



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

Reserved on: 08.05.2026
Pronounced on: 10.06.2026

+ **CRL.A. 1234/2024**

KHURAM PARVEZAppellant

Through: Mr. Tanveer Ahmed Mir, Sr.
Adv. with Ms. Swati Khanna,
Ms. Raminder Kaur, Mr. Md.
Imran Ahmad and Mr. Shahzad
Khan, Advs.

versus

NATIONAL INVESTIGATION AGENCYRespondent

Through: Mr. Rahul Tyagi, SPP,
Ms. Priya Rai, Mr. Shubham
Goyal, Mr. Jatin, Mr. Amit
Rohila, Advs. with DSP Sonu
Verma, CIO

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. The present appeal has been filed by the appellant under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act'), assailing the Order dated 13.12.2024 passed by the learned Additional Session Judge-03, N.D.D. Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court') in NIA/4/2022, titled *National Investigation Agency v. Khuram*



2026:DHC:5092-DB



Parvez@Khurram and Ors., emanating from RC No. 30/2021/NIA/DLI, whereby the learned Trial Court rejected the bail application filed by the appellant herein.

CASE OF THE PROSECUTION:

2. The appellant before this Court is the Accused No.1 before the learned Trial Court.
3. The case of the prosecution is that reliable information was received by the Central Government on the Lashkar-e-Taiba ('LeT'), a Pakistan-based proscribed terrorist organization, establishing a widespread network of operatives/over-ground workers ('OGWs') in India for providing support in the planning and execution of its terrorist activities in various parts of the country.
4. Basis the said inputs, the Ministry of Home Affairs, Government of India, issued Order No. 11011/68/2021 dated 05.11.2021, directing the National Investigation Agency ('NIA') to investigate into the same.
5. Pursuant thereto, FIR bearing No. RC-30/2021/NIA/DLI came to be registered at Police Station NIA, New Delhi on 06.11.2021, under Sections 120B, 121 and 121A of the Indian Penal Code, 1860 ('IPC') and Sections 17, 18, 18B, 38 and 40 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA').
6. The said FIR, apart from naming various individual accused persons, also narrates a broad conspiracy involving the recruitment and running of an OGWs network of the LeT in India by a Pakistan



2026:DHC:5092-DB



based handler identified as one Hyder@Ali@Yusuf. The name of the appellant was not mentioned in the FIR.

7. Upon registration of the FIR, an investigation team was constituted by the NIA, which commenced an inquiry into digital and ground-level networks allegedly connected with the said conspiracy. This investigation led to the arrest of multiple suspects, including the appellant-Khuram Parvez (A-1), Muneer Ahmad Kataria (A-2), Arshid Ahmad Tonch (A-3), and Zafar Abbas (A-4), who were arrested on 22.11.2021, 16.11.2021, 18.11.2021, and 07.12.2021, respectively. Thereafter, Rambhawan Prasad (A-5) and Chandan Mahato (A-6) were arrested on 16.12.2021. On analysis of the digital devices of the accused persons, the role of Arvind Digvijay Negi (A-7), Superintendent of Police, surfaced and he was arrested on 18.02.2022.

8. Upon completion of substantial investigation, the NIA filed its first charge-sheet on 13.05.2022 against the aforementioned seven accused persons.

9. In the charge-sheet, it is alleged that the LeT, which is engaged in waging war against the Government of India, has established a widespread network of OGWs for providing support in the planning and execution of its terrorist activities in various parts of India, including in Jammu and Kashmir. The accused persons along with their associates, are stated to have hatched a conspiracy to recruit persons across various States of India for the said cause. It is alleged that they were in contact with foreign based handlers and upon their directions, gathered intelligence on vital installations, Security



Forces/Security Agencies of India. They also identified target locations for launching terror attacks. This information was then stated to be passed on to the LeT leadership based in foreign countries *via* internet-based communication platforms. It is alleged that they also received terror funds from handlers abroad, including from Hyder@Ali@Yusuf, and were operating multiple pseudonymous bank accounts to channelize and distribute these funds to OGWs for furtherance of terrorist activities.

SPECIFIC ALLEGATIONS AGAINST THE APPELLANT (ACCUSED NO.1):

10. It is alleged that the appellant is the Program Coordinator of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and the Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD). It is alleged, that he, in guise of human right's activism, was part of the larger conspiracy.

11. It is alleged that the appellant recruited Muneer Ahmad Kataria (A-2) as an OGW for LeT, and personally facilitated his contact with Hyder@Ali@Yusuf, a Pakistan-based LeT handler. Muneer Ahmad Kataria (A-2), in turn, is alleged to have recruited Arshid Ahmad Tonch (A-3) as an OGW.

12. It is alleged that in guise of human rights activism, the appellant was actively involved in collecting information regarding movement of Army vehicles near the Line of Control, road conditions and details of army camps, structures of army, paramilitary and police etc.. Information regarding officers and security personnel who were



involved in militancy operations, was also collected and a dossier of officers named '*High-Ranking Perpetrators*' was maintained. The mail data of the appellant is also alleged to reveal that the appellant was in contact with many Pakistani journalists who wanted to portray India in a bad light and wanted from the appellant, footage of the presence of the Indian Army in Kashmir.

13. It is alleged that visiting cards, including that of spokespersons of Pakistan based proscribed terrorist organisation Hizb-ul-Mujahideen (HM) were found at office of JKCCS. It is alleged that the appellant had visited Pakistan twice in the year 2007 and 2015, during which he had met Syed Salauddin (Amir of HM), a designated terrorist. It is alleged that the appellant had contact with Hurriyat leaders from both sides of the border. It is alleged that these findings establish that the appellant had nefarious links with Pakistan based proscribed terrorist organisations.

14. The appellant is also alleged to have been actively involved in instigating and providing material support to the protestors in the Kashmir valley during the post Burhan Wani encounter agitation in the year 2016. It is alleged that the appellant provoked protestors by giving hate speeches "*Burhan teray janissar, beyshumaar beyshumaar*", "*Go Back Go Back India*" and "*India go away from Kashmir*", which incited the protestors and caused disaffections against the government. He is also alleged to have been involved in distributing Azad Kashmir Flags to the protestors and other successionist activities.



15. It is alleged that the appellant negotiated the payment of illegal gratification to Arvind Digvijay Negi (A-7), Superintendent of Police, *via* Muneer Ahmad Kataria (A-2), for compromising the investigation of NIA Case No. RC-37/2020/NIA/DLI by releasing of digital devices and other material seized by NIA during search conducted in the house of the appellant and the office of JKCCS in the said case.

16. He has accordingly been charge-sheeted under sections 120B and 121A of the IPC, Section 8 of the Prevention of Corruption (Amendment) Act, 2018 ('PC Act') and Sections 13, 18, 18B, 38 and 39 of the UAPA.

THE IMPUGNED ORDER AND FURTHER DEVELOPMENTS BEFORE THE LEARNED TRIAL COURT:

17. The application filed by the appellant seeking regular bail has been rejected by the learned Trial Court by the Impugned Order, observing that the allegations against him appeared to be *prima facie* true. In reaching the said conclusion, the learned Trial Court has relied upon the chats allegedly between the appellant and Muneer Ahmad Kataria (A-2), observing that the same showed that the appellant tried to bribe Arvind Digvijay Negi (A-7) to compromise the investigation of NIA Case No. RC-37/2020/NIA/DLI and for releasing the seized digital devices in the said case. The learned Trial Court also observed that there is evidence against the appellant of having introduced Muneer Ahmad Kataria (A-2) to Hyder@Ali@Yusuf. The learned Trial Court further found that there is evidence that the appellant used to promote the cause of separate Kashmir by making speeches as well



as by distributing flags to protestors, which protests resulted in injuries to the security personnel.

18. Aggrieved of the said order, the appellant has preferred the present appeal.

19. During the pendency of the present appeal, a supplementary charge sheet was filed on 15.07.2025, wherein certain additional material has been placed on record.

20. Pertinently, it has been highlighted that Muneer Ahmad Kataria (A-2) has been granted the status of approver by the learned Trial Court on 02.07.2025. In his statement under Section 164 of the Code of Criminal Procedure Code, 1973 ('Cr.P.C.'), he has stated that he was working as an NIA informer with Arvind Digvijay Negi (A-7) since 2019. He has stated that he knows the appellant since 2015, and in 2020 the appellant introduced him to Hyder@Ali@Yusuf who had links with the LeT. He has stated that the appellant had told him that Hyder@Ali@Yusuf was the Chief Operating Commander of the LeT (J&K module). He has stated that on request of the appellant, he approached Arvind Digvijay Negi (A-7) requesting for the release of digital gadgets of the appellant which had been seized by the respondent. He has stated that the appellant paid Rs. 1,50,000/- to him to pay Arvind Digvijay Negi (A-7).

**SUBMISSIONS MADE BY THE LEARNED SENIOR COUNSEL
FOR THE APPELLANT:**

21. The learned senior counsel for the appellant submits that the appellant has been in custody for more than four years. The trial is at



the stage of framing of charge and that there are more than 190 witnesses to be examined. He submits that in such a scenario, the delay in the trial itself constitutes a ground for grant of bail. He highlights that in cases of prolonged incarceration, bail can be granted without complying with the requirements of Section 43D(5) of the UAPA. Reliance in this regard is placed on the judgment dated 12.03.2026 of the Supreme Court in SLP (CRL.) No. 13399 of 2025, titled, *Shabir Ahmed Shah v. National Investigation Agency*; judgment dated 12.01.2026 in SLP (CRL.) No.11095/2025, titled *Alemla Jamir v. National Investigation Agency; Athar Parwez v. Union of India*, 2024 SCC OnLine SC 3762; *Shoma Kanti Sen v. State of Maharashtra & Anr.*, (2024) 6 SCC 591; *Ashim v. National Investigation Agency*, (2022) 1 SCC 695; *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713; *Sagar Tatyaram Gorkhe & Anr. v. State of Maharashtra*, (2021) 3 SCC 725; and, *Angela Harish Sontakke v. State of Maharashtra*, (2021) 3 SCC 723. He also refers to the judgment of this Court in *Haris Nisar Langoo v. National Investigation Agency and Zamin Adil Bhat v. National Investigation Agency*, 2026 SCC OnLine Del 1183; of the High Court of Jammu and Kashmir and Ladakh in *Baseerat-ul-Ain v. National Investigation Agency & Anr.*, 2024 SCC OnLine J&K 36; of the High Court of Punjab and Haryana at Chandigarh in *Chandeep Singh v. National Investigation Agency*, 2023 SCC OnLine P&H 6332; of the Gauhati High Court in *Indra Mohan Bora v. National Investigation Agency*, GAHC010153542023 and of the Allahabad High Court in *Sharjeel Imam v. State of U.P.*, 2021:AHC:147247.



2026:DHC:5092-DB



22. He submits that bail is the rule and jail is the exception even in cases involving the provisions of the UAPA. In this regard, reliance is placed on the judgments of the Supreme Court in *Jalaluddin Khan v. Union of India*, (2024) 10 SCC 574 and *Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr.*, (2024) 9 SCC 813. Placing reliance on the judgment of the Supreme Court in *Rup Bahadur Magar v. State of West Bengal*, 2024 SCC OnLine SC 5575, he further submits that bail cannot be denied even on account of the expedited measure of trial.

23. He submits that in fact, some of the co-accused, namely, Rambhawan Prasad (A-5), Chandan Mahato (A-6) and Arvind Digvijay Negi (A-7) have already been granted bail on 02.06.2022.

24. He submits that it is a matter of record that on 20.04.2004, the appellant lost his leg in a tragic incident during an election monitoring exercise in Kupwara, North Kashmir, when his vehicle was struck by a landmine blast. The appellant has worn a prosthetic leg since then and is infirm. He states that hence, the appellant is entitled to be enlarged on bail on account of his infirmity. He submits that the proviso of Section 437(1) of the Cr.P.C. provides for infirm accused to be released on bail even if such accused is otherwise covered by the restrictions imposed under Section 437(1)(i) and (ii) of the Cr.P.C.. Placing reliance on the judgment of the Supreme Court in *Satender Kumar Antil v. CBI & Anr.*, (2022) 10 SCC 51; and in *Alemla Jamir* (supra); and of the High Court of Gauhati in *National Investigating Agency v. Redaul Hussain Khan*, 2010 SCC OnLine Gau 606, he submits that the said proviso is applicable even in cases of UAPA.



Placing reliance on the judgment of this Court in *Kewal Krishan Kumar v. Enforcement Directorate*, 2023 SCC OnLine Del 1547, he submits that infirmity has been defined to include ‘*some permanent disease, accident, or something of that kind*’. He submits that the appellant is therefore, entitled to be released on bail, being infirm.

25. Turning to the alleged activities attributed to the appellant, the learned senior counsel for the appellant, at the outset, places reliance on the judgments of the Supreme Court in *Dablu Kujur v. State of Jharkhand*, (2024) 6 SCC 758; and *Rajesh Yadav and Anr. v. State of Uttar Pradesh*, (2022) 12 SCC 200; and of this Court in *Ashok Chawla v. Ram Chander Garvan, Inspector CBI*, ILR (2011) 3 Delhi 638, to submit that a charge sheet is merely the opinion of the investigating officer. Reliance is placed on the judgement of the Supreme Court in *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1, to further submit that as per Section 43D(5) of the UAPA, the complete material must be analyzed for the purpose of bail.

26. He highlights that the appellant is an internationally renowned and decorated Kashmiri human rights activist who works on documenting and publishing human rights reports on topics such as people who have disappeared in Kashmir, fake encounters, the militarisation of Kashmir, and its impact on human rights. The appellant has deep roots in society and conducts various seminars and dialogues with the Kashmiri people. He interacts with the Kashmiri community across religious and ideological spectrums through means of non-violence. Placing reliance on the judgment of the Supreme Court in *Ravinder Singh Alias Kaku v. State of Punjab*, (2022) 7



SCC 581, he submits that mere statements and incoherent facts of the appellant's years of activism, without conclusive evidence to form a chain of circumstances, does not make a *prima facie* case against the appellant.

27. He submits that the information gathered by the appellant regarding army structures, paramilitary formations, army's chain of command, and the roles of individual officers, was collated in a structured form and published in 2015 in the name of '*Structures of Violence Report*'. The said report was released on 11.09.2015 in Srinagar and is, till date, available publicly on the official website of JKCCS. He submits that the said document constitutes legitimate human rights documentation carried out in the public interest.

28. As far as the '*Alleged Perpetrators*' report is concerned, he submits that the same was also published on 06.12.2012 and is available on the JKCCS website till date. He states that the report is not a secret document as most of the information was collected through RTI. Moreover, the said report was also shared with the army which gave a public response, as reported by the Kashmir Tribune on 12.12.2012. The report advocates legal responsibility and institutional reform, not armed retaliation.

29. He submits that as far as the flow chart of the structure of the army is concerned, the same is accessible across various online sources, including websites like Wikipedia. He further submits that the purpose of the research into militants killed and arrested, was to document the subsequent promotions or awards distributed amongst



security forces, to study whether the encounters were fake and incentivised by awards or promotions.

30. In so far as the visits of the appellant to Pakistan in 2007 and 2015 are concerned, the learned senior counsel points out that both visits are in public domain and had no criminal intent behind them. The appellant visited Pakistan with a valid visa.

31. He submits that in as far as allegations of subscribing to a separatist ideology and inciting protests post-Burhan Wani's killing in 2016 is concerned, the appellant already has four FIRs against him on similar grounds which are all bailable offences. Moreover, the appellant was taken into illegal detention by passing of a Detention Order 21.09.2016 under the Public Safety Act, 1978 on this ground alone. The same was however quashed by the High Court of Jammu and Kashmir in H.C.P No. 297/16, titled *Khuram Parvez Sheikh v. State of Jammu and Kashmir & Ors.*, vide its order dated 25.11.2016.

32. He submits that the mere expression or belief of political dissent, advocacy of self-determination, or criticism of State policy, cannot attract provisions of the UAPA, unless it crosses the threshold of incitement or active involvement in violence. In this regard, he places reliance on the judgments of the Supreme Court in *Kedar Nath Singh v. State of Bihar*, 1962 SCC OnLine SC 6, and *Balwant Singh & Anr. v. State of Punjab*, (1995) 3 SCC 214; of the High Court of Bombay in *Jyoti Babasaheb Chorge v. State of Maharashtra & Sushma Hemant Ramtekke v. State of Maharashtra*, 2012 SCC OnLine Bom 1460 and of this Court in *Kanchan Mishra @Anu v. State of NCT of Delhi*, 2012 (130) DRJ 646.



33. He submits that, at best, raising objectionable slogans without incitement of violence, may fall under the definition of ‘unlawful activity’ under Section 2(1)(o) of the UAPA, and may attract Section 13 of the UAPA, which has a maximum sentence of 7 years and does not attract the twin conditions of bail as prescribed in Section 43D(5) of the UAPA. Reliance in this regard is placed on the judgment of the High Court of Jammu and Kashmir and Ladakh in *Union Territory of J&K v. Ameer Hamza Shah and Anr.*, 2025 SCC OnLine J&K 745.

34. In as far as the allegation pertaining to recruitment of OGWs for the LeT is concerned, he submits that the mere statement of Muneer Ahmad Kataria (A-2) is not enough to deny bail to the appellant. He submits that while the WhatsApp Chats between the appellant and Muneer Ahmad Kataria (A-2) may *prima facie* show that Muneer Ahmad Kataria (A-2) was seeking bribe from the appellant on behalf of Arvind Digvijay Negi (A-7) in return for the seized devices belonging to the appellant, there is no material on record against appellant of recruiting him as an OGW, especially given the fact that Muneer Ahmad Kataria (A-2) himself disclosed in the WhatsApp Chat that he is an NIA official’s, namely, Arvind Digvijay Negi’s (A-7) appointed person. He submits that the learned Trial Court has erred in interpreting the WhatsApp conversation between the appellant and Muneer Ahmad Kataria (A-2), and the alleged sharing of Official Secret Documents by Muneer Ahmad Kataria (A-2) with Hyder@Ali@Yusuf as being part of the same transaction. He submits that the appellant has no role to play in Arvind Digvijay Negi (A-7) sharing Official Secret Documents to Muneer Ahmad Kataria (A-2)



who is further alleged to have shared the same with Hyder@Ali@Yusuf. He submits that Muneer Ahmad Kataria (A-2) has, in fact, now been granted the status of an approver by the learned Trial Court.

35. He submits that uncorroborated oral evidence of recruitment is not conclusive evidence, and a surface level analysis of its probative value is required. He submits that the mere association of the appellant with a co-accused does not amount to a *prima facie* case under the UAPA. To buttress his submission, reliance is placed on the judgments of the Supreme Court in *Ravi v. State*, (2008) 15 SCC 115, *Neeraj Dutta v. State (Govt. of NCT of Delhi)*, (2023) 4 SCC 731, *Thwaha Fasal v. Union of India & Union of India v. Allan Shuaib*, 2021 SCC OnLine SC 1000 and *Vernon v. State of Maharashtra & Anr.*, 2023 SCC OnLine SC 885; and of the High Court of Kerala in *Abusalih & Anr. v. M.K. Jubairiya*, 2013 SCC OnLine Ker 18835. Placing reliance on the judgment dated 16.07.2024 passed by the Supreme Court in Review Petition (Crl.) No. 299 of 2024 in Crl. A. No. 704 of 2024, titled *Gurwinder Singh v. State of Punjab & Anr.*, the learned senior counsel for the appellant submits that the judgment of the Supreme Court in *Gurwinder Singh v. State of Punjab & Anr.*, 2024 INSC 92, rejecting the bail of the appellant therein, has been clarified as having been passed in the facts and circumstances of the said case.

36. He highlights that it is the own case of the prosecution that the appellant was not in direct contact with Arshid Ahmad Tonch (A-3), Zafar Abbas (A-4), Rambhawan Prasad (A-5) and Chandan Mahato



(A-6). Hence, the dismissal of the bail appeal of Zafar Abbas (A-4) by this Court is of no consequence.

37. He submits that hence, the Impugned Order is liable to be set aside, and the appellant should be granted bail.

SUBMISSIONS MADE BY THE LEARNED SPECIAL PUBLIC PROSECUTOR FOR THE RESPONDENT

38. On the other hand, Mr. Rahul Tyagi, the learned Special Public Prosecutor, appearing on behalf of the respondent, places reliance of the judgment of the Supreme Court in *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, 2026 SCC OnLine SC 10, to submit that even in cases of prolonged incarceration, the statutory context of the UAPA and the nature of allegations has to be taken into consideration prior to the grant of bail. He submits, that even otherwise, in the present case, the delay in trial has been caused by the accused persons.

39. He further submits that the appellant has failed to make out a case for grant of bail by satisfying the conditions stipulated under Section 43D(5) of the UAPA. He submits that the said provision imposes a statutory bar on the release of a person accused of offences under Chapter IV and/or VI of the UAPA if, upon a perusal of the case diary and the charge-sheet, there are reasonable grounds for believing that the allegations against such person are *prima facie* true. Reliance in this regard is placed on the judgments of the Supreme Court passed in *Zahoor Ahmad Shah Watali* (supra), *Gurwinder Singh* (supra) and *Union of India rep. by the Inspector of Police, National*



Investigation Agency, Chennai Branch v. Barakathullah Etc., 2024 INSC 452.

40. He submits that the appellant has a lot of sympathizers across the globe and is a major flight risk. He also possesses a record of attempting to tamper with evidence and influence investigations. He has past antecedents, which include five other cases involving similar successionist and terrorist activities. He submits that the judgments relied upon by the appellant are not applicable to the facts of the present case.

41. The learned SPP further takes us through the material relied upon by the prosecution in support of the allegations against the appellant.

42. In so far as direct evidence is concerned, he draws our attention to the statement of Muneer Ahmad Kataria (A-2), who turned approver, highlighting that the same carries the weight of a sworn judicial deposition. He also takes us through Section 161 Cr.P.C. statements of Protected Witnesses D, E, F, G, H, J, as also of LW-24, LW-25 and LW-26, to show that the statement of Muneer Ahmad Kataria (A-2) stands corroborated by independent witnesses. He submits that the appellant's visits to Pakistan evidences his sustained engagement with the leadership of organisations that have always been engaging in waging war against the Government of India, irrespective of whether such organisations stood formally proscribed under the UAPA on the specific date of engagement. He submits that the same can be used to corroborate the statement of Protected



Witness-H, who mentions that the appellant met top leadership of the LeT and HM during these visits.

43. In so far as digital and forensic evidence is concerned, he takes us through the WhatsApp Chats between the appellant and Muneer Ahmad Kataria (A-2). He also draws our attention to various social media posts, photographs and email threads of the appellant. He submits that the same shows the appellant's active involvement in orchestrating the violent protests following the encounter of Burhan-Wani and the propagation of successionist ideology.

44. In so far as documentary evidence is concerned, he highlights the various material recovered from the office of JKCCS, including visiting cards and documents listing out army officials as '*High Ranking Perpetrators*' and the '*Structure of Army, Rashtria Rifles*'. He submits that the nomenclature of the documents is itself revealing. He submits that the said information was neither publicly available nor can there be any justification for collecting and publishing the names of Indian Army officers as perpetrators of crimes against Kashmiris. He submits that the appellant was involved in an intelligence gathering operation directed against the Security Forces of India.

45. He submits that hence, the materials against the appellant show that the present case is not one of 'mere association', but rather is founded on overt acts including recruitment of OGWs for LeT, transmission of intelligence to a Pakistan based handler, active orchestration of public violence, possession of targeting lists of Indian Army personnel and corrupt engagement with a former NIA officer.



46. He submits that the appellant cannot claim parity with co-accused persons who were not charge-sheeted for offences under the UAPA. He highlights that in fact, the bail appeal filed by Zafar Abbas (A-4), who was charge-sheeted under the UAPA, has been dismissed by this Court in *Zafar Abbas@ Jaffar v. National Investigation Agency*, 2025:DHC:286-DB. The same has been upheld by the Supreme Court *vide* order dated 17.04.2025 passed in Special Leave to Appeal (Crl.) No (s). 5489/2025 titled *Zafar Abbas @Jaffar v. National Investigation Agency*.

47. He submits that the quashing of the detention order passed against the appellant on procedural infirmities, cannot operate as an adjudication on the substantive merits of the appellant's conduct during the Burhan-Wani protests.

48. The learned SPP further submits that the appellant does not qualify as an "infirm person" entitled to the discretionary benefit under Section 437(1) of the Cr.P.C.. Even though the appellant lost his leg in 2004, he has worked without any hinderance ever since, participating in so-called field work and human rights activism. He has also gone on multiple foreign trips. He submits that the Tihar Jail is well equipped to deal with all necessary medical requirements of the appellant, and it is not his case that he is sick or not receiving treatment for ailments, if any.

49. He submits that therefore there is no infirmity in the Impugned Order passed by the learned Trial Court.

ANALYSIS AND FINDINGS



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

51. At the outset, we would note the special provision governing the grant of bail to a person accused of offence punishable under Chapters IV and VI of the UAPA. Section 43D(5) of the UAPA reads as under:

“43D. Modified application of certain provisions of the Code.—

xxx

(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.”

52. In ***K.A. Najeeb*** (supra), the Supreme Court considering the balance to be achieved between the Fundamental Right of an accused for a speedy trial *vis-à-vis* the restrictions imposed under Section 43D(5) of the UAPA on release of the accused on bail, held that these restrictions do not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. It held that whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail, however,



these restrictions will melt down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. It was further held that Section 43D(5) of UAPA is comparatively less stringent than Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, where the court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail. Instead, Section 43D(5) of the UAPA merely provides another possible ground for the court to refuse bail, in addition to the well-settled considerations like gravity of offence, etc.. We quote from the judgment as under:

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

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious



threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by 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. Najeed**, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.*



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

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

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

xxx

101. It is well recognised that Article 21 rights, though not absolute, require the State and the Court to justify continued custody with reference to the specific individual before it. Treating all accused identically irrespective of their roles would risk transforming pre-trial detention into a punitive mechanism divorced from individual circumstances. The



constitutional mandate demands a differentiated inquiry: where prolonged custody disproportionately burdens those whose roles are limited, the balance between individual liberty and collective security may call for conditional release, while the same balance may tilt differently for those alleged to have orchestrated the offence.”

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

*“80. From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. **First**, the provision embodies a deliberate legislative departure from ordinary bail jurisprudence, premised upon the distinctive nature of offences under Chapters IV and VI of the Act. **Second**, the expression “prima facie true” mandates a threshold judicial inquiry which is neither perfunctory nor adjudicatory, requiring the Court to examine whether the prosecution material, taken at face value, discloses the essential statutory ingredients of the alleged offence. **Third**, the inquiry is necessarily accused-specific, directed to the role and attribution qua the individual, and does not admit of collective or undifferentiated treatment merely because allegations arise from a common transaction or conspiracy. **Fourth**, the bail stage under Section 43D(5) is not a forum for evaluating defences, weighing evidence, or conducting a mini-trial; judicial restraint at this stage is not an abdication of duty but a fulfilment of the statutory mandate. These propositions, read together, define the contours of judicial power and responsibility under the provision.*

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



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

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

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

82. Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.”

56. The correctness of the above judgment, insofar as interplay between Article 21 of the Constitution of India and Section 43D(5) of the UAPA is concerned, has been doubted by the Supreme Court in *Syed 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



'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



61. Keeping in view the above, we have proceeded to consider the case of the appellant for releasing him on bail.

62. For the same, we would note that the appellant was taken into custody in the present case on 22.11.2021, and has, therefore, undergone prolonged incarceration of almost 4½ years. The stage of the trial is at the arguments for framing of charge. We are further informed that the prosecution intends to examine 197 witnesses in case the charge is framed against the appellant.

63. We shall also conduct a surface evaluation of the case alleged by the prosecution against the appellant.

64. The prosecution alleges that Hyder@Ali@Yusuf, an LeT operative based in Pakistan, hatched a conspiracy with his Indian counterparts, including the appellant herein, to run a network of OGWs of LeT for furthering the activities of LeT and to commit terrorist acts in India. The prosecution further alleges that, in furtherance of this conspiracy, the appellant recruited Muneer Ahmad Kataria (A-2), who has since turned approver, and who in turn recruited one Arshid Ahmad Tonch (A-3). It is alleged that the appellant, along with Muneer Ahmad Kataria (A-2) and Arshid Ahmad Tonch (A-3), was involved in collection of sensitive information regarding vital installations of Indian Security Forces and passed on the same to Hyder@Ali@Yusuf with an intention to further the activities of LeT in India.

65. The case against the appellant is primarily based on the statement of Muneer Ahmad Kataria (A-2). He, in fact, states that he was working as an NIA informer since 2019 and was working with



Arvind Digvijay Negi (A-7). He states that he knows the appellant since 2015, and in 2020 he had met him at Delhi. He states that as he was suffering financially at that time due to Covid-19 Pandemic, the appellant told him that there are some people based out of India, that is, in European countries and Pakistan, who are working towards secessionist activities pertaining to Kashmir in India, and if he helps them, then they will also help him financially. He states that he then got a video call from a person, who the appellant later told was Hyder@Ali@Yusuf. He states that the appellant also told him that he can share his bank account details with Hyder@Ali@Yusuf to receive gifts from him. He states that the appellant called Hyder@Ali@Yusuf in his presence, and it is then that he came to know that Hyder@Ali@Yusuf was the chief operating commander of LeT (J&K module), who was operating from Azad Kashmir in Pakistan. He states that appellant was the one who introduced him to Hyder@Ali@Yusuf. He also states that the appellant asked for his help in getting his digital devices, including a mobile phone and a pen drive seized from him, released and, for the said purpose, he contacted Arvind Digvijay Negi (A-7), who then asked for a bribe of Rs. 3 lakhs. He states that the appellant gave a bribe of Rs. 1,50,000/-, which he then forwarded to Arvind Digvijay Negi (A-7).

66. While the above statement raises serious allegations against the appellant, these allegations are based on the statement of a co-accused who has since turned approver and who himself claims to be an NIA informer. His evidence is yet to be tested in trial.



67. It is then alleged that the documents seized from the office of JKCCS showed that the appellant was actively involved in collecting information regarding the movement of Army vehicles near the LOC, road conditions, and details of Army camps, structures of the Army, paramilitary forces, and police, etc.. Information regarding officers who were involved in militancy operations was also collected by him, and the same were named as perpetrators, and posters containing the names of security personnel were also printed.

68. The appellant, on the other hand, alleges that the materials referred to by the prosecution in this regard are all public documents and have been published in the form of articles and reports. These include an article published in 2015 under the name '*Structure of Violence Report*', which is, till date, publicly available on the official website of JKCCS. Also included is a report published on the website of JKCCS under the name '*Alleged Perpetrators 2012*', which is still publicly available. The said report was also shared with the Indian Army, which gave a public response to the same in the newspaper, Kashmir Tribune on 12.12.2012. The said submission was not disputed by the learned SPP.

69. There is then an allegation regarding the seizure of visiting cards, including those of the spokesperson of Pakistan-based proscribed terrorist organisation HM, e-mails, one photograph of the appellant with Syed Salauddin (Amir of HM), a designated terrorist, during his visits to Pakistan. The appellant has alleged that these visits were way back in the years 2007 and 2015 and were open visits.



70. There are also allegations of the appellant taking part in, and in fact, instigating protests post the encounter of Burhan Wani. The appellant alleges that the same cannot be said to, in any manner; incite the commission of any terrorist act.

71. We have taken note of the above allegations and the defence of the appellant, only to highlight that they must be tested against the long period of incarceration of the appellant and the fact that there is no likelihood of the trial ending soon as also against the yardstick of bail being the rule, while denial thereof being an exception. The appellant's rights under Article 21 of the Constitution of India need to be balanced and may even trump the restriction imposed under Section 43D(5) of the UAPA.

72. We are also mindful of the fact that one of the co-accused, namely, Zafar Abbas (A-4), has been denied bail by this Court and the said order has been upheld by the Supreme Court, however, we find that the allegations against the said co-accused were very different from the one against the appellant herein.

73. We are also to keep in mind that the appellant is infirm. Though the learned SPP has emphasised that his infirmity has not deterred the appellant from still indulging in activities, which he describes as being anti-national, the fact remains that the appellant is infirm and deserves that special consideration.

74. Guided by the above-referred judgments as also the judgments of the Supreme Court in *Kareem @ Sadam v. State by National Investigation Agency* (Order dated 07.10.2025 in SLP (Crl.) No. 11626/2025); *Alemla Jamir* (supra) and *Tapas Kumar Palit v. State*



of Chhattisgarh, 2025 INSC 222, and without expressing any opinion on the merits of the allegations and the defence, we are inclined to grant bail to the appellant, on the conditions as we shall set out below. Some of the conditions are being set as the learned SPP has submitted that the appellant may be a flight risk.

75. We direct that the appellant be released on bail in RC No. 30/2021/NIA/DLI, P.S. NIA, in NIA/4/2022 titled *NIA v. Khuram Parvez @ Khurram & Ors.*, on the following conditions:

- a. The appellant shall execute a personal bond in the sum of Rs. 2,00,000/- 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 National Capital Territory of Delhi 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 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. He shall furnish his current residential address, the mobile/landline number and his e-mail address to the Investigating Officer and to the



2026:DHC:5092-DB



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;

- e. The appellant shall appear before the learned Trial Court on each date of hearing, unless exempted by the learned Trial Court from such appearance;
- f. He shall not exhibit any conduct that has the effect of delaying the proceedings;
- g. The appellant shall not directly or indirectly contact, influence, threaten or communicate with any prosecution witness, protected witness, complainant or person acquainted with the facts of the case;
- h. The appellant shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
- i. 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;
- j. The appellant shall not participate in any activity which may prejudice public order or the integrity of the trial;
- k. The appellant shall not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise;



2026:DHC:5092-DB



1. The appellant shall report to the Investigating Officer once every fortnight, or at such interval as may be directed by the learned Trial Court. The Investigating Officer shall maintain a separate register of attendance with respect to the appellant;
- m. In the event of breach of any condition, it shall be open to the prosecution to seek cancellation of bail before the appropriate court.

76. The Impugned Order is, accordingly, set aside and the appeal is disposed of in the above terms. However, it is clarified that the release of the appellant pursuant to the present order shall remain subject to any order(s) passed in another case wherein the appellant may be detained or otherwise be in custody in accordance with law.

77. It is made clear that the observations made herein shall not be construed as an observation of the merits of the case.

78. 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

JUNE 10, 2026/rv/ik