IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 850 OF 2026
WITH
INTERIM APPLICATION NO.3559 OF 2026

The National Investigation Agency ...Appellant
Vs.
1. The State of Maharashtra
2. Sachin S/o. Hindurao Waze. ...Respondents

Mr. Anil C. Singh, Additional Solicitor General of India with Mr. Chintan Shah, SPP with Mr. Amogh Singh, SPP with Mr. Sundeep Sadavarte, DLA, NIA Mumbai, with Aditya Thakker with Mr. Karthik Garg with Mr. Kr. Krishnakant Deshmukh with Mr. Adarsh Vyas with Mr. Rohan Chaughule, for Appellant-NIA.

Mr. V. M. Thorat with Sajal Yadav, Shalabh Saxena, Aatri Kalekar, Harsh Ghangurde, Raj Raut, Aayushya Geruja with Nihal Rebello, Disha Hatkar and Rasheed Nakhwa and Amar Bodke, for Respondent No.2.

Mr. Pravin Ingawale, IPA/SP NIA Mumbai and Mr. Shashikant Singh, PI NIA, Mumbai present.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.
RESERVED ON: 16 OCTOBER, 2026
PRONOUNCED ON: 05 NOVEMBER, 2026

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JUDGMENT:

Preface:

1. This appeal under Section 21 of the National Investigation Agency Act, 2008 (for short, "**NIA Act**") is directed against the order dated 29 September 2026 passed by the learned Special Judge on bail application (Exhibit 601) filed by respondent no.2 (original Accused no.1)- Sachin Hindurao Waze (hereinafter referred to as "**Accused no.1**"), whereby the bail application came to be allowed on the terms and conditions as set out in the impugned order. Accused No. 1 was an Assistant Police Inspector in the Crime Intelligence Unit ('**CIU**'), Crime Branch, Mumbai.

2. At the outset, it may be noted that Accused no.1 is facing trial in Special Case No. 1090 of 2021[1] for the offences punishable under Sections 120-B, 201, 302, 364 and 403 of the Indian Penal Code,1860 (**"IPC"**), read with offences under Section 25 of the Arms Act, 1959 (**"Arms Act"**) and under Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967. (" **UAPA** ")

3. It also needs to be stated that prior to filing of the present bail application, Accused no.1 had earlier filed a bail application before the learned Special Judge (below Exhibit 197) in NIA Special Case No. 1090 of 2021, which came to be rejected by an order dated 16 September 2023. With a delay of 778 days, Accused

1 Special Case concerns three related FIRs being FIR Nos. 35 of 2021, 47 of 2021 and 12 of 2021 (ADR No.39 of 2021).

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No. 1 preferred an appeal before this Court challenging rejection of the bail application. The Division Bench of this Court, by an order dated 7 August 2026, while disposing of the interim application seeking condonation of delay, *inter alia*, observed that the interim application would stand closed, keeping open the question of law to be decided in an appropriate case. The Division Bench also granted liberty to Accused no. 1 to approach the trial Court by filing a fresh application seeking bail, given that the investigation was complete and the NIA had filed the chargesheet. The said order passed by a co-ordinate Bench of this Court read thus: -

> "1. This Interim Application has been filed with a prayer to condone the delay of 778 days in presenting the connected Appeal against the judgment and order dated 16th September 2023 in NIA Special Case No. 1090 of 2021 (Bail Application) passed by the NIA Special Court, Mumbai, rejecting the bail prayer made by the Applicant.
>
> 2. After hearing the submissions made at the Bar, we find that the earlier prayer for bail made by the Applicant was rejected at the stage when the investigation was still going on. However, it has been brought to our notice that the investigation in the connected case being CR No. 01/2021/NIA/MUM based on FIR No. 47 of 2021 has since been completed and the charge-sheet has also been submitted by the NIA. Based on the same, charge has also been framed against the Applicant on 1st August 2026.
>
> 3. If that be so, we are of the opinion that the Applicant would now be entitled to seek regular bail before the learned Trial Court in accordance with law. In other words, in our opinion, the present application, as well as the connected Appeal has become infructuous for all practical purposes.
>
> 4. Therefore, we close this Interim Application by keeping the question(s) of law involved therein, open to be decided in an appropriate case, by granting liberty to the Applicant to approach the learned Trial Court by making a fresh application, seeking bail.

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5. We make it clear that if such an application is filed by the Applicant/Appellant the same shall be considered by the learned Court below, on merit and dispose of the same, as expeditiously as possible, by a reasoned order without being influenced in any manner with the findings, observations and conclusions recorded in the judgment and order dated 16th September 2023.

6. With the above observations, the Application as well as the connected Appeal stands disposed of."

Facts

4. Briefly, the case of the prosecution/ NIA is as follows: -

i. Accused No.1, a person in uniform (Assistant Police Inspector) working in an important department, namely, the Crime Intelligence Unit ('CIU'), Crime Branch, Mumbai, prior to the accusations in question is stated to have two antecedents viz., C.R. No. 272 of 2004 registered with the Ghatkopar Police Station for the offences punishable under Sections 302, 331, 217 218, 201, 203, 193, 506, 109, 342, 120-B, 34 of the IPC and C.R. No. 34/2017 registered with the Vasai Police Station for offences punishable under Sections 384, 386, 34, 212, 120B of the IPC read with Sections 3, 25 and 30 of the Arms Act.

ii. He is stated to have committed the offences, which are subject matter of three first information reports (CRs), being accused of offences, as noted by us in paragraph 2 (supra), which was committed while he was on bail in the aforesaid cases.

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iii. In regard to the complaints in question, the facts are that, on 25 February 2021, one Mahindra Scorpio vehicle bearing Registration No. MH-01-DK-9945, containing explosive material, namely, '20 Gelatin sticks', along with a **"threat note"** addressed to the family of a prominent industrialist in the country, namely the "**Ambani family**", was found parked on Carmichael Road, Mumbai, in the vicinity of the Ambani family's residence. The threat note reads thus:

> "NITA Bhabhi our mKESH bhyya aur fEMILI
> Ek jalak he ye
> Agli bar ye saaman pora konekt ho ke ayega.
> Orijinl gadi me ayega.
> Tum pora femili ko udane ke liye
> Intajam ho gaya hai.
> Sambal jana.
> Gud nit"

iv. Thus, what was significant was that the explosive material was accompanied by the aforesaid threat note, in the said vehicle parked in the vicinity of the Ambani family's residence and specifically naming the Ambani family.

v. On this, a complaint was registered by the security personnel attached to the Ambani residence, being FIR No. 35/2021 with the Gamdevi Police Station under Sections 286, 465, 473, 506(2) and 120B of the IPC and under Section 4(a)(b)(i) of the Explosive Substances Act, 1908, against

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unknown persons. The investigation revealed that the registration number of the vehicle was fake, which in fact pertained to a 'Range Rover' vehicle registered in the name of 'Reliance Industries' and deployed at Smt. Nita Ambani's security convoy of vehicles. The said FIR was transferred to the Crime Intelligence Unit, Crime Branch, and re-registered as C.R. No. 40/2021. Interestingly, the investigation was assigned to Accused No. 1, who was then posted as Assistant Police Inspector, CIU, Crime Branch, Mumbai.

vi. Investigation revealed that the license plate of the Scorpio was replaced with the license plate of another vehicle and that the Scorpio's actual registration number was MH-02-AY-2815, which was owned by one **"Mansukh Mishrilal Hiran".**

vii. In relation to the said vehicle, later on, it was revealed that FIR No. 47/2021 dated 18th February 2021 was already registered with the Vikhroli police station pertaining to the theft of the said Scorpio car found outside the Ambani residence. This FIR was registered based on a complaint made by Mansukh Mishrilal Hiran against unknown persons.

viii. On 26 February 2021, under an order passed by the Joint Commissioner (Crime), the said FIR for theft of the vehicle registered with the Vikhroli Police Station, was also transferred to the Crime Intelligence

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Unit (CIU), Crime Branch, Mumbai, which was re-registered as C.R. No. 41/2021.

ix. The investigation revealed that on 4 March 2021, Mansukh Mishrilal Hiran claimed to have left his house to meet one police officer named Tawde, posted at Kandivali Police Station; however, he did not return home. Therefore, his son, **'Meet Mansukh Hiran',** filed a missing person's complaint with the Naupada Police Station, Thane, on 5 March 2021. The police registered Missing Person Report No. 16/2021 pursuant to the complaint. On the same day, Mansukh Hiran's dead body was found by the officers of the Mumbra Police Station in the "**Retibunder Creek".** In relation to the dead body of "Mansukh Mishrilal Hiran", the Mumbra Police Station registered an Accidental Death Report No. 39/2021 under Section 174 of the Code of Criminal Procedure, 1973 (**'Cr. PC'**). Further, the police conducted an Inquest Panchanama and a post-mortem examination of Mansukh Hiran.

x. During the course of investigation, Mansukh Hiran's widow, **"Smt. Vimla Hiran"**, in her written complaint before the Anti-Terrorist Squad (**'ATS'**), Thane, alleged foul play and expressed her suspicion against Accused No.1 - Sachin Waze.

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xi. Given the seriousness of the case, the Government of Maharashtra issued an order dated 6 March 2021 transferring the cases arising from the said FIR's, namely the explosive-laden Scorpio, the theft of the Scorpio, and the ADR case of Mansukh Hiran, to Anti Terrorism Squad (ATS) Maharashtra, for further investigation.

xii. On 7 March 2021, the ATS Maharashtra re-registered ADR No. 39/2021 as FIR No. 12/2021 under Sections 302, 201, 34, 120-B of the IPC, as against unknown persons, for the murder of Mansukh Hiran. The cases relating to placing the explosive-laden Scorpio and stealing the Scorpio were re-registered as C.R. No. 10/2021 and C.R. No. 11/2021, respectively.

xiii. Further, considering the seriousness of the offences as the investigation revealed in the national perspective, the **Ministry of Home Affairs, Government of India,** directed the appellant- NIA to take over the investigation of the aforesaid cases, vide orders dated 8 March 2021, 20 March 2021 and 21 March 2021, respectively. Accordingly, the cases were re-registered as NIA RC 01/2021/NIA/MUM, and ATS Maharashtra handed over the original case papers and articles to NIA on 10 March 2021.

xiv. During the course of investigation, Accused No.1- Sachin Waze, along with nine other persons, was alleged to have committed the said offences. After taking over the investigation, the NIA also added offences

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under the UAPA and arrested Accused No. 1, Sachin Waze, on 13 March 2021.

xv. The **first chargesheet** was filed on 03 September 2021, and cognizance, as per section 16 (1) of the NIA Act read with 173(2) Cr.PC was taken on 7 September 2021. After filing the charge sheet, Accused No. 1 filed an application seeking default bail under Section 167(2) Cr.P.C. before the Trial Court. The Trial Court rejected the said application by an order dated 22 October 2021.

xvi. Thereafter, on 18 April 2023, Accused No.1 moved a regular bail application before the Trial Court, which was also rejected on merits by an order dated 16 September 2023. In rejecting the said bail application, the learned Special Judge observed that the chargesheet contained *prima facie* material that Accused No.1 was, in fact, using the said Scorpio vehicle from November 2020 to 5 February 2021, as seen from the statements recorded of witnesses under Section 164 of the Cr.P.C. There was sufficient material to connect Accused No.1 to the deceased, Mansukh Mishrilal Hiran, who it was revealed to be the friend of Accused No.1. The Court also observed the acts of Accused No.1 in regard to changing the number plate and parking of the said vehicle at Carmichael Road in the vicinity of the residence of the Ambani family. Further, the confession of Accused No.9 – Manish Soni-

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established the involvement of Accused No.1 in the murder of Mansukh Mishrilal Hiran, which, according to the prosecution, was also corroborated by the inquest panchanama, which showed ante-mortem injuries. It was also observed that the motive of Accused No. 1 was to regain his clout as a 'Super Cop' and to "extort money" by spreading terror. The bail plea was silent on the material revealed in the investigation. The court held that, even with the likelihood of terror under Section 15 of the UAPA, this material was sufficient to connect Accused No. 1 to the commission of the offence under Section 15 of the UAPA. In the context of Section 15 of the UAPA, it was also observed that the target was a section of people, i.e., the Ambani family (referred to paragraphs 68 to 70 of the bail order). The learned Special Judge also considered that Accused No.1 was highly influential and could identify protected witnesses, as well as the fact that the murder of Mansukh Mishrilal Hiren was well planned with every precaution against detection and was not a simple IPC offence. There was also an imminent risk that witnesses would be influenced and evidence tampered. In addition, it was observed that substantial evidence including electronic existed against accused no. 1. One of the significant aspect was of the Court observing that Accused No. 1 took the Scorpio from Hiran and parked the vehicle in the vicinity of the residence 'Antilia', the residence of the Ambani family, along

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with the explosive material, namely, gelatin sticks and the threat note (supra), when Accused No.1 was on duty. Also, his bail plea was completely silent on any false implication of Accused No.1. Thus, applying the principles of law laid down by the Supreme Court in **National Investigating Agency vs Zahoor Ahmad Shah Watali**[2] **and Thwaha Fasal vs Union of India**[3], the then learned Special Judge rejected his bail application.

xvii. Accused No.1 thereafter filed Writ Petition No.2485 of 2024 before this Court, seeking issuance of a writ of *habeas corpus*. After hearing all the concerned parties, the Court dismissed the writ petition by order dated 6 March 2026.

xviii. The prosecution then filed a supplementary charge-sheet on 29 May 2026.

xix. Accused No. 1 thereafter filed a discharge application before the Trial Court, which was also rejected by the learned Special Judge by an order dated 15 July 2026.

xx. As noted hereinabove, with a delay of about 778 days, Accused No.1 preferred a Criminal Appeal (St) No. 24687/2025 before this Court, assailing the Trial Court's rejection of his bail application *vide* its order dated

2 (2019) 5 Supreme Court Cases 1
3 (2019) 5 SCC 1

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16 September 2023. The appeal was accompanied by an interim application seeking condonation of delay in preferring the appeal.

xxi. While the Interim application seeking condonation of delay in filing of the appeal filed by Accused No.1 was pending before this Court, the Trial Court proceeded to "frame charges" against Accused No.1 and the co-Accused on 1 August 2026. Accused No.1 stands charged with all the offences invoked against him*. Vide order dated 7 August 2026 (supra)*, this Court disposed of the criminal appeal pending before it, with liberty to Accused No.1 to file a fresh bail application before the Trial Court.

5. In the aforesaid backdrop, Accused No.1 once again filed a fresh bail application before the Trial Court below, Exhibit 601. By the impugned order dated 29 September 2026, the learned Special Judge has allowed the bail application and directed that Accused No.1 be enlarged on bail on certain conditions. This order is the subject matter of the present Appeal.

6. The accusations against Accused No.1 *inter alia are* as follows:

i. ***Firstly***, he is alleged to have placed the explosive-laden Scorpio with a threat note addressed to the Ambani family, near their residence. He tried to portray the responsibility for the same was claimed by a group operating

* Paragraph 2 (supra)
* Paragraph 3 (supra)

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under the name and style of *'Jaish Ul Hind'*, through "a post" on the Telegram channel, thereby committing an act of terror. Notably, a post also appeared on social media, purported to have been published by the same group, denying any connection with the said act, titled 'No threat to Ambani from '*Jaish Ul Hind*';

ii. ***Secondly***, he is alleged to have directed Mansukh Mishrilal Hiran to register a false FIR for the theft of the Scorpio, which he himself used in the commission of the crime;

iii. ***Thirdly***, he attempted to make Mansukh Mishrilal Hiran take responsibility for placing the explosive-laden Scorpio near Ambani residence, and when he refused to do so, Sachin Waze, in conspiracy with the co-accused, murdered him. Mansukh Hiran's murder was a direct consequence of the aforesaid act of terror;

iv. ***Fourthly***, he procured fake number plates for commission of both the crimes, i.e., placing the explosive-laden Scorpio, and execution of Mansukh Hiran's murder;

v. ***Fifthly***, he destroyed evidence by illegally taking electronic records/DVRs containing incriminating CCTV footage and documents related to procuring fake number plates and thereafter dumping them in

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the Mithi River and other locations in Mumbai and Thane. He also destroyed evidence relating to the mobile handset of Mansukh Hiran and the mobile handset handed over by him to Accused No.5 from which Mansukh Hiran received the last call. His intention, from the entire conspiracy, was to make monetary gains and to re-establish himself as a super cop to regain his lost glory.

Submissions on behalf of the Appellant/NIA of Mr. Anil Singh, learned ASG

7. While assailing the impugned Order allowing the bail application, Mr Anil Singh has made the following submissions:

7.1 That Accused No.1 is the main Accused in the case of the Scorpio laden with gelatin sticks left near "Antilia", the residence of the 'Ambani family', on 25 February 2021, and in the murder of Mansukh Hiran, the owner of that Scorpio, on 4 March 2021. He is charged, among other offences, under Sections 16, 18, and 20 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), and Sections 120-B, 201, 302, and 364 of the IPC. Mr Singh has submitted that the same learned Special Judge framed charges against Accused No. 1, including under the UAPA, on 1 August 2026. Less than two months later, ignoring all the material on record, he granted bail to Accused No. 1. It is submitted that the impugned order itself says that Accused no. 1 "can be said to have committed offences under the UAPA" (para 32, Pg 28), when the learned Special Judge in the impugned order

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records that "*had it been the case at the threshold, I would have outrightly turned down the applicant's prayer*" (para 9, Pg 17).

7.2 Mr. Singh at the outset has submitted that there are three FIRs, all now being investigated by NIA in RC-01/2021/NIA/MUM, namely, (i) Theft FIR: FIR No. 47 of 2021 dated 18 February 2021, Vikhroli Police Station, lodged by Mansukh Hiran for theft of his Scorpio. It was transferred to the CIU, where A- 1 himself was the investigating officer, then to the ATS, and finally to NIA; (ii)Explosives / Threat FIR: FIR No. 35 of 2021 dated 25 February 2021, Gamdevi Police Station, under Sections 286, 465, 473, 506(2) and 120-B of the IPC and Section 4 of the Explosive Substances Act. This too went to the CIU under A-1, then to the ATS, and was entrusted to NIA; and (iii) Murder FIR: ADR No. 39 of 2021 at Mumbra Police Station, converted by the ATS into FIR No. 12 of 2021 dated 07 March, 2021 under Sections 302, 201, 34 and 120-B of the IPC, and entrusted to NIA. It is submitted that the offences involved in the three FIRs are part of a larger conspiracy and are clearly interrelated. The theft was staged to get the vehicle; the vehicle carried the explosives and the threat note; and the murder silenced the owner of the vehicle, who himself was a key witness against Accused No.1. It is submitted that the learned Special Judge himself observed that the three FIRs are "intricately and intrinsically interlinked with each other" (paragraph 11/1 of the impugned order).

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7.3 It is submitted that Accused no. 1 was serving as a Assistant Police Inspector (API) heading the Crime Intelligence Unit (CIU) of the Mumbai Crime Branch. He was on long suspension and was also on bail in other offences which were under trial and was taken back into service shortly before the incident in question. It is submitted that, as the impugned order itself records the prosecution case, that Accused no. 1 intended to “create terror” and, thereafter, as the investigating officer, to "solve" it himself and "regain his lost glory" to be labelled a "super cop". Mr Singh submitted that Accused no. 1 had kept the Scorpio belonging to his friend, Mansukh Hiran, in his possession since November 2020, returned it to him for a short while, and then took back the said vehicle. Also, with the help of Accused No. 2 and Accused No. 3, he collected several SIM cards in fictitious names. It is submitted that, the investigation has revealed that on 18 February 2021, at the instance of Accused No. 1, Mansukh lodged a false FIR at Vikhroli Police Station stating that his Scorpio had been stolen.

7.4 Mr. Singh submitted that thereafter, on 25 February, 2021, the same Scorpio, with a false number plate, was found on Carmichael Road near Antilia with twenty gelatin sticks and a threat note. It is submitted that the impugned order itself records that Accused no. 1 "*got changed the number plates of the Scorpio, planted gelatin sticks in it, and parked the same with a threat note near house of Shri. Mukesh Ambani*". Soon thereafter, a post appeared on Telegram in

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the name of "Jaish-ul-Hind" claiming responsibility for the incident and demanding ransom. This was done to give the incident the colour of a terror attack. This particularly so for the reason that the head of the CIU, A-1, was himself the investigating officer in both the theft case and the explosives case. It is submitted that the prosecution alleged that Accused no. 1 wanted Mansukh to take the blame for the Scorpio. However, Mansukh Mishrilal Hiran refused. It is submitted that he knew of the conspiracy and was seen as a weak link. Fearing that he would expose them, Accused No. 1 further conspired to eliminate Mansukh. His body was found in the Retibunder creek the next morning. It is submitted that the charge-sheet categorically records that the murder was carried out by A-10 and the others at A-1's instance, and Accused no. 1 facilitated the assailants. It is submitted that Accused no. 1, in these circumstances, was arrested on 13 March 2021. The chargesheet was filed on 3 September 2021 against ten Accused; the first supplementary charge-sheet was filed on 29 May 2026, and charges were framed on 1 August, 2026, including against Accused no. 1 under Section 16(1)(a) of the UAPA. The case is now at the stage of Section 294 Cr. PC.

7.5 Mr. Singh, referring to Section 43D (5) of the UAPA, submits that the said provision stipulates that a person accused of an offence under Chapter IV or VI of the UAPA "*shall not be released on bail*" if the Court, "*on a perusal of the case*

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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". He submits that the Court therefore to look at the prosecution material, that is, the case diary and the chargesheet. It does not weigh the material against the defence. If the accusation is prima facie true, the Court has no discretion and must refuse bail. It is submitted that the bar applies to the person accused, not offence by offence. In the present case, Accused No. 1 is charged under Sections 16, 18, and 20, all of which fall under Chapter IV. Section 16(1)(a) (terrorist act resulting in death) is punishable with death or life imprisonment. It is his submission that Section 16(1)(b) and Section 18 carries a minimum of five years and a maximum of life imprisonment. Also Section 20 is punishable with imprisonment up to life. Mr. Singh has submitted that the material collected by the NIA must prevail until it is contradicted or disproved. The required satisfaction is lighter than that needed to frame a charge. The material needs to read as a whole, and documents are taken as they stand. Hence, the principle that "Bail is the rule and jail the exception" does not apply to the cases falling under the UAPA. In this context, reliance is placed on the decisions in **NIA v. Zahoor Ahmad Shah Watali (supra)** and **Gurwinder Singh v. State of Punjab**[4].

4 (2024) 5 SCC 403

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7.6 Mr. Singh, having referred to the material facts, submits that there are several grounds on which the impugned order needs to be set aside. It is submitted that the learned Special Judge has treated this Court's order dated 7 August, 2026 as the reason for taking a different view. It is submitted that most significantly the impugned order observes that, at the threshold, the learned Special Judge would have rejected bail outrightly; however, he was deciding the bail application as ordered by the Court in its order dated 7 August 2026 and hence the same should have been decided “in the letter and spirit of that order”. In the context of such observation as made by the learned Special Judge, it is submitted that, pertinently, in the said order this Court only noted that the earlier bail had been rejected during investigation, that the chargesheet had since been filed and charges framed, and that Accused no. 1 could therefore apply afresh "**in accordance with law**" and accordingly, disposed of the application rendering the appeal as infructuous. It is submitted that the delay was never condoned. Hence, the question of law referred to in the order passed by the Division Bench of this Court was whether delay in filing an appeal under the NIA Act could be condoned. The Division Bench kept this question of law open "to be decided in an appropriate case". In these circumstances, it is submitted that the learned Special Judge could not have been oblivious to the specific observation as made by this Court in its order dated 7 August 2026, that the bail application of Accused

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no. 1 was required to be decided “in accordance with law", which necessarily included applicability of Section 43D (5) of UAPA. It is submitted that, when directed to decide the fresh application filed by Accused no. 1 without being influenced by the findings in the order dated 16 September 2023, the learned Special Judge could not have misinterpreted the said order passed by this Court, by refusing even to consider NIA's earlier reply below Exh. 197, which explained why the statements of the Ambani family were not recorded. It is submitted that the learned Special Judge then faulted NIA for giving no explanation as set out in paragraphs 25, 29 and 33 of the impugned order.

7.7 It is next submitted that the learned Special Judge has proceeded on an untenable premise when he recorded that the Statements of the Ambani family were not recorded. It is submitted that a large part of the impugned order (paragraphs 22 to 36 thereof) turns on the fact that no member of the Ambani family had recorded their statements. It is submitted that the statement of the Ambani family, the likely target of the attack, cannot be an ingredient of the offence under Section 15 of the UAPA, as Section 15 punishes an act done with “*intent to strike terror or likely to strike terror*". The submission is that whether an act is likely to strike terror is seen from the act itself, significantly when in the present case twenty gelatin sticks were left in a vehicle on a public road in a

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residential area of South Mumbai, with a note threatening to blow up a named family. It is hence submitted that these circumstances certainly attracted the said provision. It is submitted that it is for the prosecution as to how it will prove the commission of an offence. In this context, reliance is placed on the statement of protected witness KW-1, a material witness, to show the falsity of the theft FIR and to prove the complicity of Accused no. 1 in planting the gelatin-laden car. It is submitted that the statement of the person in charge of the security of the Ambani family and Antilia is also on record. However, the learned Special Judge did not consider it.

7.8 Mr. Singh submits that the impugned order also fails to consider the confession statement of the co-Accused or the evidence of KW-1, the prime protected witness. Instead, it relies upon KW-19, a salesman in a nearby shop, and calls his statement "trifling", "hearsay" and "Quite ditzy" (paragraphs 26 to 29 of the impugned order). It is submitted that assessing a witness's credibility is for the trial, not for a bail application.

7.9 It is next submitted that Bail is to be scrutinized more strictly than the charge. The submission is that the learned Judge holds that the test for framing a charge is "somewhat on lower pedestal" and the test for rejecting bail is "on

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somewhat higher pedestal", so that "more serious evaluation of the material" is needed at the bail stage as referred in paragraph 63 of the impugned order. It is submitted that on such basis, the learned Special Judge has held that the same material was enough to frame UAPA charges but "not sufficient to reject this Bail Application" as observed in paragraph 46 of the impugned order. It is submitted that this is exactly opposite to the law, as the Supreme Court has held that the satisfaction needed under Section 43D(5) "is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges" as held in paragraph 23 of the decision of the Supreme Court in **Watali** (supra). It is submitted that charges are framed only where there is grave suspicion, referring to the decision of the Supreme Court in **Union of India v. Prafulla Kumar Samal**[5]. It is submitted that having framed charges under the UAPA, the requirement that the accusation must be *prima facie* true stood satisfied.

7.10 It is next submitted that the learned Special Judge quite glaringly had held that Section 15 of the UAPA is not attracted and then separates the murder from the planting of the Scorpio. Also, it is observed that murder "cannot be said to be an outcome of any terrorist act", that it would at most fall under Section 16(1)(b), and that A-1 has already undergone the minimum sentence of five years as

5 (1979) 3 SCC 4

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observed in paragraph 48 of the impugned order. It is submitted that the error is in the learned Special Judge concluding that the murder "remains p/u/s 302 of the IPC, independent of the UAPA offences", so that Section 43D (5) "would not apply for murder of Shri. Mansukh"as observed in paragraph 58 of the impugned order. In such context, it is submitted that this splits one conspiracy into two, when the case of the prosecution in the chargesheet as also the charges framed by the learned Special Judge on 1 August, 2026 all treat them as one. It is submitted that the learned Special Judge has himself framed the charge under Section 16(1)(a), that is, a terrorist act which has resulted in death.

7.11 It is next submitted that the trial court's finding in paragraph 47 of the impugned order is that Mansukh was killed because "he was thought to be a weak link who might expose the conspiracy". The submission is that a murder committed to protect the conspiracy cannot be "independent" of it. It is further submitted that paragraph 59 of the impugned order when observes that, apart from murder, none of the offences carries life imprisonment, such observation is wholly erroneous, as Sections 16(1)(b), 18 and 20 of the UAPA and Section 364 of the IPC are all punishable with imprisonment for life. It is further submitted that, even leaving murder out, the minimum punishment is five years and the maximum punishment is life. It is hence submitted that five years in custody does

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not answer the question under Section 43D (5), which is only whether the accusation is prima facie true.

7.12 The next submission of Mr Singh is that Section 15 covers an act done *"with intent to threaten... the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people".* These limbs according to Mr. Singh are in the alternative. It is hence submitted that the learned Special Judge could not have overlooked that the NIA did not allege any threat to the unity or sovereignty of India as observed in paragraph 39 of the impugned order. It is submitted that the prosecution need not prove both limbs. In such context, it is submitted that in the last part of paragraph 40 of the impugned order, the learned Special Judge when holds that "people or any section of people" "would not include in its ambit a particular single family or its members" and "requires some large number of persons, particularly based on sect, religion, language, ideology, cult as such". It is submitted that none of the words which appear in Section 15 of the UAPA. It is submitted that a vehicle carrying explosives was left on a busy public road, itself was plainly an act likely to strike a terror in the people, apart from the family named in the note.

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7.13 In this context, it is submitted that paragraph 43 of the impugned order records the argument of the defence that gelatin sticks without a detonator are "useless", and then observes that, "This argument is not countered successfully by the prosecution". In such context, it is however submitted that Section 15(1)(a) covers "bombs, dynamite or other explosive substances" used "to cause or likely to cause" death or injury. In this context, it is submitted that the forensic report states that the gelatin sticks are explosives. Under Section 2 of the Explosive Substances Act, "explosive substance" includes "any materials for making any explosive substance".

7.14 It is next submitted that there are two “threat notes” on record, the first recovered from the Scorpio car along with gelatin sticks and the other was posted on the Telegram App on 27/02/2021, which contained a purported message from a terrorist group. The threat note itself warned that next time the material would come "fully connected". It is next submitted that in paragraph 44 of the impugned order, the learned Special Judge holds that harm to economic security falls under Section 15 only through counterfeit currency. It is submitted that "Economic security" is defined separately in Section 2(1)(ea) and includes financial, monetary and fiscal stability. Counterfeit currency is only one of the consequences listed in clause (iiia). It is submitted that in paragraph 22, the

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learned Special Judge has observed that there is no material of any demand of money. However, a demand is not an ingredient of Section 15 or Section 18. It is further submitted that the impugned order deals only with Section 15 and says nothing about Sections 18 and 20, though Accused No. 1 is charged under both. In such context, reliance is placed on the decision of the Supreme Court in **Union of India v. Barakathullah**[6], wherein the Supreme Court considered the chargesheet as it stood and, following **Watali** (supra), it "would prevail until rebutted, contradicted and overcome or disproved by other evidence", when the following observations were made:

> "18. ….. For the purpose of considering the offence under Section 18, the commission of terrorist act as contemplated in Section 15 of UAPA is not required to be made out. For attracting Section 18, the involvement of the Accused in the actual commission of terrorist act as defined in Section 15 need not be shown."

7.15 It is hence submitted that even if there was to be any doubt, not only Section 15 but also Section 18 would still apply. The order does not refer to **Barakathullah (supra)** at all.

7.16 It is further submitted that Section 18 of the UAPA punishes a conspiracy to commit a terrorist act, and any act preparatory to it. The order itself records the acts of Accused no. 1: taking the Scorpio, collecting SIM cards in fake names,

6 2024 INSC 452

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arranging the false theft FIR, changing the number plates, planting the gelatin, preparing the threat note, parking the vehicle near Antilia, taking over the investigation himself, and then getting rid of the "weak link". Each of these is an act in the same conspiracy. Section 18 carries a minimum of five years and a maximum of life, and on its own attracts the bar of Section 43D(5).

7.17 In the context of the confession of Manish Soni (Accused no.9), it is submitted that referring to paragraph 54 of the impugned order, the learned Special Judge has virtually set aside the confession of Manish Soni (Accused no.9) on the ground that it has been retracted when no application for retraction has been filed by Accused no.9. It is submitted that the confession was recorded by the Magistrate under Section 164 CrPC and such a statement is admissible, if proved during the trial. It is submitted that whether it is true, is a matter to be tested in the trial, hence at such stage of the proceeding, it has to be taken as it stands, as held in paragraph 27 of the decision of the Supreme Court in **Watali** (supra). The order does not consider what Accused no.9 says about Accused no.1.

7.18 In the context of long incarceration, it is submitted that the delay in framing charges was caused by the repeated applications of Accused No. 1 and his co-Accused for default bail, regular bail, discharge. Charges were framed on 1 August, 2026, and the trial is about to begin. It is submitted that NIA is ready to examine its material witnesses on priority. In such context, reliance is placed on

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the decision in **Gulfisha Fatima v. State (Govt. of NCT of Delhi)**[7], wherein the Supreme Court held that in such cases "delay does not operate as a trump card, so as to automatically displace the statutory restraint" and that delay has to be weighed against the gravity of the offence and the role of each Accused. It is submitted that the question of how long custody, affects the bar under Section 43D(5) has now been referred to a larger Bench in **Tasleem Ahmed v. State (Govt. of NCT of Delhi)**[8] (order dated 22 May 2026). Even the referring Bench has observed that Najeeb is "neither a charter for indefinite incarceration nor a mathematical command that mere passage of time must automatically result in bail".

7.19 It is next submitted that the contention of parity will not apply in the facts of the present case, as the roles attributed to all the Accused are distinct save and except the acts involving conspiracy. It is submitted that, recently, in **Rajendra Prasad v. State of Goa**[9], the Supreme Court held that "parity is not a mechanical mathematical formula" while refusing parity to the person who was the principal architect of the plan when the others were only facilitators. Also, in **Gulfisha Fatima** (supra), the Court has held that parity cannot be used to wipe out a "qualitatively distinct and graver role". It is submitted that Accused no. 10 was granted bail by the Supreme Court on 23 August 2023. His role was to engage the

7 2026 INSC 2 (decided on 05.01.2026)
8 2026 SCC OnLine SC 1707
9 2026 SCC OnLine SC 1657

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assailants for the murder; it is in such context the Supreme Court observed that the UAPA offences "would pale into insignificance" was an observation only with respect to Accused no. 10. It is submitted that when the learned Special Judge himself accepts that this observation was about Accused no. 10 in paragraph 57 of the impugned order, the principle of parity could not have been applied.

7.20 It is next submitted by Mr. Singh that in regard to the risk to witnesses, Accused no. 1 had headed the CIU and himself purported to investigate the very FIRs in this case. Many witnesses are police officers who worked with or under him. It is submitted that it is the prosecution's case that one man who could have exposed him was deceased, Mansukh Mishrilal Hiran, who was killed for that reason. The fear of witnesses being influenced/hampered is thus real, not "hypothetical". It is submitted that the learned Special Judge himself has treated Mansukh's family as the most vulnerable witnesses and has barred Accused no. 1 from five districts. The need for such a condition shows the imminent risk. It is submitted that conditions cannot, in any case, override the bar under Section 43D(5). In any event, releasing Accused no.1 on bail before the material witnesses have deposed before the Court would put the entire trial at risk, given his position as former head of the Crime Intelligence Unit (CIU) and Mansukh Hiran's fate.

7.21 It is next submitted that the learned Special Judge erred in holding that the murder of Mansukh Hiran was not an outcome of any terrorist act and, at most,

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fell under Section 16(1)(b) of the UAPA. In this context, Mr Singh submitted that the learned Special Judge needed to consider the voluminous material placed on record when considering this second bail application, in the same manner as his predecessor did in rejecting the first bail application. Merely because the High Court in its order dated 7 August, 2026 (supra) observed that Accused no. 1 would have liberty to file a fresh application seeking bail, and that if such application is filed, the learned Special Judge would consider the same without being influenced by a finding, observation and conclusions recorded in the order rejecting the bail application dated 16 September 2023, would not mean that the learned Special Judge would not consider the materials on record demonstrating the complicity of Accused no. 1 in the commission of the offences. It is submitted that, in fact, the High Court directed the learned Special Judge to consider the fresh bail application "on merits" and dispose of it expeditiously. This observation of the High Court in its order dated 7 August, 2026 (supra) has not only been overlooked but very casually disregarded.

7.22 Mr. Singh has drawn the Court's attention to the order passed by the Special Judge framing charges against the Accused to submit that if the prosecution was not to make out any *prima facie* case, there was no occasion to frame charges against the Accused. Hence, the reasons recorded by the learned Special Judge in passing the impugned order are legally and factually perverse,

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particularly in light of the principles laid down by the Supreme Court in **NIA v. Zahoor Ahmad Shah Watali** (supra).

7.23 Mr. Singh thus submitted that it was incumbent on the learned Special Judge to apply the parameters of bail specified in Section 43D(5), inasmuch as the learned Special Judge has failed to record any finding or opinion on the reasonable grounds for believing that the accusations against the Accused were true as the materials before the Court would reflect. It is submitted that also, there is no finding recorded that such material did not *prima facie* reflect the complicity of Accused no. 1 in the commission of the offences with which he stands charged. Mr Singh's grievance is that the learned Special Judge has ignored, in totality, the mandate of Section 43D(5) as prescribed in the proviso thereto. Mr. Singh would submit that the learned Special Judge has ignored the provisions of Section 43D(5) and the settled principles of law in that regard, in considering an application for bail in cases involving offences under the UAPA. In supporting this submission, reliance is placed on the decisions of the Supreme Court in **Union of India v. Barkathullah (supra)**; **Gurwinder Singh v. State of Punjab (supra)**; and **Gulfisha Fatima v. State (Govt. of NCT of Delhi) (supra)**.

7.24 Mr Singh thus prayed that the appeal be allowed and the order granting bail to the Accused be set aside.

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Submissions on behalf of Respondent No.2/Accused No.1 of Mr. V. M. Thorat.

8. On the other hand, Mr. V. M. Thorat, learned Counsel for Accused No.1, in supporting the impugned Order, has made the following submissions:

8.1 At the outset, Mr. Thorat has submitted that, primarily, Accused No.1 is entitled to bail on the ground of prolonged incarceration of Accused No. 1. Mr. Thorat submitted that all the parameters for granting bail are satisfied; therefore, there is no reason to continue the Accused's incarceration.

8.2 Mr. Thorat would next submit that *prima facie* none of the ingredients of Section 15 of the UAPA are satisfied and that, even if the allegations against him are taken at face value, it cannot be said that he has committed a terrorist act, by striking terror in the minds of one Ambani family.

8.3 It is next submitted that the motives attributed to the acts of Accused No.1 are merely that he wanted to redeem his image as a supercop. Thus, the intention cannot be linked to any terrorist activity, and the charges against him do not survive. He thus submitted that the provisions of the UAPA have been wrongly invoked.

8.4 Mr. Thorat relied on the decisions of the Supreme Court in the decision of **Syed Iftikar Andrabi v. NIA**[10] to submit that in this decision the Supreme Court was concerned with the manner in which Section 43D (5) of the UAPA was being applied, considering the delay in trial and long incarceration. He contends that

10 (2026) SCC OnLine SC 881

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there is no iota of evidence against Accused No.1 in the terror charges, as even if the case against him relating to planting of a Scorpio car laden with gelatin sticks is taken at face value, there was no 'terror' caused since the gelatin sticks were not attached with a detonator nor a fuse.

8.5 In the written submissions submitted by Mr Thorat, it is the contention of Accused No. 1 that the discovery of material which was unable to cause an explosion by itself could not have been taken, to be any material for striking a terror justifying invocation of section 16 and 18 of UAPA. In such context it is submitted that the provisions of Section 15(2) of UAPA also does demonstrate occurrence / attempt of "Terrorist act". More particularly, when terrorist act itself is defined under Section 15 of the Act in clause (a) below sub-section (1) in clauses (i) to (v) read with Section 2(k) which defines 'terrorist act' to have the meaning assign to it under Section 15 and the expressions "terrorism" and "terrorist" shall be construed accordingly. Mr. Thorat has also made reference to the provisions of Section 2(l) which defines terrorist gang, section 2(m) 'terrorist organization', section 18 'punishment of conspiracy', section 20 'punishment for being member of terrorist gang or organization' to contend that the ingredients of none of these provisions would stand attracted in the case of the prosecution as alleged against Accused no.1.

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8.6 Mr. Thorat has referred to the decision in ***Vernon vs. State of Maharashtra & Ors.***[11] to contend that it has been held that the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against Accused no. 1 is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering the discharge application or framing of charges in relation to the offences under the UAPA.

8.7 It is next submitted by Mr. Thorat that the case of murder as alleged by the prosecution so as to prevent Mansukh Mishrilal Hiran from deposing against Accused no.1, would not amount to an act of terror. These submissions are supported by placing reliance on **Manjitsingh alias Mange vs CBI**[12].

8.8 It is next submitted that the delay in commencement of the trial cannot be attributed to Accused No.1. In support of these submissions, reliance is placed on the decision of this Court in **Sarang Wadhwan vs ED[13].**

8.9 It is next submitted that rejection of discharge application filed by Accused No.1 cannot be an embargo on bail. In such context, reliance is placed on the decision of the Full Bench of the Gauhati High Court in **Rojen Boro Vs. NIA[14].**

11 (2023)15 SCC 56
12 2011 (11) SCC 578
13 Cri. Bail Application 3377 of 2023 decided on 5 April 2024
14 2016 SCC OnLine Gau 823

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8.10 It is submitted that the other accused, namely, Accused no. 10-Pradeep Sharma was released on bail as also the other accused, namely, accused nos. 2, 3,4, and 5, thus, on the principles of parity, Accused no. 1 needs to be enlarged on bail.

8.11 It is next submitted that although Accused No.1 was also Accused in the case of Khwaja Yunus murder case and other extortion cases and a CBI and ED case, concerning ex-home minister, he is on bail in all these cases and without any antecedents of tampering of witnesses, hence on this consideration as well, Accused no. 1 is entitled for bail.

8.12 On the aforesaid submissions, it is submitted that the appeal deserves to be dismissed.

ANALYSIS

9. We have heard the learned Counsel for the parties and with their assistance, we have perused the record and the impugned order.

10. Before we consider the rival contentions, we are of the opinion that the present appeal is required to be considered keeping in view the object and intent of the Parliament in enacting the UAPA, namely to provide for more effective prevention of certain unlawful activities of individuals and associations, and for

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dealing with terrorist activities and matters connected therewith. This, more particularly, when the offences with which Accused No.1 is charged, albeit the other serious offences, include offences under Sections 16, 18 and 20 of the UAPA. We say so as, *prima facie,* having regard to the totality of the prosecution case, what seems to be of paramount importance is that various ingredients of a terrorist act, as envisaged under Section 15 of the UAPA, appear to be evident in the accusations as made against Accused No.1. There is *prima facie* material indicating an act intended to threaten, or likely to threaten, the unity, integrity and security, including "economic security", of the country, and intended to strike terror, or likely to strike terror, among a certain section of the people in the country. Moreso, as such actions are clearly intended against a prominent industrialist family, which, as contended on behalf of the NIA, plays a significant role in the economic development of the country, considering the large industrial empire contributing to the country's economic development.

11. It would require no deliberation to conclude that any threat of such a nature, particularly to strike a terror which involved planting of explosive material, accompanied by a threat note issued in the name of *Jaish-ul-Hind*, would be sufficient to attract the provisions of Sections 15 read with Section 16 of the UAPA. This is a significant contention as urged on behalf of the NIA.

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12. We discuss how, prima facie, it is evident that Accused No. 1 was involved in the commission of such an offence, which, in our opinion, is apparent from the series of actions. However, before doing so, it would be advantageous to extract the provisions of Section 15 of the UAPA, which defines a terrorist act, and Section 16, which provides for punishment for committing a terrorist act. The said provisions read thus:

> "**Section 15. Terrorist act.** -(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, —
>
> (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
>
> (i) death of, or injuries to, any person or persons; or
>
> (ii) loss of, or damage to, or destruction of, property; or
>
> (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
>
> (iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or
>
> (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
>
> (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

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

[**Explanation.**—For the purpose of this sub-section,—

(a) "**public functionary**" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "**high quality counterfeit Indian currency**" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

Section 16. **Punishment for terrorist act**.—

(1)Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

13. It is also the case of the prosecution that Accused No.1 was not the only person involved in the commission of the aforesaid offence and that certain other persons were also involved, thereby attracting the provisions of Sections 18, 20 and 43D(5) of the UAPA, which are also required to be noted, which read thus:

Section "**18. Punishment for conspiracy, etc.—**

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Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Section 20. Punishment for being member of terrorist gang or organisation.—
Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Section 43D Modified application of certain provisions of the Code.—
… … ….
(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

14. In the above backdrop, we now proceed to examine the merits of the present case, however, before we do so, we regret to express our profound concern as to the casual manner in which the trial Court has dealt with the proceedings of the bail application and more particularly in the context of the following observations as made in the impugned order, which in our clear opinion, do not satisfy the test of any rationale, relevancy and far away from being a legally and factually sound reasoning in the adjudication of such proceedings. Such observations as made by the learned Judge, in fact sound strange nay abnormal in applying the elementary principles of what a judicial reasoning ought to be:

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"3. ..... cutting the crap just to 2-3 pages, in exceptionally unusual, pleasant though, manner. Following the directions of the Hon'ble High Court, this application is being decided with agility, in the nick of time.

…. ….

6. ... I always feel honoured to be happily abided by each and every precedent of each and every Hon'ble Superior Court. In this order, I proudly borrow the gist from the precedents cited in this matter.

7. ... Heard the repetitive recrimination at utmost tolerable extent.

… … ...

9. Had it been the case at the threshold, I would have outrightly turned down the applicant's prayer.

… … ….

14. ..... Hoteliers and the Bar owners are often hard nuts to crack. Family man, business man, corporate tycoon in comparison would have been considered to be an easy target to extract money from if kept under duress.

.. … ….

15. In this mental and psychological process as described in the last forgoing para that, applicant/accused Sachin (A/1) appears to have chosen the Ambani family. He appears to have thought that, it would be easier to create terror in the minds of the richest family and the family in turn would easily yield any amount of money. For that, according to the NIA, applicant/accused Sachin (A/1) planned meticulously and evolved well designed conspiracy with all the accused.

… … … ..

20. It is again pertinent to note that, had there been nothing at all to be considered on merits, the Hon'ble High Court would have long back thrown outrightly the Appeal of accused Sachin (A/1) filed with delay of 778 days, against the bail rejection order dated 16.09.2023 of the trial Court.

.. … ...

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22. .... There is literally no iota of material to show any demand of money by this applicant/accused Sachin (A/1) to the Ambanis. Not a whit.

… … … ..

26. .... Quite ditzy. Let it be. Statement of this truncated witnesses is practically vain qua the offences.

.. … ...

"62. .... Still my withers remain unwrung."

15. It is thus quite incomprehensible to gather as to what the learned Special Judge really intended in making such bizarre observations. Further, the learned Special Judge. quite surprisingly, at the outset observes that, but for the High Court relegating the Respondent back, it would have outrightly turned down the bail prayer. These observations clearly suggests a very odd approach to the matter as serious as this. On merits, the reasons given by the trial court for granting bail are as under:

(i) There is no material on record that the Respondent wanted to create terror in the minds of Ambanis or to extract money from them.

(ii) The prosecution is not clear as to whose mind was to be terrorised.

(iii) The prosecution has not recorded any statement of the Ambani family to ascertain whether they were terrorised. There is no '**Muhurat**' for the prosecution to record the same.

(iv) The statement of KW-19, a witness to the discovery of gelatin sticks in the car, reveals that he was later frightened when he learned about the explosives found in the car.

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(v) The Gelatin sticks found in the car lacked any detonator or fuse and were therefore useless. Possession of gelatin sticks does not fall under the UAPA.

(vi) The offence does not fall within the scope and ambit of Section 15 of the UAPA, as damage to economic security and to monitor stability has 'to come in the section' by way of production or smuggling or circulation of high-quality counterfeit Indian paper currency, coin or any other material and not by threatening any tycoon for extortion of money.

(vii) Although the same court framed the charges, it did so without verifying the credibility and probative value of the material and charge sheet placed on record by the prosecution and thus considered sufficient. The same material is not sufficient to refuse bail.

(viii) Murder of Mansukh Hiran cannot be the outcome of a terrorist act.

(ix) Parity with co-Accused Pradeep Sharma (A-10) and Sunil (A-5) who are granted bail.

16. Before we delve on the discussion on merits, it would be necessary for us to consider the principles of law in regard to bail in the context of the provisions of Section 43D(5) of the UAPA. The principles of law are to be found in the following decisions: (i) **National Investigation Agency Vs. Zahoor Ahmad Shah Watali (supra)**, (ii) **Vernon vs. State of Maharashtra (supra)**, (iii) **Gurwinder Singh vs. State of Punjab & Anr. (supra)**, (iv) **Tasleem Ahmed vs. State Government of NCT of Delhi (supra)** (v) **Syed Iftikhar Andrabi vs. National Investigation**

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Agency, Jammu (supra), (vi) **Union of India v. Barkathullah (supra),** (vii) **Gulfisha Fatima v. State (Govt. of NCT of Delhi) (supra)**

17. We proceed to discuss the relevant decisions hereinbelow:-

In **National Investigation Agency Vs. Zahoor Ahmad Shah Watali** (supra), the respondent - Zahoor Ahmad Shah Watali was named as Accused no.10 in the First Information Report (FIR) dated 30 May 2017, registered by the Officer-in-charge of Police Station, NIA, Delhi, for offences punishable under Sections 120B, 121 and 121A of the Indian Penal Code ("IPC") and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA. He had filed an application for bail before the Special Court (NIA), New Delhi, which was rejected on 8 June 2018. The said order of the learned Special Court was reversed by the High Court of Delhi in Criminal Appeal No.768 of 2018, by an order dated 13 September, 2018, whereby the High Court directed that the respondent be released on bail, subject to certain conditions. It was such a decision of the High Court which was the subject matter for consideration before the Supreme Court. In considering the rival contentions, the Court in paragraph 21 of the report noted the settled legal position about matters to be considered for deciding an application for bail. It was observed that when it comes to offences punishable under special enactments, such as the UAPA, something more is required to be kept in mind in view of the special provisions contained in Section 43D of the UAPA. It was observed that sub-

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section (5) of Section 43D of the UAPA would mandate the Court to be satisfied that there are reasonable grounds for believing that the accusation against the Accused is *prima facie* true or otherwise. The following observations of the Court are required to be noted which read thus:-

> "**21.** Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:
> (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
> (*ii*) nature and gravity of the charge;
> (*iii*) severity of the punishment in the event of conviction;
> (*iv*) danger of the accused absconding or fleeing, if released on bail;
> (*v*) character, behaviour, means, position and standing of the accused;
> (*vi*) likelihood of the offence being repeated;
> (*vii*) reasonable apprehension of the witnesses being tampered with; and
> (*viii*) danger, of course, of justice being thwarted by grant of bail. (*State of U.P.* v. *Amarmani Tripathi)*
> … … … .
> **23.** By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the Accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and Mcoca. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, Mcoca and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the Accused is "not guilty" of the alleged offence. **There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the Accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "*prima facie*" true. By its very nature, the expression "*prima facie* true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the Accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such Accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "*prima facie* true", as compared to the opinion of the Accused "not guilty" of such offence as required under the other special enactments. In any case,**

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the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the Accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.

24. A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the Accused in the commission of the stated offence or otherwise.

… … ….

27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.

.. … …

45. Suffice it to observe that the High Court adopted a tenuous approach — by first discarding the Document No. D-132(*a*) and then discarding the statement of witnesses recorded under Section 161 and also the statements recorded under Section 164, presented by the investigating agency in a sealed cover. As aforesaid, the High Court ought to have taken into account the totality of the materials/evidence which depicted the involvement of the respondent in the commission of the stated offences and being a member of a larger conspiracy, besides the offence under Section 17 for raising funds for terrorist activities.

47. The fact that there is a high burden on the Accused in terms of the special provisions contained in Section 43-D(5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in *K. Veeraswami* [*K. Veeraswami* v. *Union of India*, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] , to the effect that the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named Accused is prima facie true or otherwise."

(emphasis supplied)

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18. In **Vernon vs. State of Maharashtra** (supra), the appellants, Vernon Gonsalves and Arun Ferreira, were arrested on 28 August 2018 in connection with the Bhima-Koregaon/Elgar Parishad case and charged under various provisions of the IPC and Sections 13, 16, 17, 18, 18-B, 20, 38, 39 and 40 of the UAPA. The prosecution alleged that the appellants were associated with the CPI (Maoist) and had participated in its recruitment, training and financial activities. Their bail applications were rejected by the Special Court and the Bombay High Court. The Supreme Court examined the material against each appellant in the context of Section 43-D(5) and, applying the principles in ***NIA v. Watali (supra)*** *and K.A. Najeeb* although holding that the statutory restriction on bail does not exclude the constitutional power to grant bail, particularly where there is no likelihood of an early trial and prolonged incarceration infringes Article 21, yet the Supreme Court also considered the principles laid down in Watali's case, wherein it was held that, the factors for determining bail would depend on the seriousness of the offence, the nature of evidence, and other aspects peculiar to the case in hand. The Court examined the material on record against each appellant in light of the applicable legal principles. In such context, the following observations made by the Court are relevant and are required to be noted which read thus:-

> "**45.** In three decisions of this Court, *Hitendra Vishnu Thakur* v. *State of Maharashtra* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi* v. *Jitendra*

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Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and *Usmanbhai Dawoodbhai Memon* v. *State of Gujarat* [*Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*, (1988) 2 SCC 271 : 1988 SCC (Cri) 318] , the manner in which stringent provisions of a statute ought to be interpreted has been laid down. In all the three authorities, observation of this Court has been that the court ought to carefully examine every case, before making an assessment if the Act would apply or not. When the statutes have stringent provisions the duty of the court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act. **Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same principle would apply in respect of the 1967 Act as well**.

46. In *Zahoor Ahmad Shah Watali* [*NIA* v. *Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383], it has been held that the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the Accused concerned in the charge-sheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such Accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the Accused ought to prevail. In our opinion, however, it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-Accused.

…

50. We are returning these findings as the restrictions on the Court while examining the question of bail under the 1967 Act is less stringent in comparison to the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. …….. Here, we have to satisfy ourselves that the specified offences alleged to have been committed by the appellants cannot be held to be prima facie true.

…

52. In these two proceedings, the appellants have not crossed, as undertrials, a substantial term of the sentence that may have been ultimately imposed against them if the prosecution could establish the charges against them. But the fundamental proposition of law laid down in *K.A. Najeeb* [*Union of India* v. *K.A. Najeeb*, (2021) 3 SCC 713] , that a bail-restricting clause cannot denude the jurisdiction of a constitutional court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials

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with prima facie low-probative value or quality.

> **53.** In *Zahoor Ahmad Shah Watali* [*NIA* v. *Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] reference was made to the judgment of *Jayendra Saraswathi Swamigal* v. *State of T.N.* [*Jayendra Saraswathi Swamigal* v. *State of T.N.*, (2005) 2 SCC 13 : 2005 SCC (Cri) 481] in which, citing two earlier decisions of this Court in *State* v. *Jagjit Singh* [*State* v. *Jagjit Singh*, 1960 SCC OnLine SC 2 : AIR 1962 SC 253] and *Gurcharan Singh* v. *State (Delhi Admn.)* [*Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] , the factors for granting bail under normal circumstances were discussed. **It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the Accused, a reasonable possibility of the presence of the Accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail.**
>
> (emphasis supplied)

19. In **Gurwinder Singh vs. State of Punjab & Anr.** (supra), the Court was considering a challenge to an order dated 24 April 2023 passed by the High Court of Punjab and Haryana, whereby the High Court had upheld the order dated 16 December 2021 passed by the learned Special Judge, NIA Court. The learned Special Judge had rejected an application for regular bail filed by the appellant, Gurwinder Singh, along with other co-Accused, under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C), in NIA Case. The case involved offences punishable under Sections 124A, 153A, 153B, 120-B of the Indian Penal Code, Sections 17, 18, 19 of the UAPA, and Sections 25 and 54 of the Arms Act, 1959.

20. In the said case, the investigation was completed, and a final report was filed before the Trial Court on 16 April 2019 against eleven Accused persons. Supplementary reports were also submitted. The said case was similar to the

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present case, where considering the degree of severity in the charges involved, the investigation was transferred to the NIA. Thereafter, the NIA filed a third supplementary charge-sheet on 18 December 2020, and charges were framed by the learned Special Judge, NIA, on 09 December 2021. On examining the materials on record and the proceedings before the Special Court in the context of the bail application, the Court was of the prima facie view that the material on record indicated the complicity of the appellant/Accused in the conspiracy allegedly hatched in furtherance of terrorist activities. Accordingly, the bail application and the appeal were rejected. In arriving at the aforesaid conclusion, the Court considered the provisions of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (UAPA), particularly the interpretation of the statutory restrictions on the grant of bail prescribed thereunder. In this regard, the Court made the following observations:-

> "**24.** The source of the power to grant bail in respect of non-bailable offences punishable with death or life imprisonment emanates from Section 439 Cr.PC. It can be noticed that Section 43-D(5) of the UAP Act modifies the application of the general bail provisions in respect of offences punishable under Chapter IV and Chapter VI of the UAP Act.
>
> **25. A bare reading of sub-section (5) of Section 43-D shows that apart from the fact that sub-section (5) bars a Special Court from releasing an Accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an Accused on bail, the proviso to sub-section (5) of Section 43-D puts a complete embargo on the powers of the Special Court to release an Accused on bail. It lays down that if the Court, "*on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure*", is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter**

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VI of the UAP Act is prima facie true, such Accused person *shall not be* released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43-D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

26. The conventional idea in bail jurisprudence vis-a-vis ordinary penal offences that the discretion of courts must tilt in favour of the oft-quoted phrase — "bail is the rule, jail is the exception" — unless circumstances justify otherwise — does not find any place while dealing with bail applications under the UAP Act. The "exercise" of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in the proviso to Section 43-D(5)— "*shall not be released*" in contrast with the form of the words as found in Section 437(1) CrPC — "*may be released*" — suggests the intention of the legislature to make bail, the exception and jail, the rule."

(emphasis supplied)

21. In **Union of India vs. Barakathullah (supra)** the Supreme Court was dealing with the appeal filed by the NIA Chennai, being aggrieved by the orders passed by the High Court of Judicature at Madras, on the appeals filed by the Accused whereby the High Court had released the respondents on bail subject to conditions. The Accused were facing trial being charged under Sections 120B, 121A, 122, 153A, 505(1)(b), (c), (2) of Indian Penal Code and Sections 13, 18, 18A and 18B of UAPA. The High Court had taken into consideration the material on record including the chargesheet and had allowed the appeal filed by the Accused thereby releasing the Accused-respondents on bail. It is in such context, the Supreme Court considering the provisions of Section 43D of the UAPA and the decisions surrounding the said provisions in **Gurwinder Singh** (supra), **Zahoor Ahmad Shah Watali** (supra), **Vernon** (supra) and more particularly, the

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guidelines which would flow from Watali had come to a conclusion that in the said case the High Court had committed gross error in not considering the material/evidence in its right and proper perspective and in recording a perverse finding to the effect that there was no material to suggest the commission of any offence, which falls under Section 15 of UAPA. The relevant observations are required to be noted which read thus:

> "12. The ratio of the said judgment has been consistently followed by this Court in many cases, and recently in Gurwinder Singh vs. State of Punjab and Another (supra), in which this court has culled out following guidelines from Watali's Case:
>
> > "34. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:
> >
> > • Meaning of 'Prima facie true' [para 23] : On the face of it, the materials must show the complicity of the Accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.
> >
> > • Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared [para 23] : **Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the Accused, to justify the framing of charge**. In that situation, the Accused may have to undertake an arduous task to satisfy the Court that despite the

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framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. **Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.**

• Reasoning, necessary but no detailed evaluation of evidence [para 24] : The exercise to be undertaken by the Court at this stage--of giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

• Record a finding on broad probabilities, not based on proof beyond doubt [para 24]:"The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the Accused in the commission of the stated offence or otherwise."

• Duration of the limitation under Section 43D(5) [para 26] : The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

• Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27] : The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

• Contents of documents to be presumed as true [para 27] : The Court must look at the contents of the document and take such document into account as it is.

• Admissibility of documents relied upon by Prosecution cannot be questioned [para 27] : The materials/evidence collected by the investigation agency in support of the accusation against the Accused in the first information report must prevail until contradicted and overcome or disproved by other evidence……. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

… … … .

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18. **In our opinion, the High Court has committed gross error in not considering the material/evidence in its right and proper perspective and in recording a perverse finding to the effect that there was no material to suggest the commission of any offence, which falls under Section 15 of UAPA, and that the prosecution had not produced any material about the involvement of any of the respondents-Accused in any terrorist act or as a member of a terrorist gang or organization or training terrorism. Such perverse findings of the High Court deserve to be strongly deprecated more particularly when the appellant has not alleged the offence under Section 15 of UAPA either in the FIR or in the chargesheet against the respondents. The alleged offences are under Section 18, 18A, 18B etc. For the purpose of considering the offence under Section 18, the commission of terrorist act as contemplated in Section 15 of UAPA is not required to be made out.** What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. **Hence, if there is any material or evidence to show that the Accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18.** For attracting Section 18, the involvement of the Accused in the actual commission of terrorist act as defined in Section 15 need not be shown. The High Court having miserably failed to comprehend the correct import of Section 18 read with the definition of terrorist act as contemplated in Section 15 of UAPA, in our opinion the High Court has fallen into a patent and manifest error."

(emphasis supplied)

22. In **Gulfisha Fatima v. State (Govt. of NCT of Delhi)** (supra) the appeals had arisen out of the common judgment and order passed by the High Court of Delhi by which the High Court affirmed the rejection of bail application filed by the applicants. At the inception, the applicants were booked under Section 147, 148, 149 and 120B of the Indian Penal Code. Upon completion of investigation, a chargesheet was filed alleging offence under Section 120B read with Sections 109, 114, 124A, 147, 148, 149, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395,

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420, 427, 435, 436, 452, 454, 468, 471 and 34 of the Indian Penal Code, as also under Sections 13, 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967, Sections 25 and 27 of the Arms Act, and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984. This was in the context of riots arising out of the incidents that occurred in several parts of Delhi NCR in February 2020. The case of the prosecution was that the rights were allegedly orchestrated and executed by the appellants which was on the allegation of a pre-on allegations of a pre-planned criminal conspiracy involving several Accused persons, including the appellants. It was alleged that the conspiracy was hatched with the object of orchestrating riots in the National Capital Territory of Delhi as a form of protest against the enactment of the Citizenship Amendment Act, 2019 and the proposed National Register of Citizens. Leading to widespread communal violence on and around 22nd, 23rd, and 24th February 2020. The riots are stated to have resulted in grave consequences, including the loss of 54 lives, among them a senior police officer and an Intelligence Bureau official, as well as grievous injuries to several police personnel and civilians. In this context, the Court considered the statutory framework of Section 43D(5) and the scope of judicial inquiry at the bail stage, and observed that the expression "prima facie true", which lies at the heart of Section 43D(5), does not invite a detailed examination of evidence, nor does it require the Court to assess the probability of conviction. It was observed that

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equally, it does not reduce the judicial role to a mechanical acceptance of the prosecution's assertions. It was held that the statutory standard contemplates a threshold inquiry of limited but real content. The following observations are required to be noted which read thus:-

> "70. **The expression "prima facie true", which lies at the heart of Section 43D(5), does not invite a detailed examination of evidence, nor does it require the Court to assess the probability of conviction. Equally, it does not reduce the judicial role to a mechanical acceptance of the prosecution's assertions. The statutory standard contemplates a threshold inquiry of limited but real content.**
>
> 71. At this stage, the Court is required to examine whether the material relied upon by the prosecution, taken at face value and without rebuttal, discloses the essential ingredients of the offences alleged against the Accused. The inquiry is one of statutory plausibility, not evidentiary sufficiency. The Court tests the allegations against the legal ingredients of the offence, not against possible defences or competing factual narratives.
>
> 72. The discipline imposed by Section 43D(5) necessarily circumscribes the nature of judicial scrutiny permissible at the bail stage. The Court is not called upon to weigh the probative value of evidence, to assess its admissibility, or to determine whether the prosecution version will ultimately withstand trial. Any exercise approximating a mini-trial at this stage would transgress the statutory boundary deliberately drawn by Parliament.
>
> 73. Such premature adjudication is not merely procedurally inappropriate; it carries institutional consequences. It risks prejudging issues reserved for trial, distorting the adversarial process, and undermining the legislative intent underlying the special bail regime. Section 43D(5) therefore demands judicial restraint, not judicial abstention, at the pre-trial stage.
>
> 74. A salient feature of Section 43D(5) is its express reference to "such person". The statutory text mandates an inquiry that is Accused-specific rather than case-centric. The provision does not permit a collective or undifferentiated approach to bail merely because multiple Accused are arraigned in the same prosecution or alleged conspiracy.
>
> 75. The Court is thus required to examine the role attributed to the individual Accused, as emerging from the prosecution material, and to determine whether such attribution bears a prima facie nexus to the offences under Chapters IV or VI. This inquiry does not involve ranking degrees of culpability or pronouncing upon guilt.

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It serves the limited purpose of determining whether the statutory threshold is crossed qua the Accused before the Court.

76. In cases alleging conspiratorial conduct, it becomes necessary to distinguish between the existence of a conspiracy and the position occupied by an Accused within the alleged framework. While conspiracy may supply the overarching context, Section 43D(5) requires attention to the nature, extent, and character of participation attributed to the individual.

77. At the threshold stage, the inquiry is directed towards whether the prosecution material suggests conspiratorial centrality or merely conspiratorial association. Conduct which, on the prosecution's own showing, reflects conceptualisation, direction, orchestration, or mobilisation of unlawful activity or terrorist activity, stands on a different footing from conduct alleged to be episodic, peripheral, or substitutable. This distinction does not determine guilt; it informs the statutory assessment of whether continued restraint on liberty is justified at the pre-trial stage.

78. The cumulative effect of the statutory scheme and the jurisprudence of this Court is that Section 43D(5) operates as a gatekeeping provision. It requires the Court to undertake a focused, Accused-specific, and legally disciplined inquiry, confined to determining whether the prosecution material, taken at its highest, satisfies the statutory threshold of prima facie truth.

79. Any departure from this calibrated approach, whether by converting the bail stage into a forum for adjudicating defences or by treating the invocation of the statute as determinative of the outcome, would unsettle the careful balance struck by Parliament. The provision demands neither mechanical denial nor casual grant of bail, but a principled application of the statutory standard within its clearly defined limits.

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 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:

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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.

83. The discussion thus far has been directed to the manner in which the statutory threshold under Section 43D(5) is to be applied at the stage of bail. That inquiry sets out how the Court is to examine the prayer for bail under a special enactment. The inquiry must now turn to what the accusation is that is sought to be tested against that threshold. This necessarily requires an examination of the statutory meaning and scope of a "terrorist act" under the Act."

(emphasis supplied)

23. In **Syed Iftikhar Andrabi vs. National Investigation Agency, Jammu** (supra), the Supreme Court was considering the question concerning the interface between Section 43-D(5) of the UAPA and the constitutional guarantee of personal liberty under Article 21 of the Constitution of India, in the context of challenge by the appellant-Andrabi who was Accused of having committed offence under Sections 17, 38 and 40 of the Unlawful Activities (Prevention) Act, 1967 read with Sections 8, 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 120B of the Indian Penal Code, to the order dated 19 August 2025 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu, by which the High Court upheld the order passed by the Special NIA Court dismissing the bail application filed by the appellant under Section 21 of

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the NIA Act. In this case having surveyed and deliberated upon the earlier decisions which includes the decision of the Court in NIA Vs. Zahoor Ahmad Shah Watali (supra), Union of India v/s. K. A. Najeeb (supra), Gurwinder Singh v. State of Punjab (supra) and Gulfisha Fatima v. State (Govt. of NCT of Delhi) (supra), expressed reservations on the decision in Gurwinder Singh (supra) in which two Judges Bench had taken a view different from what was taken in K.A. Najeeb (supra). In such context, the relevant observations in that regard are required to be noted which read thus:

> "26. There are two judgments of this Court which we need to deal with before proceeding ahead. These two judgments, Gurwinder Singh v. State of Punjab14 and Gulfisha Fatima v. State (Govt. of NCT of Delhi)15, have taken a somewhat divergent view from the clear distinctive trajectory taken by this Court qua grant of bail even under special enactments like TADA, UAP Act and NDPS Act.
>
> 27. In Gurwinder Singh, the appellant was charged under various provisions of the IPC as well as under the UAP Act and the Arms Act. Prayer for bail of the appellant was rejected by the Special Court which was upheld by the High Court of Punjab and Haryana whereafter the matter travelled to this Court. Appellant was in jail for about five years and relied upon K.A. Najeeb for bail. A two-Judge Bench of this Court while rejecting the prayer for bail of the appellant distinguished K.A. Najeeb in the following manner:
>
> 45. In K.A. Najeeb case, this Court was confronted with a circumstance wherein except the respondent-Accused, other co-Accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this Court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-Accused might face upon conviction and since the respondent-Accused had already served portion of the maximum imprisonment i.e. more than five years, this Court took it as a factor influencing its assessment to grant bail. Further, in K.A. Najeeb case, the trial of the respondent-Accused was severed from the other co-Accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said Accused therefore this Court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined.

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

27.2. In our view, the decision in Gurwinder inasmuch as it refuses to be bound by Najeeb, is difficult to be followed by us as a matter of precedent. It is plain that a judgment rendered by a Bench of lesser strength is bound by the law declared by a Bench of greater strength. Judicial discipline mandates that such binding precedent must either be followed or, in case of doubt, be referred to a larger Bench. A smaller Bench cannot dilute, circumvent, or disregard the ratio of a larger Bench.

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

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

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

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

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

27.7. We also note that the Bench in Gurwinder formulated the so-called 'twin-prong test' governing grant of bail under the UAP Act. It held that the inquiry under Section 43-D(5) must proceed in two sequential stages: first, whether the accusation is prima facie true; and second, only if the first question is answered in

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favour of the Accused, whether ordinary bail considerations, such as, flight risk, tampering with evidence, or influencing witnesses, justify release. If the first stage of this twin-prong test is satisfied against the Accused, bail becomes absolutely impermissible.

27.8. With respect, this test flows neither from the text of Section 43-D(5) of the UAP Act nor from Najeeb. In fact, on the contrary, it is in teeth of Najeeb which categorically stated that Section 43-D(5) of the UAP Act provides no more than another possible ground, namely that the accusations against the Accused are prima facie true, for the competent court to refuse bail, in addition to the well-settled considerations like possibility of tampering with evidence, influencing the witnesses, or the Accused evading the trial by absconding etc. If this twin-prong test is accepted, the State need only satisfy a low prima facie threshold while the trial may continue for years with the result that pre-trial incarceration begins to acquire a post-trial punitive character and even then, no court could ever grant bail no matter the length of period of such incarceration because the case stood prima facie made out against the Accused. A plain reading of Najeeb will show that it was trying to prevent precisely this possibility from arising when it cautioned that Section 43-D(5) must not become 'the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.'

27.9. Therefore, the caution of Najeeb is that continued incarceration cannot go unabated by a mere discharge by the State of the prima facie standard under Section 43-D(5). The judgment explicitly held that Section 43-D(5) will 'melt down' where prolonged incarceration and delayed trial produce a violation of Article 21. The constitutional inquiry in Najeeb therefore operated independent of, and notwithstanding, the statutory embargo of Section 43-D(5) in the realm of constitutional principles. That being the case, the formulation of Gurwinder becomes difficult to follow. Once the three-Judge Bench in Najeeb recognised that constitutional courts retain the authority to intervene despite the existence of a prima facie case against the Accused where prolonged incarceration and delayed trial would breach Article 21, the statutory embargo of Section 43-D(5) could no longer be treated as the gateway through which the prayer of bail must first pass.

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

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

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

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

.. … …

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

31. In K.A. Najeeb, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the Accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the Accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP

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Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will 'melt down' where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the Accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the Accused had to be enlarged on bail.

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

… …. …

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

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

(emphasis supplied)

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24. Accordingly applying the principles, the Court considering the prosecution material on its face value, had reached to a conclusion that the same did not satisfy the threshold laid down in Watali (supra), as there were no reasonable grounds to believe that the accusations against the appellant were prima-facie true. In such context, the Court considering the case of the prosecution against the Accused Andrabi as set out in paragraphs 50, 51 and 52, it was observed that at the stage of considering the prayer for bail of the appellant, it was neither desirable nor permissible to analyse and consider the merits of the accusations made against the appellant and the prosecution would have to prove its case against the appellant beyond all reasonable doubt in the trial. However, the Court having broadly noted the core charges against the appellant only with a view to contextualize the bail prayer of the appellant without expressing any opinion on the merits of those charges. The Court was of the view that the appellant – Andrabi had made out a case for grant of bail during pendency of the trial for the reasons which are set out in paragraph 53.1 to 53.8, which includes not only the observations on the necessary parameters which would be the subject matter of consideration at the stage of bail but also that coupled with such material which would point out towards substance of the accusation. The fact that Andrabi arrested in connection with the case in question on 11 June 2020 and since then for more than 5 years 11 months he was in custody. It was also stated that as per the prosecution, there were

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more than 350 witnesses still to be examined and it was thus clear that the conclusion of the trial in the near future is well-nigh impossible and hence, in such a case, K.A. Najeeb (supra) will apply with full force. Having held as such in the facts of that particular case, the Supreme Court yet reiterated the legal position that no reading of **Najeeb** (supra) suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to be released. In this context, the Supreme Court in **Andrabi** (supra) merely held that the mere presence of statutory restriction in Section 43D(5) of the UAPA per se does not oust the ability of constitutional Courts to grant bail. The Supreme Court in **Andrabi** (supra) held as under:

> **"35.** The often invoked phrase '*bail is the rule and jail is the exception*' is not merely an empty statutory slogan flowing from the Cr.PC 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."
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> (emphasis supplied)

25. In **Tasleem Ahmed v. State (Govt. of NCT of Delhi)** (supra) the Court at the outset noted the submissions as made on behalf of the State that in a case

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dealing with grant of bail under UAPA, there appears to be a perceived divergence in the manner in which the decision of the three-Judge Bench in **Union of India v. K.A. Najeeb,** (supra), was being understood and applied by different Benches of the Supreme Court. Considering the divergence of views, the State had sought reference of the matter to an appropriate Bench to settle the issues. It is in such context, the Court referring to the decisions in **Kartar Singh v. State of Punjab**[15], **Shaheen Welfare Assn. v. Union of India**[16]**, P. Ramachandra Rao v. State of Karnataka & Ors.** [17] and **Gulfisha Fatima v. State (Govt. of NCT of Delhi)** (supra), the Court observed that the issue as projected was is not a narrow and as concerning the bail prayer of the present appellants alone and it concerns the proper constitutional approach to be adopted where prolonged incarceration and delay in conclusion of trial were pressed as grounds for bail notwithstanding the statutory restraint contained in Section 43D(5) of the UAPA. In such context, the Court also observed that K.A. Najeeb (supra) is an authoritative pronouncement of a three-Judge Bench of the Supreme Court and it preserves the constitutional force of Article 21, while at the same time recognizing the legislative policy underlying special statutes such as the UAPA, wherein the Supreme Court held that the presence of statutory restrictions such as Section 43D(5) of the UAPA does not *per se* oust the power of constitutional Courts to grant bail where

15 (1994)3 SCC 569
16 (1996)2 SCC 616
17 (2002)4 SCC 578

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continued detention violates Part III of the Constitution. The Supreme Court observed that at the same time, the three-Judge Bench expressly recognized that at the commencement of proceedings Courts are expected to appreciate the legislative policy against grant of bail, and that the rigour of such provision may 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. The Supreme Court observed that the ratio of K.A. Najeeb (supra), therefore, was neither a charter for indefinite incarceration under the cover of Section 43D(5), nor a mathematical command that the mere passage of time, divorced from all surrounding circumstances, must automatically result in bail. It was further observed that the the decision in Gulfisha Fatima v. State (Govt. of NCT of Delhi) (supra) required to be understood. It was observed that the said judgment proceeded on the very premise that K.A. Najeeb (supra) binds all Benches of lesser strength while recognising that Article 21 occupies a central place in the constitutional scheme, that the right to speedy trial is a facet of personal liberty; and that pre-trial incarceration cannot, by mere passage of time, assume the character of punishment. It was further observed that Gulfisha Fatima (supra) recognised K.A. Najeeb (supra) as a constitutional safeguard against unconscionable detention and recorded that there cannot be second opinion on the proposition that statutory restrictions must yield

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in an appropriate case. The two Judge Bench also observed that what Gulfisha Fatima (supra) declined to accept was a mechanical or solitary application of delay. Further the said judgment held that the inquiry into delay is contextual and must take into account the nature of allegations, the statutory field, the stage of proceedings, the realistic trajectory of trial, the causes contributing to delay, the role attributed to the Accused, the prima facie material, the availability of intermediate safeguards and the risks attendant upon release. It was observed that the said approach, in the considered view, does not dilute Article 21. It gives Article 21 structured content in a field where the Constitution requires the Court to accommodate personal liberty, fair trial, societal security and the legislative judgment underlying a special statute. It was further observed that the judgment in Gulfisha Fatima (supra) understood the findings and ratio in K.A. Najeeb (supra) as a principled safeguard against unconscionable detention, and not as a mathematical formula of universal application, and accordingly the Court granted bail to five of the seven appellants before the Court and the bail was declined to two appellants not because Article 21 was treated as subordinate to Section 43D(5), but because, upon an Accused specific evaluation, the Court found that their role, the prima facie material attributed to them, and the attendant concerns of trial integrity did not, at that stage, justify overriding the statutory embargo. In contrasting what was held in Gulfisha Fatima (supra), the Court referred to the

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case in **Syed Iftikhar Andrabi v. National Investigation Agency, Jammu** (supra), in which case the Bench has expressed serious reservations on certain aspects of Gulfisha Fatima (supra), including the manner in which K.A. Najeeb (supra) was applied. When the Court observed that Gulfisha Fatima (supra) adopts a narrower reading of K.A. Najeeb and that such reasoning amounts to a hollowing out of the Constitutional force of the three-Judge Bench decision, and it is in such context, the Court observed that the issue requires consideration by a Bench to be constituted by the Hon'ble Chief Justice of India, to settle the correct approach to bail under special statutes where Article 21, prolonged incarceration and statutory restrictions intersect. The following observations are required to be noted which read thus:

> 23. We are, therefore, of the considered view that the issue requires consideration by Bench to be constituted by the Hon'ble Chief Justice of India. This is necessary not merely for the present batch of matters, but to settle the correct approach to bail under special statutes where Article 21, prolonged incarceration and statutory restrictions intersect.
>
> 24. Having regard to the importance of the issue, we are of the view that the questions requiring consideration need not be confined to the correctness of any one decision. The controversy raises a broader question concerning the manner in which constitutional courts are to approach bail where prolonged incarceration is asserted in prosecutions governed by special statutes imposing restrictive bail conditions. In this background it would be imperative or in other words necessary for the appropriate bench that may be constituted by the Hon'ble Chief Justice of India, to clarify or expound the position of law laid down in K.A. Najeeb's case, particularly in the backdrop of the rigour of 43D (5) which imposes restriction consciously and has received the assent of the Parliament, which obviously was brought in keeping in mind the valuable right enshrined in Article 21 of the Constitution of India."

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26. Adverting to the aforesaid principles of law, it is clear that the trial court failed to apply and consider any of the settled legal parameters in deciding the bail application. Considering the settled principles of law, it was necessary for the learned Special Judge to dwell on the grounds on which the earlier bail application filed by Accused no. 1 was rejected. In **Prasad Shrikant Purohit v. State of Maharashtra**[18]

> "30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected**."**

27. While rejecting the earlier bail application, the Special Judge recorded reasonable grounds leading him to believe that the accusation against this Accused is *prima facie* true. Three distinct cases are against the Accused. Firstly, the case involving Mansukh Hiran's car; Secondly, placing this car laden with gelatin sticks along with a threat note near the Ambani residence, inviting the terrorism case; and thirdly, murdering Mansukh Hiran. In the proceedings of the earlier bail application, Accused no. 1 had canvassed the very argument that he had argued before us, including that there was nothing to indicate that the Ambani family was terrorised and that none of his actions satisfied the ingredients of the offences under UAPA.

18 (2018) 11 SCC 458

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28. Further, as noted above, the plain application of the proviso to Section 43D(5) of the UAPA casts an embargo on grant of bail to a person being prosecuted for an offence under the said Act inasmuch as the Accused person cannot be released on bail in case of availability of reasonable grounds to believe that the accusations against such person appearing in the report made under Section 173 of the Cr.P.C. are prima facie true.

29. Accordingly, we have also perused the material available before the learned Special Judge while refusing to grant bail to this Accused on the earlier occasion. The Key witness (KW-17), in both his statements recorded under 161 and 164 CrPC, has narrated that this Accused was reinstated in the police department as API and was appointed in the CIU. In connection with the crime in question, the record reveals that on 06th February 2021, Accused No. 1 had directed this witness to return the Scorpio to Mansukh and later, on 18th February 2021, he saw the same Scorpio outside the Accused's residence. Another witness, API Howal, stated that the CIU used the Scorpio from July 2020 till January 2021. Vinod Hiran, Mansukh's brother, stated that the Scorpio was sold to the Accused by Mansukh but was returned to him in the first week of February 2021. Another witness, namely, Vishal Doshi, a travel agent employee, affirmed that this Accused, through his friend Manish, booked a room in Oberoi Hotel, Mumbai for 100 nights. The room was booked in the name of Sushant Khamkar, whose Aadhaar

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card bore the Accused's photo. On enquiry, Mr Singh stated that Sushant Khamkar did not exist. Thus, the Accused used a fake Aadhaar Card to book a room in Oberoi Hotel for 100 nights.

30. Mr Singh tendered a truncated copy of the 161 statement of Key witnesses KW-1 and KW-13. He also tendered the complete copy of the 164 Cr.PC statement of these witnesses. We have gone through the same carefully. From the statement of KW-1, it is clear that on the directions of Accused No. 1, the witness substituted the license plates of the Scorpio with those of an Innova car, which was also under the control of Accused No.1.

31. Most importantly, the statement of this witness also prima facie establishes that Accused no. 1parked the Scorpio car laden with explosives outside the Ambani residence. KW-1 in his detailed statement as recorded under Section 164 of Cr. P.C. has narrated the entire sequence of events establishing complicity of Accused no. 1 in committing the offences in question. The statement of KW-1 is thus vital in the context of the accusations made against Accused no. 1 which *prima facie* show the complicity of accused no. 1 in commission of offence as charged under UAPA. This more particularly, when he stated that on 25 February, 2021 at about 2.10 hours he was following the Scorpio driven by Waze at a very slow speed on Carmichael Road and at one particular point, accused no. 1 stopped

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the Scorpio and parked it on the left side of the road. He has stated that he also stopped the Innova car at a distance of about 40 to 50 meters behind the Scorpio. He further stated that accused no. 1 sat in the Scorpio for about 5 minutes and thereafter he came out from left side of Scorpio and walked towards the innova parked by him behind the Scorpio. Accused no. 1 opened the left middle door of the Innova and sat on the left side. He stated that when accused no. 1 sat in the car, he saw a black coloured sack in his hand. His statement is apart from the several other incidents. He has also stated that after reaching some distance, accused no. 1 noticed that he could not find his Mumbai Police Identity card and he asked to search the same in the dashboard of Innova, but the identity card could not be found. KW-1 stated that when he asked accused no. 1 as to what was the operation about, accused no. 1 did not answer and asked him to remove face shield and gloves, which was taken over by him. KW-1 further stated that accused no. 1 told him that he has forgotten the same in Scorpio and accused no. 1 told him to go back to the same place where he parked Scorpio and check the Scorpio. He narrated as to how they travel. Also stated of change in number plate being handed over to him.

32. Thereafter, when the offence in this regard was registered, Accused no. 1, whose designation was merely a Assistant Police Inspector, exerted sufficient influence to ensure that the investigation of this case was assigned to him. The

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statement also establishes that Accused no. 1 was well acquainted with Mansukh Hiran and was in constant contact with him. This witness also stated that Accused no. 1 gave him a packet of money to remain tight-lipped and not disclose the acts of Accused No. 1 to anyone. Further, Accused no. 1 visited the residences of the then Chief Minister and Home Minister, Mr Anil Deshmukh.

33. It also need to be noted that there are criminal antecedents/cases against Accused No. 1 involving powerful personalities of the relevant time, involving extortion of huge amounts from hoteliers and bar owners, wherein Accused No. 1, i.e., hatched a conspiracy to extort 100 crores from the businessmen under threats of blackmail.

34. The statement of KW-13 also *prima facie* evidences the involvement of Accused No. 1 in the commission of these offences with which he is charged. KW-13 stated that the Accused was close to Pradeep Sharma (Accused No. 10), a police officer who retired from the Crime Branch. From the statement of KW-12, it is clear that Accused No.1 had purchased several high-end mobile phones for huge amounts. He also stated that the Accused told him that the Scorpio found outside the Ambani residence belonged to Mansukh. This witness also narrated in detail the various acts of Accused No. 1 leading to the commission of the offences. KW-14's truncated statement (original was also provided to us in a sealed cover) is also

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on record. KW-14 has also affirmed that the Accused fabricated cases against hoteliers and bar owners, threatening them with fake raids and extorting huge amounts from them. He narrated the incident of 08th February 2021, where the witness and another police officer were instructed to arrange eight dummy SIM cards for an alleged confidential operation. KW-14 also stated that the Accused demanded 10 Lakhs from him towards protection money and to refrain from raiding his hotel. All this shows that Accused No. 1 has a criminal propensity.

35. The statements of Meet Hiran, Vimla Hiran and Vinod Hiran, i.e., the son, wife and brother of the deceased-Mansukh, bring more clarity to the several acts of the Accused No.1. Meet Hiran stated that he had sold the Scorpio car to Accused No. 1, which was thereafter returned to him. He also stated that his mother informed him that ATS officials took Mansukh on 25th February 2021 at 11:00 pm. They did so to conduct enquiries regarding the Scorpio car found outside the Ambani residence. He also narrated that on 03rd March 2021 his deceased father had gone to meet the Accused and that the Accused was pressurizing his father to get himself arrested in the Scorpio-explosives case. Accused No.1 had also assured Mansukh that he would get him released within 4 to 5 days. However, Mansukh's family consulted a lawyer, who advised him that Mansukh Mishrilal Hiran had done no wrong and, therefore, he was not required to get himself arrested. Vinod Hiran also spoke to Accused No.1 about this and conveyed the decision not to get

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arrested. Immediately thereafter, a police officer, Tawde, called Mansukh Mishrilal Hiran and told him to go to Ghodbunder Road and meet him. Mansukh Mishrilal Hiran left to meet the so-called police officer, Tawde, on 04th March 2021 at 08:20 pm and was never seen or heard of again. Surprisingly, the Hiran family members repeatedly called Accused No.1 about Mansukh's whereabouts, but he pretended to be unaware. Statements confirm that Accused No. 1, acting as the Investigating Officer in the said cases, collected the DVRs and other material. Mansukh, being aware of the illegal activities of Accused No. 1 and fearing exposure, was murdered by the Accused. Vinod Hiran disclosed these facts in his statement, which other witnesses prima facie corroborate. The statement of Advocate Kalpanath Giri sheds light on the role of Accused No. 1 in asking him to draft a false complaint on behalf of Mansukh Mishrilal Hiranregarding the theft of his Scorpio. The statements of the key witnesses are inculpatory towards Accused No.1, being the person involved in the explosive-laden, along with the threat note against the Ambani family, being parked/placed in the vicinity of the residence of the Ambani family.

36. Most importantly, the statement of Sameer Gawkar, another Police Constable, reveals that on the instructions of Accused No.1, a black bag was kept in his Mercedes Benz car driven away by Accused No. 1. On 15th March 2021, this witness was called upon by one Police Inspector- Kotwal, to keep the

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Accused's bags in safe custody. On 16th February 2021, he was directed to keep three travel bags, one laptop bag, and one blue-coloured sack bearing the 'Mumbai Indians Logo' in the Innova Car of Accused No. 1. The same blue bag was found in the said Scorpio parked outside the Ambani residence. Another witness namely, Yuvraj Shelar, a Police official, stated that when they went to investigate the explosives incident, the material, including DVRs of CCTV footage, hard drives, were collected without following any legal formalities, on the instructions of Accused No.1. Another person namely one Umang Lodhaya, an employee of Arihant Motors, also stated about Accused No.1 coming to his showroom and demanding to prepare two number plates. Further, the statement of Prakash Howal, another API, assumes vital significance. He narrated on the clout of Accused No.1 and as to how Accused No.1 was brazenly walking into the residence of the then Chief Minister as also that of the Home Minister. He stated that evidence was collected, including CCTV footage and DVRs, etc. On the directions of Accused No. 1, as an investigating officer of these offences, the police failed to seize and/or desisted from preparing any documents as per procedure and did not seize the relevant CCTV footage. Thereafter, on 08th March 2021, all the materials collected, including CPUs and DVRs, that were kept in the Mercedes car, Accused No. 1, along with API Kazi and the said witness, drove by the Freeway to the Bandra Kurla Complex side and stopped at the over-bridge at

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Mithi River. These officers were asked to get out of the car. The Accused then threw all the articles in the Mercedes car into the Mithi River. Later, after his arrest and on his statement of disclosure recorded under Section 27 of the Indian Evidence Act, 1872, the said material was recovered from the Mithi River.

37. Thus, as seen from the statements of the said persons, recorded during the course of investigation, there is strong *prima facie* material to link Accused No.1 with the said offences. It is *prima facie* evident that the Accused was a Police Official (stated to be now terminated from service) with serious charges of blackmail and extortion against him. He was suspended for 16 years. (From March 2004 to June 2020) and thereafter he was eager to redeem and resurrect himself as a 'supercop' and pursue his activities; he appears to have hatched the intricate plot of setting up Mansukh's car as stolen, substituting its number plates, parking it outside the Ambani residence, stuffing the car with explosives, and leaving a threat note in the car. On discovery of the car laden with explosives, material on record indicates that the Accused No.1 portrayed such an act to have been done by a terror outfit by giving publication on the Telegram channel in the name of the terror group, claiming responsibility for the act. The said group immediately disassociated itself from the act by giving a similar publication thereafter. Brandishing the name of the terror outfit clearly indicates that the intent of Accused no.1 was to create terror in the minds of the common man, threatening a

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bomb scare. Then the so-called 'supercop' would step in to offer his protection to the rich industrialists and gradually extort money from them. This entire scheme, albeit it appears akin to something on the celluloid, nevertheless, the consequences of such action amount to commission of serious crimes, inasmuch as it exposes the acts of the Accused and co-Accused, whose principal intent and objective it seems was to create terror in the society, although being persons in uniform and then exploiting such position as uniformed officers by unleashing a reign of terror in the society at large, aimed towards the family of a prominent industrialist.

38. Thus, in our view, the material on record *prima facie* indicates complicity of Accused No. 1 in the commission of the offences with which he is charged. Considering such voluminous material comprising the chargesheet as filed against Accused No. 1, *prima facie,* it appears that Accused No. 1, a police officer far from being in the higher cadre, was able to indulge in these criminal acts by taking help of unsuspecting junior police officials. It is clearly seen that Accused no. 1 was far beyond what an ordinary government servant, with abnormal track record. As an Assistant Police Inspector, he possessed high-end luxury cars and was influential enough to get assigned investigations to himself, in which he was directly involved despite the cases being registered in various jurisdictional police stations. His clout in the police machinery, thus, should not/cannot be undermined. Added to this, his connections with high officials expose his proximity to influential persons. As

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contended on behalf of the NIA, the brazenness and impunity with which he was permitted to have a free run in openly operating an extortion racket, blackmailing hoteliers and bar owners with threats of false raids looming over them, also speaks volumes for his capability to influence witnesses. These are aspects of vital importance the Court needs to consider while dealing with the bail application.

39. We also cannot lose sight of the fact that Accused No. 1 was able to devise a plot by attempting to pressurise Mansukh Mishrilal Hiran into claiming responsibility for parking the Scorpio outside the Ambani residence and, on his refusal to get himself arrested for the same, to get him murdered. This clearly indicates Accused No. 1's propensity to intimidate witnesses and tamper with evidence. Further, it cannot be ruled out that Accused No. 1, being a Police Officer, is likely to have access to witnesses and materials. He was already on bail in another case involving serious charges against him, when he is alleged to have committed the present offences. Thus, prima facie, the appellant's case that he is a habitual offender cannot be discarded.

40. Against the backdrop of the relevant material pointing to the prima facie involvement of Accused No. 1 in the offences as charged, Mr Thorat has addressed at length a plea of delay in commencement of the trial and of prolonged incarceration. On these submissions, we do not agree with Mr Thorat. The material taken cumulatively reflects a clear role attributed to Accused No. 1, in his

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actions having a direct nexus to the unlawful activities attracting the said provisions under the UAPA. We are of the considered view that the prosecution material as it stands crosses the threshold and the statutory embargo prescribed under Section 43D(5) operates with full force.

41. As per the legal principles in relation to bail in offences under the UAPA as discussed hereinabove, the statutory mandate requires the Court to refuse bail in the face of existence of reasonable grounds to believe that the accusation is *prima facie* true. Once this threshold is crossed, the appropriate judicial response is to ensure prioritization and expedition of the case, not to grant bail in disregard of the statutory mandate. The offence carries a sentence of life imprisonment, and incarceration of 5 years cannot be said to be long incarceration in the facts of the present case. In such context, the decision in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Anr***[19] is relevant on two grounds on which the impugned order rests, namely the period of custody undergone and the prospect of a long trial when the Supreme Court observed thus: -

> "14. … the mere fact that the Accused has undergone certain period of incarceration by itself would not entitle the Accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe…"

19 (2004) 7 SCC 528

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42. The Supreme Court has repeatedly held that while considering whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the crime, the gravity of the offence, etc. In ***State of Karnataka vs. Sri Darshan and Ors.***[20] the Supreme Court has reiterated these principles, when it held as under:

> "35. Filing of charge sheet or lengthy list of witnesses does not justify grant of bail.
>
> 35.1. It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.
>
> *****
>
> 35.6. In the present case, the High Court failed to engage with the incriminating material collected during investigation, despite the seriousness of the offence under Section 302 IPC and the allegation of conspiracy. The mere filing of the charge-sheet, the existence of a long list of witnesses, or the possibility of delay in trial, cannot, by themselves, constitute valid reasons to dilute the gravity of the offence or to disregard the case put forth by the prosecution. As repeatedly held by this Court, such factors are not standalone grounds for the grant of bail in heinous offences involving murder. The reasoning adopted by the High Court to justify the grant of bail is, therefore, contrary to settled legal principles."

43. Further, the Supreme Court in ***M/s Netsity Systems Pvt. Ltd. v. The State Govt. of NCT of Delhi*** [21] has held that denial of bail does not mean whittling down pro-liberty principles, but the Courts must be cognizant of applying settled

20 (2026) 8 SCC 223
21 2025 SCC OnLine SC 2079

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principles of law to the facts of specific cases. It was held that in such context, no precedent operates in a vacuum and must be correlated to the extant facts.

44. A plain reading of the impugned Order reveals that the learned Special Judge has given a complete go-bye to the settled principles and parameters in determination of a bail application. The Special Judge has not examined any of the settled criteria. We have noted hereinabove the manner in which the learned Special Judge passed the impugned order; apart from demonstrating his strange approach, including the several contradictions it depicts, certainly cannot be overlooked.

45. The finding as recorded by the learned Special Judge that the criteria for framing of charges requires a lesser degree of satisfaction than a bail application is absolute legal perversity. This is even more true when the learned Special Judge has found prima facie substance in the accusations against Accused No. 1. The learned Special Judge therefore framed charges against Accused No. 1, including under the UAPA. Another observation that liberty granted by this Court to file a fresh bail application indicates that this Court found merit in the Accused's case for bail, revealing the perverse approach of the Special Judge, when the said order passed by this Court, in no uncertain terms, directed that the bail application be decided on its merits, which necessarily was required to be decided in accordance with law. To read the High Court's order as if it was a *carte blanche* to avoid

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looking at any material, which was the material at all relevant times, including when the first bail application of Accused No. 1 was rejected by the learned Special Judge, is an egregiously flawed approach of the learned Special Judge in passing the impugned Order. The impugned order accordingly would imminently deserves to be quashed and set aside.

46. We may also observe that to avoid prolix, we have not discussed certain decisions referred in the aforesaid discussion, considering that they may not be directly relevant.

47. Before parting, we may observe that the argument of prolonged pre-trial incarceration cannot be a singular factor or a sole consideration for bail in the facts of the present case. This, more particularly, in the context of several other considerations as discussed by us, which in our opinion, are germane in considering whether accused No.1 could at all sustain his plea for bail. Liberty as enshrined under Article 21 thus in the facts of the case, would be required to be viewed in a wider perspective in the context of the serious accusations involving offences under the UAPA and the manner in which the provisions of law would mandate such consideration. Further, as urged on behalf of the NIA, the trial is also set to commence.

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48. The aforesaid discussion would *prima facie* demonstrate that there is substantial inculpatory material available in the report filed under Section 173 of the Cr. P.C., which is required to be taken into consideration by the Court in the context of the bail proceedings. Such evidence/materials overwhelmingly demonstrate that there are reasonable grounds for believing, that the accusations against accused no. 1 are *prima facie* true. Also, there is likelihood that in the position and clout as enjoyed by accused no. 1 and with the kind of affluence he wields, enlarging him on bail is likely to adversely affect the trial of the case. This not only be in terms of a reasonable apprehension of the evidence and witnesses being tampered, but also on several other relevant considerations, which are writ large on the record. These are vital considerations in the larger public interest as also in the interest of the State and the Nation in the context of the accusations. Further, the severity and seriousness of the offences, more particularly, in the context when Accused no. 1 stands charged under the provisions of the UAPA cannot be overlooked. *Prima facie* the intention of accused no. 1 was not only to threaten the security and more particularly the economic security of India, with a clear intention to strike a terror or a likely to strike terror, can by no rationale be overlooked in the bail proceedings. We may observe that there is no scope for any citizen and that too a person in uniform, who is supposed to act as a protector of the rights of the citizens, to indulge in such activities, as clearly seen from the

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accusations made against accused no. 1, which are *prima facie* supported by such substantive material and evidence. No citizen of this country much less an industrialist of repute, as in the present case who is contributing to the nation and its economy, can suffer even a remotest threat of a terror. A person who suffers threat of a terror can only imagine its adversities, as created by persons who indulge in these unlawful activities. In the context of bail, if such actions are not dealt strictly, with iron hands the law would mandate, the rule of law itself would be at a peril. Hence, accused no. 1 cannot be enlarged on bail. Granting of bail to accused no. 1 would be against the larger public interest. Thus, looked from any angle as also considering the antecedents of accused no. 1, we are of the firm opinion that the course of justice cannot be thwarted and the process of justice cannot be polluted, as accused no. 1 by no standard can be considered to be an honest public servant. In such context, we may usefully refer to the decision in **Prakash Kadam v. Ramprasad Vishwanath Gupta**[22], wherein in paragraph 26 following observation is made:

> **26.** In our opinion, the High Court was perfectly justified in cancelling the bail granted to the appellant-accused. **The appellant accused are police personnel and it was their duty to uphold the law, but far from performing their duty, they appear to have operated as criminals**. Thus, the protectors have become the predators. As the *Bible* says, "If the salt has lost its flavour, wherewith shall it be salted?", or as the ancient Romans used to say, "Who will guard the Praetorian guards?" (see in this connection the judgment of this Court in *CBI* v. *Kishore Singh* [(2011) 6 SCC 369]
>
> (emphasis supplied)

22 (2011) 6 SCC 189

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49. In the light of the above discussion, we pass the following order:

ORDER

(i) The impugned order dated 29 September, 2026 passed by the learned Special Judge in Bail application (Exhibit 601) filed by respondent no. 2/accused no. 1 in Special Case No. 1090 of 2021 is quashed and set aside.

(ii) The appeal filed by the appellant-NIA accordingly stands allowed.

(iii) Interim Application No. 3559 of 2026, which was not pressed, stands disposed of.

(DR. NEELA GOKHALE, J) (G. S. KULKARNI, J.)

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