

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CrIa (D) 53/2025
CrIM (971/2025)**

Mohammad Rafiq Rather

... Petitioner/Appellant(s)

Through: Mr. Shabir Ahmad Bhat, Advocate

V/s

UT of J&K and another

... Respondent(s)

Through: Ms. Naubahar Khan, Assisting Counsel with
Ms. Maha Majeed, Assisting Counsel

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
23-12-2025**

Per Sanjay Parihar J'

1. This appeal under Section 21(4) of the National Investigation Agency Act is directed against order dated 19.03.2025 passed by the learned Special Judge (Designated Court under the NIA Act), Sopore, Baramulla (hereinafter referred to as "*the trial court*"), whereby the appellant, who is facing prosecution in FIR No. 35/2024 registered at Police Station Baramulla for offences under Sections 13 of the Unlawful Activities (Prevention) Act, 1967, Sections 148, 149, 188, 336 IPC and Section 3 of the Jammu & Kashmir Public Property (Prevention of Damage) Act, 1985, was denied the concession of bail.
2. The impugned order is primarily assailed on the ground that the trial court has erroneously invoked the rigours of Section 43-D (5) of the UAPA, despite the admitted position that the appellant has been charged

only under Section 13 of the Act, which does not fall within Chapters IV or VI of the UAPA, rendering Section 43-D (5) inapplicable.

3. Learned counsel for the appellant submits that investigation stands concluded and the charge sheet has already been filed. It is contended that the appellant is innocent and has been falsely implicated merely on account of his presence in the jail premises. It is further submitted that at the relevant time, the appellant was already lodged in District Jail, Baramulla in connection with another case, in which he was subsequently acquitted and released on 12.04.2024. According to learned counsel, the appellant was called by Police Station Hajin and thereafter handed over to Police Station Baramulla, where he was formally arrested in the present case.
4. It is urged that the alleged incident dated 03.02.2024 pertains to unrest inside the jail following the death of a fellow inmate, with which the appellant had no direct or specific role. It is contended that despite the incident having taken place in February 2024, no steps were taken to arrest the appellant until he was acquitted in the earlier case, which reflects lack of urgency and lends credence to the plea of false implication.
5. The trial court rejected the bail application primarily on the premise that the case was covered by Section 43-D of the UAPA and that the accusations against the appellant were grave in nature, involving raising of anti-national slogans, violence, and damage to public property inside the jail premises. It was observed that a prima facie case existed against the appellant, disentitling him to bail.

6. Per contra, learned counsel for the respondent submits that the allegations are serious and that the trial court has exercised its discretion judiciously. It is argued that bail is not a matter of right and that no interference is warranted with the impugned order.
7. We have given our anxious consideration to the rival submissions and perused the material on record. The prosecution case, in brief, is that on 03.02.2024 at about 12:15 hours, one inmate, namely Mohammad Rafiq Khan, who was lodged in District Jail, Baramulla, suffered an ailment and was shifted to GMC Baramulla, where he was declared brought dead. It is alleged that upon learning of the death, the appellant along with other inmates formed an unlawful assembly, raised anti-national slogans, indulged in stone pelting, and damaged CCTV cameras and other government property within the jail premises, leading to registration of the FIR.
8. Admittedly, as many as 33 inmates have been arrayed as accused in connection with the said incident. However, it is not in dispute that the only offence under the UAPA for which sanction has been accorded against the appellant is under Section 13, vide Government Order S.O. 04 dated 08.01.2025. Section 13 of the UAPA does not fall within Chapters IV or VI of the Act. Consequently, the statutory embargo contained in Section 43-D (5) of the UAPA is not attracted.
9. This Court, in *UT through P/S Chanpora v. Sameer Ahmad Koka* (CrLM No. 1636/2023), has already held that there is no statutory bar on grant of bail where the accused is charged solely under Section 13 of the

UAPA. In such cases, the bail application is required to be examined in accordance with the provisions of the Code of Criminal Procedure.

10. Examined from that perspective, the embargo under Section 437 CrPC applies only in cases involving offences punishable with death or imprisonment for life, or where the accused has previous convictions of the nature specified therein. In the present case, Section 13 of the UAPA, as well as the offences under Sections 148, 149, 188, 336 IPC, are either bailable or do not attract any statutory prohibition. The offence under Section 3 of the PPD Act carries a maximum punishment of seven years and also does not create an absolute bar to grant of bail.
11. While the appellant cannot claim bail as a matter of right, it is equally well settled that pre-trial detention cannot be permitted to assume the character of punishment. The charge sheet has already been filed; the appellant has been in custody for about one year; and there is a presumption of innocence in his favour until proven guilty. It has also not been disputed that some of the co-accused involved in the same incident have already been granted bail.
12. The argument of the prosecution that the appellant is a habitual offender and indulged in violence while in custody, though not entirely insignificant, loses much of its force in view of the fact that no urgency was shown to arrest him immediately after the incident, despite his continuous incarceration at the relevant time. The appellant was arrested in the present case only after his release in the earlier case, which lends support to the contention that his custodial detention was not indispensable for investigation.

13. In these circumstances, continued incarceration of the appellant would be unjustified and contrary to the settled principles governing grant of bail.
14. For the foregoing reasons, we are of the considered view that the trial court has failed to exercise its discretion judiciously and has erroneously invoked Section 43-D (5) of the UAPA, which has no application to the facts of the present case.
15. Accordingly, the appeal is allowed. The impugned order dated 19.03.2025 is set aside. The appellant is directed to be released on bail upon furnishing a personal bond in the sum of ₹1,00,000/- along with one surety of the like amount, to the satisfaction of the trial court, subject to such further conditions as the trial court may deem fit to ensure the smooth conduct of the trial.
16. A copy of this order shall be forwarded to the trial court for compliance. It is clarified that nothing stated herein shall be construed as an expression on the merits of the case, and the trial court shall proceed independently in accordance with law.
17. The appeal with connected CMP is disposed of accordingly

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Srinagar
23-12-2025

N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: No