)*, 2026 SCC OnLine SC 10; and, *Arvind Dham v. Directorate of Enforcement*, 2026 SCC OnLine SC 30, he submits that, in view of the long period of incarceration and the trial not likely to conclude any time soon, the appellant is entitled to be released on bail.

3. He submits that, even on merits, the appellant was not named in the initial FIR; he has no criminal antecedents; and nothing incriminating in the form of arms, ammunition, literature, or other documents has been recovered from him. The only recovery from him is of two mobile handsets, which do not contain any incriminating material. He submits that the entire case of the prosecution against the appellant rests on three planks, that is, the statements of 3 witnesses of village Radhana Inayatpur, that is, PW-28/*Israr*, PW-29/*Arif*, and PW-30/*Matloob*; the second being the appellant's alleged disclosure statement dated 11.01.2019 (D-124) and the pointing-out memo dated 12.01.2019 (D-125); and the third being the CDR analysis, which shows the movement of the phone recovered from the appellant to be the same as that of accused No. 1, namely, Mufti Mohd. Suhail (hereinafter referred to as 'A-1').



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4. He submits that, as far as PW-28, PW-29, and PW-30 are concerned, their statements have been recorded by the learned Trial Court, and nothing incriminating has come against the appellant. He submits that these witnesses are, in fact, self-confessed illegal arm dealers and if their statements are to be taken at face value, they are the accomplices whose evidence would attract the rule of caution under Section 133 read with illustration 'b' to Section 114 of the Indian Evidence Act, 1872, requiring further corroboration. They, except identifying the appellant, who is from their own village, did not identify others, including A-1, who is supposed to have been supplied the arms. Even the alleged weapons that were supplied and had been recovered by the prosecution, were not shown to them or got identified before the learned Trial Court. There is also no proof of any transaction of money.

5. He submits that the witnesses cited against the appellant have themselves contradicted each other as the chargesheet mentions that Matloob (PW-30) had handed over a pistol, a katta and twenty live cartridges to A-1; however, he in his statements states that he had given the said arms to one Qasim with only 5 live cartridges.

6. He submits that, even otherwise, their statements would not implicate the appellant in the aggravated offence under Section 23 of the UAPA, as it is not shown that the appellant had any knowledge that these arms were to be used for furthering the activity of a terrorist organization. He submits that, therefore, at best, the allegation against the appellant would be that he introduced A-1 to arm dealers in his own village, which act alone cannot establish the intention to aid



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terrorism or to further the activity of a terrorist organization. He submits that Section 23 of the UAPA requires the contravention under the Arms Act, 1959 (hereinafter referred to as 'Arms Act') to take place with an intent to aid any terrorist or to further any terrorist activity. He submits that there is not a single whisper about the terrorist group involved or of jihad in the testimonies of the aforementioned witnesses, thereby eliminating any allegation of intent to aid in the alleged terrorist activities.

7. He submits that as far as the offences under the Arms Act are concerned, the appellant has already suffered incarceration for a long period, which would be commensurate when compared with the pre-amended provisions of the Arms Act.

8. As far as the CDR analysis establishing the movement of the appellant and that of A-1 together is concerned, he submits that this alone cannot show the contact between the appellant and A-1, much less prove any charge against the appellant. In support, he places reliance on the judgment of the Supreme Court in **Shoma Kanti Sen v. State of Maharashtra & Anr.**, (2024) 6 SCC 591.

9. He submits that, even as per the case of the prosecution, the appellant was not a key functionary or a core member of the Pro-IS module Harkat-UI-Harb-E-Islam. He further submits that there is no allegation of the appellant attending any meeting of this group, in relation to the ideology of ISIS, or of him being in contact with any of its handlers. Relying on the judgment of the Supreme Court in **Gulfisha Fatima v. State (Govt of NCT of Delhi)**, 2026 SCC OnLine SC 10, he submits that, therefore, again, the appellant is entitled to be



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released on bail as he satisfies the triple test.

10. On the other hand, the learned Special Public Prosecutor (hereinafter referred to as 'SPP') submits that though from the appellant himself, no recovery except a mobile has been made, there is a host of recoveries from the other co-accused, which clearly shows the conspiracy to commit a terrorist act by the organization. He submits that in this conspiracy, each member may have a different role, however, such person cannot plead innocence or leniency by drawing a distinction in such role. In support of his plea, he places reliance on the judgments of the Supreme Court in **Bhagwan Swarup Lal Bishan Lal & Ors. v. State of Maharashtra**, 1963 SCC OnLine SC 26 and in **Mohd. Amin & Anr. v. CBI**, (2008) 15 SCC 49.

11. He submits that the appellant cannot plead ignorance of the main object of the conspiracy, that is, to support terrorism, as the very act of facilitating procurement of arms in such large quantity would show his knowledge that the same would be used for terrorist activities. In support, he places reliance on the judgment of the Supreme Court in **State of Maharashtra & Ors. v. Som Nath Thapa & Ors.**, (1996) 4 SCC 659.

12. Placing reliance on **Gulfisha Fatima** (supra), he submits that, the appellant was not a peripheral member of the organization but was its core member and played a very active part, disentitling him to bail only on the ground of a prolonged period of incarceration.

13. As far as the submissions of the learned counsel for the appellant that PW-28, PW-29, and PW-30 are, in fact, by their own statements, accomplices and their statements should not be accepted,



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he places reliance on the judgment of the Supreme Court in ***Laxmipat Choraria & Ors. v. State of Maharashtra***, 1967 SCC OnLine SC 30, to contend that the statements of such witnesses are also entitled to acceptance.

14. He submits that the CDR analysis of the phone recovered from the appellant and A-1, shows that they were moving together. This corroborates the disclosure statement and the pointing-out memo, as also the evidence of PW-28, PW-29, and PW-30. He submits that there were, in fact, 59 calls between A-1 and the appellant, and another 32 calls between A-1 and accused No. 5/*Mohd. Saqib Iftekar*, which clearly show that the appellant was aware of the design of the conspiracy and played an active part in the same. He submits that, for the above reasons, the present appeal deserves to be dismissed.

15. We have considered the submissions made by the learned counsels for the parties and have also perused the record of the learned Trial Court.

16. We shall first take note of the allegations made against the appellant in the Charge-Sheet. These are as under:

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X.	A-11 (Non FIR named accused)	
	i) Name with Parentage	Naim @ Mohd. Naeem @Nayeem Choudhary, age 22 yrs (DOB: 01.01. 1997) Aadhar Card No: 5164 8969 1960 S/o Hafiz Munqaad@Munkad, (Hereinafter referred to as A-11).



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ii) Address (Present and Permanent)	Resident of: Vill- Radhna Inayatpur, PS Kithore Kotwali, District-Meerut, Uttar Pradesh, PIN-250104
iii) Role in Crime (in brief)	•A- 11 is a relative of Mufti Saqib (A-5). It was Mufti Saqib who introduced A1 and others to A-11 for arrangement of weapons through his known contacts in Radhna Inayatpur, Meerut. •The investigation has established A- 11 was instrumental in arranging weapons for the group.
iv) Arrested/on bail/ not arrested/ absconding	Arrested: on 3 rd of January, 2018. Presently in Judicial Custody.

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“VIII. The investigation has substantiated that Mufti Saqib (A-5) was instrumental in arranging for weapons for the group. For this purpose he contacted his relative Naim @ Nayeem Chaudhary (A-11) of village Radhna Inayatpur, Meerut. In the first instance, Naim arranged one Pistol, one Katta and 20 cartridges of .32 mm and second time A-11 arranged three Pistols and 80/100 cartridges from his village Radhana Inayatpur, through three persons Matloob (PW-11), Aarif(PW-58)and Israr(PW-57)all residents of the same village. It has been revealed that Naim had the knowledge about the intention of the group to target innocent civilians for spreading terror but nevertheless he provided the weapons and involved himself in the conspiracy to wage war against the Government of India.”

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By:REYMON VASHIST
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III. Procurement of Pistols from Meerut: (1st Visit):

a) The initial investigation revealed that A-1, A-2, A-3, A-4 & A-5 went to Meerut in the first week of July, 2018 to procure pistols from Radhana Inayatpur, Meerut, UP. Naim (A-11) was instrumental in their procuring the weapons.

b) The investigation revealed that during the first week of July, 2018, Suhail (A-1) went to Simbhaoli in western UP along with Anus Yunus (A-2), Zafar (A-4) and Zubair (A-3) by a Maruti Swift Car white colour (belonging to Zubair (A-3) and took Saqib (A-5) from Jama Masjid Baksar, Hapur and reached at the tea stall near bus stand of Radhna Inyatpur. Naim (A-11) and Kasun (s/o Sh. Zafaryab) a resident of this village was already therewhen Kasim called Matloob (PW-11).

c) Matloob (PW-11) handed **one Pistol and one Katta and one packet (Cartridge) rounds** (20) to Mufti Suhail (A-1). In this transaction A-5 introduced A-11 to the group who promised them that weapons can be arranged for a price.

d) Evidence gathered by Investigation to substantiate the transactions in Meerut (First Visit):

- i. Witness Matloob (PW-11) in his statement testified that during the transaction of weapons dealings by Naim (A-11) and Suhail (A-1) he witness the transaction of arranging 01 country made pistol, 01 country made Katta and 20Nos. ammunition on the direction of Naim (A-11) and that these were handed over to A-1.
- ii. Matloob (PW-11) also identified the arms which were given to A-1 after seeing the photographs of pistols at the time of seizure.
- iii. Voluntary Disclosure and Pointing out by Naim (A-11): The investigation has also corroborated the fact of this meeting from the disclosure/pointing out on 12/01/2019



wherein A-11 pointed out the places where A-11 met with A-1 and the place where Pistols were purchased. During the visit A-1, A-2, A-3, A-4, and A-5 came at Village Radhna Inyatpur and collected one country made pistol, one country made pistol and a packet of bullets from Matloob (PW- 11).

iv. After taking the said arms and ammunition Mufti Suhail (A-1) and his team returned to Delhi and dropped Saqib (A-5) and Kasim at Simbhaoli (UP).

e) Corroboration of above from CDR Analysis: CDR Analysis of Suhail (A-1), Zubair (A-3) and Anas (A-2) was conducted to corroborate the facts coming up from the disclosures of accused and from statement of witnesses. CDR Analysis confirms that Suhail (A-1), Zubair (A-3) and Anas (A-2) (their mobile numbers are 9910660673, 9811626865 & 8750150219) went to Meerut in the first week of July 2018. The locations and movements of phone numbers used by accused persons as mentioned above are consistent with the facts as come up in the evidence discussed above. Details are attached in the CDR Report (D-192).

IV. Procurement of Pistols from Meerut: (2nd Visit):-

a) Investigation has established that during the second week of August, 2018 Mufti Suhail (A-1) along with Zafar (A-4) went to Vaishali metro station by Baleno car of Zafar and took Naim (A-11) (Naim was already present there) and reached Radhana Inayatpur village in Meerut, UP again. After reaching Radhana Inayatpur, they took Aarif (PW-58) and Israr (PW-57) who are locals of Radhana Inayatpur village. Here, Mufti Suhail (A-1) purchased three pistols and five packets of cartridge (each packet contains 20 rounds) from Israr (PW-57) (S/o Islam, Rio Village- Radhna Inayatpur, PS- Kitore, Distt- Meerut, UP). After collecting these arms and ammunition Mufti Suhail (A-1) and Zafar (A-



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4) returned to Delhi.

b) Witnesses Israr (PW-57) and Aarif (PW-58) were examined by the investigation wherein they testified in their statement that they were present while arranging 03 country made pistols and 100 Nos. ammunition, on the direction of Naim (A-11) and the weapons/ammunition were handed over to Mufti Suhail (A-1).

c) The investigation has substantiated by careful CDR Analysis of the phone numbers used by the accused persons that show commonality of location during the dates and it clearly corroborates that Suhail (A-1), Zubair (A-3), Anas (A-2) and Naim (A-11) (their mobile numbers are 9354439023, 981 1626865, 8750 150219 & 8448302920) went to Meerut in the second week of August 2018. They all met near Vaishali metro station and went to village- radhna Inyatpur, Meerut. Details are in CDR Report.

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17.7.20 Evidence Against :Md. Naim (A-11):

Substantiation through evidence against accused Naim (A11) has been done under following headings:-

I. A-11 arranged and provided weapons for the group.

a. Disclosure/Pointing out by Naim (A-11) dated 12/01/2019 corroborates the statement of witnesses that he arranged arms & ammunition for the group through Matoob (PW-11), Israr (PW-57) & Aarif (PW-58).

b. Witness Matloob (PW-11) in his statement testified that during the transaction of weapons dealings by A-11 was present and involved in arranging 01 country made pistol, 01 country made Katta and 20Nos. ammunition which were handed over to A-1. This is a reliable eye-witness testimony.

c. Statement of Prosecution Witnesses Israr



(PW-57) and Aarif (PW-58): they testified that they were present when 03 country made pistols and 100 Nos. ammunition, were arranged on the direction of Naim (A-11) and that the weapons/ammunition were handed over to Mufti Suhail (A-1).

d. The investigation has substantiated by careful CDR Analysis of the phone numbers used by the accused persons that show commonality of location during the dates ie in the first week of July and 2nd week of August, 2018. This further corroborates the facts as disclosed in the disclosure of Naim(11) and statements of eye witnesses Matloob (PW-11), Israr (PW-57) & Aarif (PW-58).

e. The evidence against him substantiates that he was part of the conspiracy hatched by A-1, A-2, A-3, A-4 & A-5 to procure weapons for the group from Radhana Inayatpur, Meerut UP.

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17.7 Evidence against each accused in Tabular Format:

10	Mohd. Naeem (A-11) ➤ A-11 is a relative of Mufti Saqib (A-5). ➤ A-5 introduced A-1 and others to A-11 for arrangement of weapons through his known	Testimonial Evidence:- ➤ Oral evidence of Israr S/o Islam R/o Radhna, Inayatpur, Tehsil Mawana, PS-Kithore, Meerut, UP, Arif S/o Farmuddin R/o Radhna, Inayatpur, Tehsil Mawana, PS-Kithore, Meerut, UP, recorded u/s 161 Cr. PC. Documentary Evidence:- ➤ CDR analysis report. ➤ Forensic Examination Report of Dr. V. S. Baswani,
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	<i>contacts in Radhna Inayatpur, Meerut.</i> <i>➤ The investigation has established A-11 was instrumental in arranging weapons for the group.</i>	<i>Scientific Consultant (Explosive Expert) related to the recoveries made during searches on 26th Dec, 2018 says that the seized materials were collected for fabrication of IEDs.</i> Material Evidence:- <i>➤ Recovery of two mobile phones along with SIM Cards seized from the possession of the A-11.</i>
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17. From the above narration of allegations against the appellant, it would be evident that the primary case against the appellant is that he had introduced Mufti Suhail (A-1) to Aarif (PW-29), Israr (PW-28) and Matloob (PW-30), to facilitate procurement of arms and ammunition, knowing fully well that the same shall be used for spreading terror. The case against the appellant, apart from the testimonies of PW-28, PW-29 and PW-30, is based on CDR analysis which allegedly shows the commonality of location of the appellant with A-1/Suhail, A-3/Zaheer and A-2/Anas. It is also alleged that there were calls exchanged between the appellant, A-1 as also Accused no.5/Mohd. Saqib Ifthekar.

18. As far as the PW-28, PW-29 and PW-30 are concerned, they already stand examined before the learned Trial Court. We have perused their statements and for the reasons that any observation made by us on the same may influence the trial, we refrain ourselves from giving our detailed opinion on the same. Suffice it to say that the



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statements of these witnesses do not persuade us to deny bail to the appellant. In addition, once these witnesses have been examined, the possibility of the appellant influencing the trial already stand reduced, if not negated.

19. As far as the CDR locations and the telephone connectivity are concerned, the effect of the same shall be considered by the learned Trial Court in the trial.

20. We are also mindful of the fact that the allegation against the appellant is that he helped A-1 procure only one pistol and one katta and one packet cartridge containing 20 rounds in the first instance, and three pistols and 3 packets of cartridge each containing 20 rounds in the second. The learned SPP appearing for the respondent has submitted that this itself shows the knowledge of the appellant that these arms and ammunition were to be used in terrorist activities. In support, he placed reliance on the judgment of the Supreme Court in **Som Nath Thapa** (supra). Though this will be a matter to be considered by the learned Trial Court, **Som Nath Thapa** (supra) was a case of supply of RDX/Bombs, due to which special presumption was drawn by the Supreme Court. Given the arms and ammunition alleged to be supplied in this case at the instance of the appellant, whether such presumption of knowledge that they would be used in terrorist activity and not other crime, will be a decision to be made by the learned Trial Court at the conclusion of the trial.

21. The learned SPP has further submitted that this being a case of conspiracy, the act committed by the appellant should not be seen in isolation. This submission, though correct in law, on facts the



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prosecution would still have to show that the appellant was acting in furtherance of a “common intention” and therefore, had knowledge of such common goal or purpose.

22. As far as A-5/Mohd. Saqib @ Saqib Iftekar is concerned, he has already been enlarged on bail by us *vide* judgment dated 14.09.2026 passed in Crl.A. 676/2024. We had placed reliance in the said judgment on our earlier judgment in ***Khuram Parvez v. National Investigation Agency***, 2026:DHC:5092-DB, wherein we had considered the law relating to the effect of delay in the trial on the Fundamental Rights of the accused under Article 21 of the Constitution of India, and balance to be achieved between this right and the restrictions on bail contained in Section 43D(5) of the UAPA. We would quote from the said judgment as under:

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



prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail. Instead, Section 43D(5) of the UAPA merely provides another possible ground for the court to refuse bail, in addition to the well-settled considerations like gravity of offence, etc.. We quote from the judgment as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court



appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.”

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

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



“30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

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

*32. In **Union of India v. K.A. Najeeb**, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and*



there can be no second opinion on the said principle.

33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

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

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

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101. It is well recognised that Article 21 rights, though not absolute, require the State and the Court to justify continued custody with reference to the specific individual before it. Treating all accused identically irrespective of their roles would risk transforming pre-trial detention into a punitive mechanism divorced from individual circumstances. The constitutional mandate demands a differentiated inquiry: where prolonged custody disproportionately burdens those whose roles are limited, the balance between individual liberty and collective security may call for conditional release, while the same balance may tilt differently for those alleged to have orchestrated the offence.”

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

“**80.** From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. **First**, the provision embodies a deliberate legislative departure from ordinary bail jurisprudence, premised upon the distinctive nature of offences under Chapters IV and VI of the Act. **Second**, the expression “prima facie true” mandates a threshold judicial inquiry which is neither perfunctory nor adjudicatory, requiring the Court to examine whether the prosecution material, taken at face value, discloses the essential statutory ingredients of the alleged offence. **Third**, the inquiry is necessarily accused-specific, directed to the role and attribution qua the individual, and does not admit of



*collective or undifferentiated treatment merely because allegations arise from a common transaction or conspiracy. **Fourth**, the bail stage under Section 43D(5) is not a forum for evaluating defences, weighing evidence, or conducting a mini-trial; judicial restraint at this stage is not an abdication of duty but a fulfilment of the statutory mandate. These propositions, read together, define the contours of judicial power and responsibility under the provision.*

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

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

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

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

82. *Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted*



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by overreach nor distorted by mechanical application.”

56. The correctness of the above judgment, insofar as interplay between Article 21 of the Constitution of India and Section 43D(5) of the UAPA is concerned, has been doubted by the Supreme Court in **Syed Iftikhar Andrabi v. National Investigation Agency, Jammu**, 2026 INSC 503. It explained **K.A. Najeeb** (supra), as under:

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



rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

xxx

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

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

“42.3. Thus, from the aforesaid figures, it is evident that the country-wide percentage of conviction under the UAP Act for the five years comprising the period 2019-23 hovers between 2% to 6%. In other words, there is 94% to 98% possibility of acquittal in such cases in



the country. When it comes to the Union Territory of Jammu and Kashmir, the percentage of conviction is abysmal, to say the least. For the aforesaid period, the annual rate of conviction is always less than 1%. It means that at the end of the trial, there is 99% possibility of acquittal in such cases. With these kind of statistics staring at our face, the question is, should we continue the detention of the appellant or defer the consideration to a later stage, simply because the charges are serious?"

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

"20. We are also conscious that an unqualified reading of the proposition that lapse of time by itself must compel bail in every case under the UAPA may have serious consequences. Such an approach may leave little room for courts to examine the nature of allegations, centrality of role, protected witnesses, risk of intimidation, possibility of reactivation of networks, nature of delay and whether such delay is attributable to the accused



himself/herself, public order concerns and national security implications. On the other hand, an equally unqualified insistence on Section 43D(5) without regard to prolonged incarceration would imperil Article 21. The Constitution does not command either extreme. It is this precise issue that may warrant attention of the appropriate bench dealing with the issues.

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

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

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

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



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

23. In the present appeal as well, though the appellant has been in custody since 03.01.2019, that is, for a period of more than 7 ½ years, in the trial only 42 witnesses out of 112 have been examined. There is no possibility of the trial concluding any time soon.

24. Given the nature of the evidence and the delay in conclusion of the trial, we are of the opinion that the appellant has been able to make out a case for being released on bail.

25. Accordingly, we direct that the appellant be released on bail, subject to the following conditions:-

a. The appellant shall execute a personal bond in the sum of



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Rs.50,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court;

b. The appellant shall surrender his passport, if any, before the learned Trial Court. If he does not hold a passport, an affidavit to that effect shall be filed before the learned Trial Court;

c. The appellant shall not leave the country without prior permission of the learned Trial Court. Any application seeking permission to travel shall disclose the destination, duration, purpose of travel and complete contact details during such travel;

d. The appellant shall not leave his native place i.e., District Meerut, except to travel to Delhi to attend his Trial or to report at the NIA Office as part of his bail conditions;

e. The appellant shall only use one mobile phone and/or landline number during the course of the trial, which shall always be kept in the switch-on mode;

f. The appellant shall furnish his current residential address, the mobile/landline number and his e-mail address to the Investigating Officer and to the learned Trial Court. He shall not change his residence or contact particulars without giving at least seven days' prior intimation to the Investigating Officer and the learned Trial Court;

g. The appellant shall appear before the learned Trial Court on each date of hearing, unless exempted by the learned Trial Court from such appearance;



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- h. The appellant shall not exhibit any conduct that has the effect of delaying the proceedings;
 - i. The appellant shall not directly or indirectly contact, influence, threaten or communicate with any prosecution witness, protected witness, complainant, person acquainted with the facts of the case or the co-accused or their family members;
 - j. The appellant shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
 - k. The appellant shall not make any public statement, including through print, electronic media or social media, touching upon the merits of the case, the evidence, the witnesses or the pending trial;
 - l. The appellant shall not participate in any activity which may prejudice public order or the integrity of the trial;
 - m. The appellant shall not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise;
 - n. The appellant shall report to the concerned NIA BRANCH OFFICE, once every fortnight, or at such interval as may be directed by the learned Trial Court. The Branch Office shall maintain a separate register of attendance with respect to the appellant;
26. In the event of breach of any condition, it shall be open to the prosecution to seek cancellation of bail before the appropriate court.
27. The impugned order rejecting the appellant's bail application is,



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accordingly, set aside. The appeal is disposed of in the above terms.

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

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

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

SEPTEMBER 30, 2026/rv/as