



IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRA-D-1568-2024

Pritpal Singh Batra @ Giffy Batra ..... Appellant

versus

State of Punjab ..... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL  
HON'BLE MS. JUSTICE LAPITA BANERJI

|    |                                                                                                      |                |
|----|------------------------------------------------------------------------------------------------------|----------------|
| 1. | The date when the judgment is reserved                                                               | 06.11.2025     |
| 2. | The date when the judgment is pronounced                                                             | 17.11.2025     |
| 3. | The date when the judgment is uploaded on the website                                                | 18.11.2025     |
| 4. | Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced | Full           |
| 5. | The delay, if any, of the pronouncement of full judgment, and reasons thereof                        | Not applicable |

Present : Mr. P. S. Ahluwalia, Senior Advocate, with  
Mr. Jasraj Singh, Advocate, for the appellant.

Mr. Himanshu Raj, Addl. A. G., Punjab.

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**DEEPAK SIBAL, J.**

1. Through the instant appeal the appellant challenges the order dated 22.12.2023, passed by the Additional Sessions Judge, Patiala, (for short, the Trial Court), declining regular bail to the appellant in FIR No.35 dated 06.06.2022 registered at Police Station Bakshiwala, District Patiala, under Sections 25(7) and 25(8) of the Arms Act, 1959 as amended by Arms (Amendment) Act, 2019 read with Sections 411, 489, 212, 216 IPC, Sections 13, 16, 20 of the Unlawful Activities (Prevention) Act, 1967 (for short, the UAPA) (hereinafter referred to as the FIR in

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question).

### **The Prosecution's case**

2. On 06.06.2022, when ASI Baljeet Singh was present at Pulli Sua (small bridge) in Village Lachkani, Patiala, he received a secret information that Sukhjinder Singh @ Harman @ Polo, Gagandeep Singh @ Teja and Kamaldeep Singh @ Kamal Alhoran, who were declared proclaimed offenders, were roaming around in town with illegal weapons. On the basis of such information, the FIR in question was lodged against the aforesaid three persons. On 07.06.2022, ASI Prem Chand received further information with regard to the presence of Sukhjinder Singh @ Harman @ Polo and Gagandeep Singh @ Teja near Satsang Ghar, Beas and on reaching there, ASI Prem Chand found those persons over there. On being searched, Sukhjinder Singh @ Harman @ Polo was found in possession of one 9 mm pistol alongwith four live cartridges and from Gagandeep Singh @ Teja a .32 bore revolver alongwith three live cartridges were recovered. These two persons were then arrested and their interrogation revealed that the .32 bore revolver recovered from Gagandeep Singh @ Teja had been given to him by Manjeet Singh @ Satta, who was a resident of Village Manakwala, Police Station Bhadson, District Patiala and that such revolver had been given to the said Manjeet Singh @ Satta by one Shiv Dayal @ Kaka, who was a resident of Nabha, District Patiala and that Shiv Dayal @ Kaka had got the revolver from his friend Simran Kaur, who was also a resident of Nabha. Thereafter, Manjeet Singh @ Satta and Shiv Dayal @ Kaka were also nominated as accused and arrested. On 25.09.2022, Kamaldeep

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Singh @ Kamal, who had initially been named in the FIR in question, was arrested and from his possession a .32 bore revolver with two live cartridges were recovered. He was arrested and his interrogation revealed that the revolver, recovered from him, had been given to him by the appellant in February, 2022. He further disclosed that in April, 2022, he alongwith the appellant and Shamsheer Singh @ Sherry had gone to Pathankot and from underneath a tree they had dug out two 9 mm pistols alongwith 25 live cartridges wrapped in a polythene bag and that these pistols and the ammunition was then taken by the appellant to his house. This led to the nomination of the appellant as an accused and his arrest. On being questioned, the appellant disclosed that when he was lodged in Maximum Security Jail, Nabha, he had come in contact with Gurdev Singh and Bhavdeep Singh, who were involved in terrorist activities and after the appellant was released on bail the said Gurdev Singh gave him a WhatsApp call on the basis whereof the appellant alongwith Kamaldeep Singh @ Kamal and Shamsheer Singh @ Sherry went to Pathankot and dug out the afore referred two 9 mm pistols and live cartridges which the appellant kept in his house. The appellant then took the police to his house and got recovered the said two 9 mm pistols and live ammunition.

3. On 05.01.2023, after completion of investigation, the police filed before the competent court, its report under Section 173 Cr.P.C. through which the prosecution cited 22 witnesses. However, till date, in the absence of sanction by the State, which is required to be taken in terms of Section 45 of the UAPA Act, no charges have been framed. In



the meanwhile, the appellant has undergone actual custody of over 02 years and 10 months.

### **The Submissions**

4. Learned senior counsel appearing for the appellant submits that the trial court has erred in law and in fact by denying regular bail to the appellant; the appellant was not named in the FIR and was nominated as an accused only on the strength of some secret information and the alleged disclosure statement, made by co-accused Kamaldeep Singh @ Kamal Alrohan in police custody; even if the case of the prosecution is taken as the gospel truth, though vehemently denied, the evidence against the appellant is his own disclosure statement which led to the recovery of 2 pistols and live cartridges from his house, which at the most would attract offences under the Arms Act, 1959 and no provision of the UAPA would be attracted against the appellant especially when no evidence has also been collected by the prosecution which would link the alleged recovery of pistols and live cartridges from the appellant with any terrorist or act of terrorism; neither any alleged WhatsApp call from the alleged terrorist namely Gurdev Singh has seen the light of the day nor is there any evidence on record to show that Gurdev Singh was in fact a declared terrorist either by the State or by the Government of India; 02 of the 03 persons, who were initially named in the FIR namely Sukhjinder Singh @ Harman @ Polo and Gagandeep Singh @ Teja have been granted bail by the trial court; co-accused-Shiv Dayal and Manjeet Singh, who were later nominated as accused, have also been granted bail by the trial court; co-accused Shamsheer Singh @ Sherry, who allegedly



accompanied the appellant alongwith co-accused-Kamaldeep Singh @ Kamal to dig out the weapons allegedly recovered from the appellant, has been granted bail through order of a Co-ordinate Bench of this Court dated 18.10.2024 passed in CRA-D-1320-2023; the appellant has undergone actual custody of over 02 years and 10 months and because till date his trial has not yet even started, if at all it does begin, it will take a long time to conclude and therefore, under Article 21 of the Constitution of India the appellant is also entitled to the grant of regular bail.

5. In support of his submissions learned senior counsel for the appellant has relied on the judgments of the Supreme Court in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, *Shoma Kanti Sen v. State of Maharashtra and another*, (2024) 6 SCC 591, *Vernon v. The State of Maharashtra and another*, (2023) 15 SCC 56, *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh*, (2024) 8 SCC 293 and *Javed Gulam Nabi Shaikh v. State of Maharashtra and another*, (2024) 9 SCC 813.

6. Learned State counsel opposes the grant of bail to the appellant by submitting that it is the appellant who had handed over weapons to co-accused-Kamaldeep Singh @ Kamal and that two weapons alongwith live ammunition had also been recovered from the appellant from his house which were to be used for terrorist activities as also that grant of bail to co-accused cannot be applied to the case of the appellant as his case is totally distinguishable from theirs.

7. Learned counsel for the parties have been heard and with



their able assistance record of the case has also been perused.

### **Discussion and Conclusion**

8. At the outset it would be apposite to refer to Section 43-D of the UAPA. The same reads as follows:-

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

*(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.*

*(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),*

*(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and*

*(b) after the proviso, the following provisos shall be inserted, namely:-*

*“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:*

*Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.*

*(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that-*

*(a) the reference in sub-section (1) thereof-*

*(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government.”;*

*(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government,*



*as the case may be”; and  
(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.*

*(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.*

*(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.*

*(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*

*(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”*

9. As per Section 43-D (5) of the UAPA, no person accused of an offence punishable under Chapter IV and VI of the UAPA shall, if in custody, be released on bail unless the public prosecutor has been given an opportunity of being heard on the application made by him for such release and if the Court, on perusing the case diary or the report filed under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusations against such person are prima facie proved. Section 43-D (6) further stipulates that restrictions for the grant of bail specified in Section 43-D (5) would be in addition to the restrictions provided under the Cr.P.C. or any other law for the time being

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in force on granting of bail.

10. The appellant has not been named in the FIR and was nominated as an accused on the basis of an alleged disclosure statement made by co-accused Kamaldeep Singh @ Kamal while the said co-accused was in police custody. The prosecution's case with regard to the appellant's alleged role also rests on the alleged disclosure statement made by the appellant while in police custody to the effect that while the appellant was in jail he got in touch with Gurdev Singh and Bhavdeep Singh who are terrorists and that when the appellant was released on bail, on the instructions of the aforesaid Gurdev Singh, received by the appellant through a Whatsapp call, the appellant alongwith co-accused Kamaldeep Singh @ Kamal and Shamsher Singh @ Sherry went to Pathankot and dug out two 9 mm pistols with live cartridges which the appellant took to his house and then got them recovered. No evidence whatsoever is forthcoming from the State's affidavit filed before us with regard to the appellant, Gurdev Singh and Bhavdeep Singh having been lodged in the same jail at the same time. Call records between Gurdev Singh and the appellant are also missing. There is also no evidence of Gurdev Singh or Bhavdeep Singh having been declared to be terrorists either by the Government of India or by the State of Punjab. There are also not found any details of any terrorist activities for which the weapons, allegedly recovered from the appellant, were to be used. No link whatsoever even between Gurdev Singh and Bhavdeep Singh on one hand and the appellant on the other has been established.

The following co-accused of the appellant who have been



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granted bail alongwith their alleged roles attributed qua them by the prosecution is given below in a tabulated form:-

| <i><b>Sr. No.</b></i> | <i><b>Name</b></i>                      | <i><b>Attributed Role</b></i>                                                                                                                                                                                                               | <i><b>Regular Bail granted by</b></i>                                                                     |
|-----------------------|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 1.                    | <i>Sukhjinder Singh @ Harman @ Polo</i> | <i>Specifically named in the FIR and from whom recoveries of a revolver with live cartridges were made</i>                                                                                                                                  | <i>The Trial Court under Section 167(2) Cr.P.C.</i>                                                       |
| 2.                    | <i>Gagandeep Singh @ Teja</i>           | <i>Specifically named in the FIR and from whom recoveries of a revolver with live cartridges were made</i>                                                                                                                                  | <i>Regular bail granted by the Trial Court on 09.11.2022</i>                                              |
| 3.                    | <i>Manjit Singh @ Satta</i>             | <i>Alleged to have supplied the weapons to Gagandeep Singh @ Teja from whom such weapons were recovered</i>                                                                                                                                 | <i>Regular bail granted by the Trial Court on 15.07.2022</i>                                              |
| 4.                    | <i>Shiv Dayal @ Kaka</i>                | <i>Alleged to have supplied weapons to co-accused Manjit Singh @ Satta, who in turn, supplied the same to co-accused Gagandeep Singh @ Teja from whom the said weapons were recovered</i>                                                   | <i>Regular bail granted by the Trial Court on 11.07.2022</i>                                              |
| 5.                    | <i>Shamsher Singh @ Sharry</i>          | <i>Alleged to have accompanied the appellant alongwith co-accused Kamaldeep Singh @ Kamal to Pathankot from where 02 pistols and live cartridges were dug out from under a tree which were later allegedly recovered from the appellant</i> | <i>Regular bail granted by the Coordinate Bench through judgment dated 18.10.2024 in CRA-D-1320-2023.</i> |

Investigation qua the appellant is complete and therefore, the prosecution does not require him for such purpose.

Even after completion of investigation and filing of its report by the police under Section 173 Cr.P.C. on 05.01.2023, no charges have yet been framed against the appellant for want of sanction by the State and in the meanwhile the appellant has suffered incarceration for over 02 years and 10 months.

In the light of the above discussion, we find no reason to deny bail to the appellant even though he is being prosecuted for having



allegedly committed offences under the UAPA.

11. In this regard we may usefully refer to the following observations made by the Supreme Court in ***Jalaluddin Khan v. Union of India*** reported in (2024) 10 SCC 574:-

*“17.1 Bihar Police had received information about a plan to disturb the proposed visit of Hon’ble Prime Minister to Bihar by some suspected persons who had assembled in Phulwarisharif area. On 11.07.2022 at about 19:30 hrs, on secret information, a raid was carried out by the police officers of PS Phulwarisharif, Patna at the rented house/premises of Athar Parvej (A-1) and recovered 05 sets of documents “India 2047 Towards Rule of Islamic India, Internal Document: Not for Circulation”, Pamphlets “Popular Front of India 20-2-2021” – 25 copies in Hindi and 30 copies in Urdu, 49 cloth flags, 02 magazines “Mulk ke liye Popular Front ke saath” and one copy of rent agreement on non-judicial stamp by Farhat Bano w/o Md. Jalaluddin Khan (A-2) with tenant Athar Parvej (A-1) son of Abdul Qayum Ansari. The recovered articles and a Samsung mobile phone having SIM card of accused Md. Jalaluddin (A-2) were seized in the instant case. They were related to anti-India activities.”*

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30. Therefore, on plain reading of the charge-sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission of offences punishable under UAPA is prima-facie true. We have taken the charge-sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a prima-facie finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under UAPA was prima-facie true. No antecedents of the appellant have been brought on record.

31. The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.

32. Before we part with the judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge-sheet objectively. Perhaps the focus was more on the activities of PFI, and



*therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law.*

*33. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."*

12. After weighing the stringency with regard to grant of bail to an undertrial facing charges under the UAPA vis-a-vis the rights guaranteed under Article 21 of the Indian Constitution, the Supreme Court has held that right to a speedy trial was guaranteed under Article 21 of the Indian Constitution and that long custody by itself would entail the accused being tried under the UAPA to be granted bail. In this regard reference can be made to the following observations of the Supreme Court in **K.A. Najeeb's** case (*supra*):\_

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

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*sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*

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19. xxxxxx

*Instead, Section 43-D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”*

13. Further, the Supreme Court, in the case of *Vernon* (*supra*) has held that serious allegations against accused who is facing trial under the UAPA by itself cannot be a reason to deny him bail. The relevant extract from the said judgment is reproduced hereunder:-

*“53. In **Zahoor Ahmad Shah Watali** (*supra*) reference was made to the judgment of **Jayendra Saraswathi Swamigal v. State of Tamil Nadu** [(2005) 2 SCC 13] in which, citing two earlier decisions of this court in the cases of **State v. Jagjit Singh** (AIR 1962 SC 253) and **Gurcharan Singh v. State of (UT of Delhi)** [(1978) 1 SCC 118], 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. Juxtaposing the appellants’ case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. **Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them.** While dealing with the offences under Chapters IV and VI of the 1967 Act, we have referred to the materials available against them at this stage. These materials cannot justify continued detention of the appellants, pending final outcome of the case under the other provisions of the 1860 Code and the 1967 Act.”*



14. Similarly, in the case of ***Shoma Kanti Sen*** (*supra*), the Supreme Court held as follows:-

*“44. In Union of India v. K.A.Najeeb, a three Judge Bench of this Court (of which one of us Aniruddha Bose, J was a party), has held that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail in the 1967 Act and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time, relying on Article 21 of Constitution of India. This decision was sought to be distinguished by Mr. Nataraj on facts relying on judgment of this Court in the case of Gurwinder Singh v. State of Punjab [2024 INSC 92]. In this judgment, it has been held:-*

*"44. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance.*

*45. In KA Najeeb's 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 KA Najeeb's 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.*

*46. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of*



*justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot on be used as a ground to grant bail. Hence, the aforesaid argument on the behalf of the appellant cannot be accepted.”*

45. *Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of Najeeb (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act.*

46. *Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-charge sheet stage has the sanction of law broadly on these reasonings. But any form of deprivation of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprivation must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-charge sheet stage.”*

47. *As regards second part of Mr Nataraj's argument which we have noted in the preceding paragraph, we accept it with a qualification. The reasoning in Najeeb case would also have to be examined, if it is the constitutional court which is examining prosecution's plea for retaining in custody an accused charged with bail-restricting offences. He cited Gurwinder Singh in which the judgment of K.A. Najeeb was distinguished on facts and a judgment of the High Court rejecting the prayer for bail of the appellant was upheld. But this was a judgment in the given facts of that case and did not dislocate the axis of reasoning on constitutional ground enunciated in Najeeb. On behalf of*

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*the prosecution, another order of a coordinate Bench passed on 18-1-2024, in Mazhar Khan v. NIA New Delhi [Special Leave Petition (Crl) No. 14091 of 2023] was cited. In this order, the petitioner's prayer for overturning a bail-rejection order of the High Court under similar provisions of the 1967 Act was rejected by the coordinate Bench applying the ratio of Watali judgment and also considering Vernon. We have proceeded in this judgment accepting the restrictive provisions to be valid and applicable and then dealt with the individual allegations in terms of the proviso to Section 43-D (5) of the 1967 Act. Thus, the prosecution's case, so far as the appellant is concerned, does not gain any premium from the reasoning forming the basis of Mazhar Khan (supra).”*

15. In the case of **Javed Gulam Nabi Shaikh** (*supra*), the Supreme Court held that criminals are not born but made out. Howsoever serious the crime may be, an accused has a right to a speedy trial and that the purpose of bail is only to secure the attendance of the accused at the trial and that bail is not to be withheld as a form of punishment. In this regard, it would be useful to refer to the following observations made by the Supreme Court:-

*“11. The aforesaid observations have resonated, time and again, in several judgments, such as Kadra Pahadiya & Ors. v. State of Bihar reported in (1981) 3 SCC 671 and Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225. In the latter the Court reemphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:*

*“84 .....The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for*



*or insist upon a speedy trial.”*

12. *In Mohd Muslim @ Hussain v. State (NCT of Delhi) reported in 2023 INSC 311, this Court observed as under:*

*“23. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*

*24. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State, reported in 1993 Cri LJ 3242, as “a radical transformation” whereby the prisoner:*

*‘13..... loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.’*

*25. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”*

*Xxxxxxx*

*16. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a*





*future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.”*

16. To the same effect are the following observations of the Supreme Court in the case of ***Tapas Kumar Palit v. State of Chhattisgarh***, reported in 2025 SCC OnLine SC 322:—

*“10. However, many times we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.*

*Xxx*

*12. The aforesaid results in indefinite delay in conclusion of trial. It is expected of the Public Prosecutor to wisely exercise his discretion insofar as examination of the witness is concerned.*

*Xxx*

*14. In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witness might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons- who remain innocent until proven guilty- can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job for accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.*

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*15. We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”*

17. In the light of the above, subject to the satisfaction of the Trial Court/Duty Magistrate the appellant is ordered to be released on regular bail on the following conditions:-

- (i) He shall furnish bond of ₹10 lakh with two sureties of the like amount;
- (ii) He shall deposit his passport, if any, in the Trial Court;
- (iii) He shall appear before the Trial Court on each and every date, unless specifically exempted;
- (iv) He shall appear before the Investigating Officer, as and when summoned;
- (v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as a witness;
- (vi) He shall not involve in any criminal activity;
- (vii) He shall not sell, transfer or in any other manner create third party right over immovable property or properties owned by him;
- (viii) At the time of release of the appellant, the SHO of the area where he normally resides, shall be informed and that the appellant shall mark his attendance before the said SHO on every Monday till the conclusion of the trial and that
- (ix) He shall furnish an undertaking to the effect that in case of his absence, the Trial Court may proceed with the trial and in such eventuality he shall not claim re-examination of any witness.

18. While granting bail to the appellant, at the time of recording its satisfaction, the Trial Court/ Duty Magistrate may also impose any further condition as it deems necessary.

19. If any of the above conditions or any further condition(s) which may be imposed by the Trial Court/ Duty Magistrate are breached by the appellant it would be open to the prosecution to seek cancellation

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of the bail granted to him through the instant order.

20. It is clarified that the observations made through the instant order have been made only for the limited purpose of deciding the present appeal for the grant of regular bail and that the same would not be construed to be an expression of opinion on the merits of the case.

21. The impugned order is set aside and the appeal is allowed in the above terms.

(DEEPAK SIBAL)  
JUDGE

(LAPITA BANERJI)  
JUDGE

17.11.2025  
shamsher/gk

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |