



2026:DHC:2317-DB



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

Reserved on: 17.02.2026
Pronounced on: 20.03.2026

+ **CRL.A. 406/2023 & CRL.M.(BAIL) 856/2025**

HARIS NISAR LANGOOAppellant
Through: Ms. Tara Narula and Ms. Priya
Vats, Advocates.
versus

NATIONAL INVESTIGATION AGENCYRespondent
Through: Mr. Gautam Narayan, Senior
Advocate/SPP with Ms. Asmita
Singh, Mr. Shashank Jain,
Mr. Geet Kumar, Mr. Prabhat
Bajpai, Advocates with Insp.
Lokesh.

+ **CRL.A. 408/2023 & CRL.M.A. 13367/2023**

ZAMIN ADIL BHATAppellant
Through: Mr. Jawahar Raja, Ms. Tamana
Pankaj, Ms. Priya Vats,
Ms. Sonal Sarada, Ms. Aditi
Saraswat and Ms. Nitai Hinduja
Advocates.
versus

NATIONAL INVESTIGATION AGENCYRespondent
Through: Mr. Gautam Narayan, Senior
Advocate/SPP with Ms. Asmita
Singh, Mr. Shashank Jain,
Mr. Geet Kumar, Mr. Prabhat
Bajpai, Advocates with Insp.
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CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present criminal appeals have been filed by the appellant(s) under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act') read with Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA'), assailing the Order dated 03.03.2023 passed by the learned Additional Sessions Judge-03, Special Court (NIA), New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court') in SC Case No. 02/2022, titled *NIA v. Tariq Ahmed Dar & Ors.*, whereby the learned Trial Court rejected the bail application(s) filed by the appellant(s) herein.

2. The appellant(s) before this Court are Zamin Adil Bhat (Accused No. 14 before the learned Trial Court) in CRL.A. 408/2023, and Haris Nisar Langoo (Accused No. 15 before the learned Trial Court) in CRL.A. 406/2023.

3. Before this Court, certain submissions have been advanced which are common to both the appeals, particularly on the issue of prolonged incarceration and the plea founded on Article 21 of the Constitution of India. At the same time, each appeal also raises issues specific to the concerned appellant; turning on the role attributed to such appellant; the prosecution material relied upon; and, the findings

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recorded by the learned Trial Court. The present judgment, therefore, first notices the broad factual background of the case and the prosecution narrative as emerging from the FIR and the charge sheets filed pursuant thereto.

CASE OF THE PROSECUTION:

4. The case of the prosecution is that reliable information was received by the Central Government regarding the hatching of a conspiracy, both in the physical realm and in cyberspace, to carry out violent terrorist acts in Jammu & Kashmir (J&K) and other parts of India, including New Delhi. It is alleged that the said conspiracy was orchestrated by hybrid cadres/sleeper cells of various proscribed terrorist organisations, such as, Lashkar-e-Taiba (LeT), Jaish-e-Mohammad (JeM), Hizb-ul-Mujahideen (HM), Al-Badr, and other similar outfits, operating through their affiliated front organisations, including The Resistance Front (TRF), People Against Fascist Forces (PAFF), Muslim Janbaaz Force (MJF), and Mujahideen Ghazwatul Hind (MGH).

5. On the basis of the aforementioned intelligence inputs, the Ministry of Home Affairs, Government of India, issued Order No. 11011/65/2021/NIA dated 10.10.2021, directing the National Investigation Agency (NIA) to take over the investigation. Pursuant thereto, FIR bearing No. RC-29/2021/NIA/DLI (hereinafter referred to as the 'FIR') came to be registered at Police Station NIA, Delhi, on 10.10.2021, under Sections 120B, 121A, 122, and 123 of the Indian

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Penal Code, 1860 (hereinafter referred to as the 'IPC'), and Sections 18, 18-A, 18-B, 20, 38, and 39 of the UAPA.

6. The FIR, as per the record, apart from naming various individual accused persons, also narrates a broad conspiracy allegedly involving Pakistan-based handlers, the Pakistan ISI (intelligence agency), their local operatives, and networks of Over-Ground Workers (OGWs) engaged in radicalisation, recruitment, logistical support, and propaganda activities in furtherance of terrorist objectives.

7. Upon registration of the FIR, an investigation team was constituted by the NIA, which commenced an inquiry into digital footprints, call detail records, social media activity, and ground-level networks allegedly connected with the said conspiracy, as reflected in the charge sheet and the supplementary charge sheets.

8. During the course of the investigation, searches and raids were conducted at multiple locations in Jammu and Kashmir, leading to the detention and subsequent arrest of several suspects, including the present appellant(s), between 21.10.2021 and 22.10.2021, as recorded in the arrest and remand documents.

9. Upon completion of a substantial investigation, the NIA filed its first charge sheet on 08.04.2022 against twenty-six accused persons, including the present appellant(s). Two accused, namely, the accused no. 1, Bashir Ahmed Pir @ Imtiyaz Alam, and the accused no. 2, Imtiyaz Kundoo @ Fayaz Sopore, were shown as absconding.

10. After the filing of the first charge sheet, further investigation continued, culminating in the filing of a supplementary charge sheet

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on 20.03.2023, wherein additional material was placed on record. However, no distinct or new role was attributed to the appellant(s) beyond what had already been alleged in the original charge sheet.

11. In the charge sheet, it is alleged that the investigation revealed that the larger conspiracy was masterminded by the senior leadership of various terrorist organisations operating from Pakistan. The conspiracy was allegedly conceived after the revocation of Article 370 of the Constitution of India, with the objective of re-igniting terrorist activities in Jammu & Kashmir as well as in other parts of India. In furtherance of this objective, a central coordinating body known as the “United Jihad Council” (UJC) was allegedly established in collaboration with other proscribed terrorist organisations. It is further alleged that the entire operation was orchestrated under the guidance and support of Pakistan’s Intelligence Agency, namely, the Inter-Services Intelligence (ISI). The investigation is stated to have revealed the formation of various “coordination groups” as an integral component of the conspiracy, which were tasked with planning and strategising terrorist operations in the Kashmir Valley.

12. It is alleged that the aforesaid terrorist organisations, in collaboration with their facilitators and leadership based in Pakistan, and along with their OGWs operating within India, were actively engaged in influencing and radicalising vulnerable local youth. The object of such activities was to recruit and train these individuals for participation in terrorist acts, including imparting training in the handling of weapons, ammunition, and explosive substances.

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13. The investigation, as per the charge sheet, further revealed the alleged existence of newly floated frontal organisations purportedly created to mask the activities of banned terrorist outfits and to recruit local youth as OGWs and “hybrid cadres”. It is further alleged that these coordination groups and hybrid cadres comprised individuals who were ostensibly engaged in lawful activities but, in reality, functioned as OGWs, facilitating and executing small-scale terrorist acts, including targeting civilians and security personnel. These hybrid cadres were allegedly groomed to carry out low-intensity attacks, including targeted killings of minorities, political workers, and security personnel, with the object of spreading fear, unrest, and terror in the Kashmir Valley and elsewhere, particularly in the aftermath of the revocation of Article 370 of the Constitution of India.

14. As per the prosecution case, the *modus operandi* involved the extensive use of encrypted communication platforms, social media channels, online propaganda groups, and digital content to radicalise impressionable youth and to glorify terrorist ideology, fallen militants, and the concept of violent jihad.

15. It is alleged that Pakistan-based handlers issued directions through cyberspace to local operatives and OGWs for the dissemination of propaganda material, identification of potential recruits, and logistical facilitation of terrorist activities.

16. The prosecution alleges that the appellant(s) were not mere passive associates but were active participants in both the online and offline propaganda machinery of the alleged terrorist conspiracy.

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**SPECIFIC ALLEGATIONS AGAINST THE APPELLANT
NAMELY ZAMIN ADIL BHAT (THE ACCUSED NO. 14):**

17. Insofar as the appellant/accused no. 14 is concerned, the prosecution alleges that he was a highly radicalised individual who actively propagated videos, images, and audio material related to the Islamic State (IS) and Islamic State Jammu and Kashmir (ISJK) among his contacts in order to motivate and radicalize them to join Jihad for the cause of Kashmir. He used to don the badge of Islamic State. He also was in contact with several followers of ISJK and used to receive images with regard to establishment of Wilayat-Al-Hind. He along with Accused No. 15/Haris Nisar Langoo used to attend classes of one Bashir Moulvi @ Bashir Chouhan, who used to deliver radicalizing lectures. He was also a member of several online propaganda groups run by Pakistan based handlers of proscribed terrorist organisation on directions of Accused Nos. 1 and 2, that is Bashir Ahmed Pir @ Imtiyaz Alam and Imityaz Kundoo @ Fayaz Sopore respectively.

18. According to the prosecution, the appellant also functioned as an OGW and hybrid cadre for the frontal organisation of proscribed terrorist organization–TRF, extending logistical and ideological support to active militants. It is alleged that several incriminating images in the form of threat posters, clicked images of pasted posters and audios/videos venerating fallen terrorists have been recovered from the digital devices seized from the possession of the Accused Nos. 14 and 15.

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**SPECIFIC ALLEGATIONS AGAINST THE APPELLANT
NAMELY HARIS NISAR LANGOO (THE ACCUSED NO. 15):**

19. With respect to the appellant/accused no. 15, the prosecution alleges that he was closely associated with the other appellant, namely Zamin Adil Bhat, and other co-accused, and acted as a facilitator for the dissemination of radical content through digital platforms.

20. It is specifically alleged that the appellant operated a YouTube channel titled "No Compromise on Tawheed", on which lectures of one Bashir Moulvi @ Bashir Chouhan were uploaded after being edited to incorporate Islamic State insignia and symbols. The prosecution asserts that the appellant, in association with the other appellant, namely Zamin Adil Bhat, used these videos to motivate and radicalise local youth towards extremist ideology and violent jihad.

21. As per the investigation, the appellant was also involved in motivating and radicalising local youth and functioned as a staunch OGW and hybrid cadre for TRF, thereby facilitating terrorist objectives.

22. The charge sheet records that several incriminating images, threat posters, screenshots of pasted posters, and audio-visual material venerating slain terrorists were recovered from the digital devices seized from the appellant(s).

**BAIL APPLICATIONS OF THE APPELLANT(S) BEFORE THE
LEARNED TRIAL COURT AND THE ORDER PASSED
THEREON:**

23. Applications for regular bail filed by the appellant(s) were considered and dismissed by the learned Trial Court by Order dated 03.03.2023.

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24. The learned Trial Court, as reflected in the order on record, observed that the case pertains to a serious terrorist conspiracy and that the allegations against the appellant(s), *prima facie*, attract the embargo contained in Section 43-D(5) of the UAPA.

25. Aggrieved by the Order dated 03.03.2023 passed by the learned Trial Court rejecting their bail applications, the present appellant(s) have approached this Court by way of the present criminal appeals under Section 21(4) of the NIA, read with Section 43-D(5) of the UAPA.

26. In the meantime, the learned Trial Court, *vide* Order dated 30.07.2024, framed charges against the appellant(s) under Sections 120B and 121A of the IPC and Section 18 of the UAPA, while discharging them of offence under Sections 20, 38, 39 and 40 of UAPA.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE APPELLANT(S):

27. Mr. Jawahar Raja, the learned counsel appearing for the appellant, namely Mr. Zamin Adil Bhat, and Ms. Tara Narula, the learned counsel appearing for the appellant, namely Mr. Haris Nisar Langoo, at the outset, jointly submitted that the delay in the trial constitutes a ground for the grant of bail to the respective appellant(s). They submitted that the appellant(s) have been in custody since 21/22.10.2021. As per the charge sheets, the prosecution proposes to examine approximately 359 witnesses, out of whom only 12 have been examined thus far. At this pace, they contend, the recording of



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evidence alone is likely to take more than 38 years. The appellant(s) have already undergone custody for more than four years. They submitted that although the prosecution has stated that the number of witnesses would be curtailed to 200, with 120 witnesses being formal in nature, no formal application to that effect has been filed thus far.

28. They further submitted that when the bail applications of the appellant(s) were earlier rejected, charges were yet to be framed. It is only by a subsequent Order dated 30.07.2024, that charges have been framed against the appellant(s) under Sections 120B and 121A of the IPC and Section 18 of the UAPA Act. They contend that, from the material placed on record by the prosecution, no offence under any of the aforesaid provisions is made out against the appellant(s).

29. They further submitted that several co-accused, including accused no. 13/Mohd. Manan Dar @ Manan, accused no. 10/Mateen Ahmed Bhatt, and accused no. 16/Rauf Ahmed Bhatt, have been granted bail, while accused no. 26/Adil Ahmad Ward has been discharged by the learned Trial Court.

30. They also took us through the statements of the material witnesses, namely, Mr. Shabir (PW-276), Mr. Tanzeel Yousuf Shah (PW-285), and protected witnesses X-8 and X-10. Of these, witness X-8 has already been examined before the learned Trial Court on 30.04.2025, and has not identified the accused no. 14 as being the person with whom he was in contact. Additionally, with regard to accused No. 15, the learned counsel referred to X-14, PW-309 (Aadil Ayoub Sofi), and PW-310 (Muis Ahmad Mir) to submit that the

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evidence relied upon by the prosecution fails to demonstrate that the appellant(s) were either members of a proscribed terrorist organisation or had any intention to further the activities of such an organisation. They contended that no overt act has been attributed to the appellant(s), nor is there any material on record to suggest that they intended to undertake any violent act. They further submit that the appellant(s) have been implicated merely because they were members of certain WhatsApp groups in which objectionable photographs or videos were shared by other members. However, there are no allegations that the appellant(s) either created such groups or shared any objectionable content therein.

31. It was further submitted that vague allegations have been made describing the appellant(s) as hybrid cadres or 'lone wolf operators' who allegedly associated themselves with online propaganda groups floated by various Pakistan-based handlers of proscribed terrorist organizations at the instance of accused nos. 1 and 2. It is also alleged that the appellant(s) were followers of one Bashir Moulvi @ Bashir Chouhan, who purportedly delivered radicalizing lectures that were thereafter shared by the appellant(s). However, insofar as the appellant Haris Nisar Langoo (accused no. 15) is concerned, there is no evidence to substantiate this allegation. As regards the appellant Zamin Adil Bhat (accused no. 14), the only material relied upon is the alleged sharing of such content with PW-276, who, according to the learned counsel, appears to have instigated the appellant into sending him a video of Bashir Moulvi @ Bashir Chouhan.

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32. It was also submitted that the prosecution has relied upon Call Detail Records (CDRs) to show that the appellant(s) were in contact with an alleged TRF commander, namely, Mohd. Abbas Sheikh, through phone numbers used by accused No. 3, Bilal Ahmad Mir, and his wife. However, the CDRs merely reflect three calls between accused no. 14 and accused no. 3 on 23.06.2021, lasting 97 seconds, 49 seconds, and 7 seconds, respectively, between 08:25 P.M. and 08:57 P.M., and five calls between accused no. 15 and accused no. 3, lasting 35, 9, 7, 21, and 23 seconds, respectively. According to the learned counsels, apart from being too brief to discuss or hatch any conspiracy, these calls do not indicate any frequency, pattern, or continuity suggestive of planning for any unlawful act. They further submitted that the appellant(s) were working as delivery boys and may have come into contact with accused no. 3 in connection with such deliveries.

33. It was also contended that the prosecution has relied upon the cell location records placing the appellant(s) in the vicinity of accused no. 3, without considering that the appellant(s) are residents of Khanyar, District Srinagar, Jammu and Kashmir and, therefore, their presence in the said area is natural. In any event, the mere fact that an accused/appellant was located within the coverage area of the same cell tower is insufficient to establish a meeting for the purpose of a terror conspiracy or support to any terrorist organization.

34. Lastly, it was urged that the mere framing of charges does not disentitle an accused from being granted bail, particularly when the

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conditions stipulated under Section 43D(5) of the UAPA are not attracted.

35. In support of their respective submissions, the learned counsels for the appellant(s) have placed reliance on the following judgments:-

- i. ***Kalp Nath Rai v. State***, (1997) 8 SCC 732.
- ii. ***Suresh Bhudharmal Kalani v. State of Maharashtra***, (1998) 7 SCC 337.
- iii. ***Shreya Singhal v. Union of India***, (2015) 5 SCC 1.
- iv. ***S. Rangarajan v. P. Jagjivan Ram & Ors.***, (1989) 2 SCC 574.
- v. ***Balwant Singh & Anr. v. State of Punjab***, 1995 (3) SCC 214.
- vi. ***Bilal Ahmed Kaloo v. State of A.P.***, (1997) 7 SCC 431.
- vii. ***Thwaha Fasal v. Union of India***, 2021 SCC OnLine SC 1000.
- viii. ***Vernon v. State of Maharashtra & Anr.***, 2023 SCC OnLine SC 885.
- ix. ***Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra & Anr.***, (2005) 5 SCC 294.
- x. ***Jalaluddin Khan v. Union of India***, 2024 INSC 604.
- xi. ***Gurwinder Singh v. State of Punjab & Anr.***, 2024 SCC OnLine SC 109.
- xii. ***NIA v. Zahoor Ahmed Shah Watali***, (2019) 5 SCC 1.
- xiii. ***Athar Parwez v. Union of India***, 2024 INSC 995.
- xiv. ***Yedela Subba Rao & Anr. v. Union of India***, (2023) 6 SCC 65.
- xv. ***Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors.***, (1994) 4 SCC 602.
- xvi. ***State NCT of Delhi v. Navjyot Sandhu***, (2005) 11 SCC 600.
- xvii. ***To issue certain guidelines regarding inadequacies and deficiencies in Criminal Trials, In re***, 2017 SCC OnLine SC 298.

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- xviii. *To issue certain guidelines regarding inadequacies and deficiencies in Criminal Trials, In re v. State of A.P. Ors.*, (2021) 10 SCC 598.
- xix. *P. Ponnuswamy v. State of T.N.*, 2022 SCC OnLine SC 1543.
- xx. *State (By NCB) Bangaluru v. Pallulabid Ahmad Arimutta & Anr.*, (2022) 12 SCC 633.
- xxi. *Anter Singh v. State of Rajasthan*, (2004) 10 SCC 657.

36. Ms.Tara Narula, the learned counsel appearing for the appellant/Haris Nisar Langoo, further submitted that the appellant is suffering from cervical spondylosis and that his medical condition has deteriorated during the prolonged period of incarceration, causing irreparable harm to his health. It was contended that on this ground alone, the appellant deserves to be released on bail.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL/SPP ON BEHALF OF THE RESPONDENT:

37. On the other hand, Mr. Gautam Narayan, learned Senior Counsel/SPP appearing for the respondents, submitted that the appellant(s) have failed to make out a case for grant of bail by satisfying the conditions stipulated under Section 43D(5) of the UAPA. He submits that the said court provision imposes a statutory bar on the release of a person accused of offences under Chapter IV and/or Chapter VI of the UAPA if, upon a perusal of the case diary and the charge sheet, there are reasonable grounds for believing that the allegations against such person are *prima facie* true. Placing reliance on the judgments of the Supreme Court in *Zahoor Ahmad Shah Watali* (supra); *Gurwinder Singh* (supra); and, *Gulfisha Fatima v.*

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State (GNCTD), 2026 INSC 2, he submitted that the appellant(s) are not entitled to be released on bail.

38. He also took us through the material relied upon by the respondent/prosecution in support of its allegation(s) against the respective appellant(s). Insofar as the appellant Zamin Adil Bhat (accused no. 14) is concerned, he specifically relied upon the scrutiny report of the digital devices seized from the said accused, which allegedly contained images referring to India as an “occupier”; material glorifying slain militants associated with TRF, including messages forwarded by accused no. 14; photographs of accused no. 14 wearing a badge of the Islamic State; and several videos of IS fighters recovered from his digital devices. He further relied upon the CDR analysis reports showing calls made by accused no. 14 to accused no. 3 and indicating their close proximity based on cell tower location data. He also referred to the statements of various witnesses, including PW-276, PW-285, and protected witnesses X-8 and X-10, insofar as accused no. 14 is concerned.

39. As regards the appellant Haris Nisar Langoo (accused no. 15), the learned Senior Counsel/SPP again drew our attention to the scrutiny report of the digital device seized from him, which, *inter alia*, allegedly contained a TRF poster threatening supporters of India; images exhorting locals to take up jihad; images depicting the Indian subcontinent as ‘Ghazwa-e-Hind’, a term used by IS; images of IS terrorists; and posters advocating the ideology of IS. He also relied upon the CDR analysis report to show that accused no. 15 had made

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five calls to accused no. 3 and was shown to be in close proximity to him based on cell tower location data. Additionally, he placed reliance on the statements of various witnesses earlier referred to by learned counsel for the appellant(s).

40. He submitted that charges have already been framed against the appellant(s). He further submitted that, for invoking Section 18 of the UAPA, it is not necessary for the prosecution to establish the actual involvement of the appellant(s) in a specific terrorist act under Section 15; even acts such as planning, coordination, or mobilization for a terrorist act are sufficient to attract Section 18. He contended that the judgments relied upon by learned counsel for the appellant(s) are not applicable to the facts of the present case.

ANALYSIS AND FINDINGS:

41. We have considered the submissions made by the learned counsels for the parties and have perused the record as well as the judgments relied upon by the learned counsels for the parties.

42. At the outset, we may deal with the common submission urged by Mr. Jawahar Raja and Ms. Tara Narula on behalf of the appellant(s) regarding the delay in trial and the long period of incarceration of the appellants.

43. At the outset, we would first note that charges have already been framed against the appellant(s) under Sections 120B and 121A of the IPC and Section 18 of the UAPA by the learned Trial Court *vide* Order dated 30.07.2024. Presently, the said Order has not been challenged by either party, with accused no. 15 having withdrawn his

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challenge on the ground of maintainability. Though Ms. Narula submits that the appellant is in the process of availing of his right to challenge the above order, we shall proceed to consider the present appeals keeping in view the aforesaid Order passed by the learned Trial Court.

44. The claim for being released on bail during trial, is to be considered on the anvil of Section 43D of UAPA, which reads as under:

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

xxxxx

(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.

.....”

45. Most recently, in *Gulfisha Fatima* (supra), the Supreme Court considered, *inter alia*, the statutory framework of Section 43D(5) of the UAPA and the scope of judicial inquiry at the stage of grant of bail, and held as under:

“80. From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. First, the provision embodies a deliberate legislative



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

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

- i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;
- ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and
- iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full- fledged trial.

82. Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach



preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.”

46. The Court, while further analysing Sections 15 and 18 of the UAPA for the consideration of an application under Section 43D(5) of the UAPA, held as under:

“90. Read together, Sections 15 and 18 disclose a legislative design wherein Section 15 defines the nature of acts which Parliament has characterised as terrorist acts, while Section 18 ensures that criminal liability is not confined only to the final execution, but extends to those who contribute to the commission of such acts through planning, coordination, mobilisation, or other forms of concerted action. Whether particular conduct ultimately attracts Section 15 directly, or Section 18 read with Section 15, depends upon the role attributed and the statutory ingredients alleged to be satisfied.

91. At the stage of consideration under Section 43D(5), the Court is not required to finally classify the conduct or determine the precise provision under which liability would ultimately arise. The inquiry is confined to whether, on the prosecution material taken at face value, there are reasonable grounds for believing that the accused’s conduct bears a prima facie nexus to a terrorist act as defined under the Act, whether as a direct participant or as a conspirator or facilitator.”

47. On the question of delay in trial and its effect on an application filed by the accused seeking bail, the Supreme Court explained that Article 21 provides not an absolute but a correlated right. All accused



are not to be treated identically; their respective roles in the alleged conspiracy must be considered. It must be examined what role is ascribed to them by the prosecution, how the same fits within the statutory ingredients, and whether continued detention would serve a legitimate purpose recognised by law. We quote from the judgment as under:

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

102. The statutory restrictions under special enactments do not preclude the Court from recognising distinctions between accused persons based on the quality of material, the nature of involvement, and the necessity of further detention.

103. At this stage, the Court must be careful not to confuse two distinct legal exercises. One is the determination of criminal liability, which belongs to trial. The other is the regulation of personal liberty pending trial,



which is the limited concern of bail. The law of conspiracy explains how several persons, acting at different levels and at different points of time, may be bound together by a common design. That doctrine answers the question of liability. It does not answer, by itself, the separate question of how long and on what basis the liberty of each individual may be restrained before guilt is proved. Bail adjudication therefore necessarily proceeds on a different plane. It requires the Court to look at what is attributed to each accused, how that attribution fits within the statutory ingredients, and whether continued detention, at that stage, serves a legitimate purpose recognised by law. This exercise does not dismantle the prosecution case of conspiracy, nor does it rank culpability. It merely ensures that pre-trial detention does not become indiscriminate or automatic, and that statutory restraint operates with reason, proportion, and fidelity to individual attribution. Seen thus, differentiation is not an exception to conspiracy law, but a constitutional discipline imposed upon the exercise of bail jurisdiction.”

48. Keeping in view the above parameters, we shall now consider the allegations of the prosecution against the appellant(s) and juxtapose the same with the period of incarceration they have already undergone and are likely to undergo further in case they are not released on bail.

49. In the present appeals, as would be evident from the charge sheet, the order on charge, and the submissions of the learned senior counsel appearing for the respondents, the allegations against the



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appellant(s) are that they were part of social media groups where anti-national messages propagating terrorism were being shared. However, there is no allegation of the appellant(s) being the creators of these groups or of sharing any objectionable material therein.

50. There are also allegations that the appellant(s) were OGWs who were instigating youth to join terrorism by sharing videos, including videos of slain IS terrorists, in respect of which statements of various witnesses have been relied upon. The learned counsel for accused no. 14 has also taken us through the WhatsApp messages exchanged between accused no. 14 and PW-276, which would *prima facie* show that it was PW-276 who was instigating accused no. 14 to share the videos and images, a matter that shall fall for deeper consideration at trial.

51. There is also material indicating that the appellant(s) were in touch with accused no. 3, as reflected in the CDR analysis. However, the calls between accused no. 14 and accused no. 3 were only three in number, lasting 97, 49, and 7 seconds respectively, while accused no. 15 made five calls to accused no. 3, lasting 35, 9, 7, 21, and 23 seconds respectively. The learned counsels for the appellants have urged that the short duration of the calls are insufficient to establish any shared criminal purpose or conspiratorial nexus. It has been urged that the appellant(s), being delivery boys by occupation, may plausibly have come in contact with accused no. 3 in connection with such deliveries, and the prosecution has not placed any material on record to conclusively rule out such an innocent explanation. The plea

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of the learned counsels for the appellants would again have to be tested in trial, however, for the purpose of the present appeal, cannot be completely brushed aside as being fanciful or absolutely improbable.

52. Similarly, the prosecution has relied upon cell tower location data to show the proximity of the appellant(s) to accused no. 3. However, the appellant(s) are residents of Khanyar, District Srinagar, and their presence in the said area is claimed to be natural. In any event, mere presence within the range of the same cell tower is by itself insufficient to establish a meeting for the purpose of a terror conspiracy. The consideration of this evidence along with other pieces of evidence that may unearth in the course of the trial, is a matter to be considered by the learned Trial Court. For the purposes of the present appeal, suffice it is to say that the appellants, given their long period of incarceration and the role attributed to them by the prosecution, have been able to meet the test laid down by the Supreme Court in *Gulfisha Fatima* (supra) for being released on bail.

53. As regards the material found on the digital devices of the appellants, which may even be propagating anti-national activities, in our view, the same may not justify the continuation of the prolonged detention of the appellants at the trial stage. It is not the case of the prosecution that the appellants are the creators of this content or had further disseminated this content to others. We are guided by the observations of the Supreme Court in *Thwaha Fasal* (supra), wherein the Supreme Court, while dealing with UAPA bail matters, held that

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sympathy for a cause, or even the possession of literature and digital content associated with a banned organization, does not by itself constitute membership of such organisation or active participation in its terrorist activities, absent a demonstrated nexus to actual terrorist acts. The distinction between ideological alignment and operational participation is constitutionally significant, and must be borne in mind while applying the *prima facie* standard under Section 43D(5) of the UAPA to the specific facts and material attributed to each of the appellant(s). In this regard, we may usefully draw support from the judgment of the Supreme Court in *Vernon* (supra).

54. Most significantly, witness X-8, who was one of the key prosecution witnesses relied upon to establish the role of accused no.14 (Zamin Adil Bhat) in radicalising and instigating youth towards terrorism through the sharing of videos and extremist content, upon examination before the learned Trial Court on 30.04.2025, did not identify accused no. 14 as the person who shared such material with him or instigated him. While this Court is not conducting a mini-trial and the weight of this evidence remains a matter for the learned Trial Court to assess finally, it is nonetheless a relevant factor in the present inquiry, particularly as mandated by Section 43D(5) of the UAPA and as expounded in *Gulfisha Fatima* (supra).

55. We must also remain mindful of the fact that though it has been submitted by the learned Senior Counsel for the respondents that, pursuant to certain orders passed by the Supreme Court in SLP (Crl.) No. 83/2024, titled *Suhail Ahmad Thokar v. National Investigation*

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Agency, the list of witnesses to be examined at trial has been curtailed and, therefore, the trial is not likely to take long, in our view, even with the curtailed number of witnesses, the trial is still likely to take a considerable amount of time to conclude. We, therefore, are of the view that taking into consideration the allegations against the appellant(s), their continued detention may amount to a violation of their right under Article 21 of the Constitution of India. The appellant(s) have already undergone prolonged incarceration of around 4 years and 4 months, without any certainty of the trial concluding within a reasonable time. In our considered opinion, and keeping in view the role assigned to the appellant(s), the continued detention of the appellant(s) at this stage would not serve the ends of justice.

56. Insofar as the health condition of appellant/Haris Nisar Langoo (accused no. 15) is concerned, it has been brought on record that he is suffering from cervical spondylosis, a condition that has reportedly deteriorated during the period of his incarceration. While this Court does not treat medical grounds as independently decisive in cases governed by Section 43D(5) of the UAPA, the state of health of an undertrial prisoner is nonetheless a relevant consideration in the overall assessment of rights under Article 21 of the Constitution of India. Prolonged pre-trial detention of a person whose alleged role is predominantly digital and non-violent in nature, and who is additionally suffering from a documented ailment, further tilts the

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balance in favour of conditional release rather than continued incarceration.

57. We are also influenced by the fact that certain co-accused, that is accused no. 13 (Mohd. Manan Dar @ Manan), accused no. 10 (Mateen Ahmed Bhatt), and accused no. 16 (Rauf Ahmed Bhatt), having similar allegations against them, have been granted bail by the learned Special Court itself, while accused no. 26 (Adil Ahmad Ward) has been discharged altogether.

58. While having found and said the above, this Court is conscious that the grant of bail in matters under the UAPA must be accompanied by stringent and carefully crafted conditions, so as to ensure that the legitimate interests of national security and the integrity of the trial process are not compromised. The conditions imposed hereinbelow are therefore calibrated to address these concerns, while also ensuring that the appellant(s) are not subjected to pre-trial detention that has effectively become punitive given the projected duration of trial and the limited role attributed to them in the charge sheet.

59. Keeping in view the above, the Impugned Order is hereby set aside.

60. The appellant(s) are directed to be released on bail, subject to their furnishing personal bail bonds of Rs.50,000/- with two sureties of like amount each to the satisfaction of the learned Trial Court, and subject to the following conditions:-

- i. The appellant(s) shall not travel out of the country

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without the prior permission of the learned Trial Court.

ii. The appellant(s) shall surrender their passports, if any, before the learned Trial Court. In case they do not hold a passport, an affidavit to that effect shall be filed;

iii. The appellant(s) shall furnish their current residential addresses, contact numbers, and e-mail addresses to the Investigating Officer as well as to the learned Trial Court. They shall use only one mobile phone and/or one landline number during the course of trial. Details of these numbers shall be provided to the Special Public Prosecutor, and the mobile phone shall always be kept in the switched-on mode. They shall not change their place of residence or contact particulars without giving at least seven days' prior written intimation to the Investigating Officer and the learned Trial Court;

iv. The appellants shall personally appear on every Monday between 10:00 A.M. and 12:00 Noon, before the Station House Officer, Local Police Station, and mark their attendance. The Station House Officer shall maintain a separate register of attendance in respect of each of these appellant(s) and shall furnish a monthly compliance report to the learned Trial Court, which shall be placed on the main record of the case;

v. The appellant(s) shall not directly or indirectly contact, influence, intimidate, or attempt to contact any witness or any person connected with the proceedings, nor shall they associate with or participate in the activities of any group or organization



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linked to the subject matter of the present FIR/final report;

vi. The appellant(s) shall not join any WhatsApp group or other social media platforms where anti-national material is uploaded or circulated or propagated. They shall themselves also not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise. They shall also furnish an undertaking to this effect before the learned Trial Court;

vii. The appellant(s) shall fully cooperate with the trial and shall appear on every date of hearing before the learned Trial Court unless exempted by the learned Trial Court, and they shall not exhibit any conduct that has the effect of delaying the proceedings; and,

viii. The appellant(s) shall not make any comment in the media about the present case or their role in the case.

61. In the event of the appellant(s) violating any of the conditions mentioned above, the prosecution will be at liberty to seek cancellation of bail granted to the appellant(s).

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

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

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64. The appeals along with the pending applications are disposed of in the above terms.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

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