IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No.499 of 2026

Raj Kumar Bhagat @ Rajkumar Bhagat, S/o Ramnath Bhagat, aged about 40 years, R/o Village-Kubriyam, P.O. and P.S.- Ramgarh, District-Dumka, Jharkhand
.... Appellant

Versus

The State of Jharkhand **.... ... Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Ayush Kumar, Advocate
Mr. Rakesh Kumar Mandal, Advocate
Mr. Abhijeet Karan, Advocate
For the Respondent : None

C.A.V. on 14.08.2026 **Pronounced on 30/09/2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal preferred under Section 21(4) of the National Investigation Agency Act, 2008 is directed against the order dated 02.02.2026 passed in Misc. Criminal Application No.45 of 2026 by the learned District and Additional Sessions Judge-III, Dumka, in connection with Sessions Trial Case No.50 of 2023, arising out of Kathikund P.S. Case No.55 of 2013, by which the prayer for regular bail of the appellant has been rejected.

Factual Matrix

2. The case was lodged on the basis of self-statement of informant Ashok Kumar, O.C., Kathikund, Police Station, alleging therein that on 02.07.2013, a police convoy led by the Superintendent of Police, Pakur, was allegedly ambushed by members of a banned organization (MCC),

leading to the unfortunate death of the Superintendent of Police and other officers. The FIR was registered against certain named persons allegedly belonging to MCC.

3. Upon the said statement, Kathikund P.S. Case No. 55/13 dt. 02.07.13 was lodged u/s 147, 148, 149, 332, 333, 324, 326, 307, 302, 353, 427, 120B, 396, 412 of I.P.C. and U/s 17 C.L.A Act & 16(1)a/18 U.A.P. Act and Section 27 of the Arms Act against four named accused persons and 28-30 unknown Maoists.

4. The present appellant was arrested after submission of the charge-sheet and has remained in custody since 07.11.2022. Thereafter, he preferred Misc. Criminal Application No. 253 of 2023 before the court concerned seeking bail, but the same was rejected on 29.03.2023.

5. Aggrieved by the order dated 29.03.2023, the appellant preferred *Criminal Appeal (DB) No. 572 of 2023* before this Court, which was dismissed on merits vide order dated 20.07.2023.

6. Subsequently, the appellant again moved *Misc. Criminal Application No. 905 of 2023* before the court concerned for bail, but the same was rejected on 14.12.2023.

7. Against the order dated 14.12.2023, the appellant preferred *Criminal Appeal (DB) No. 66 of 2024* before this

Court, which was dismissed as not pressed vide order dated 07.04.2025.

8. Thereafter, the appellant once again preferred *Misc. Criminal Application No. 45 of 2026* before the court concerned seeking bail, which has been dismissed by order dated 02.02.2026; against the said order, the present appeal has been preferred.

Submission of the learned counsel for the appellant

9. Mr. Ayush Kumar, learned Counsel appearing for the appellant has submitted that the appellant is not named in the FIR.

10. It has been submitted by referring to the FIR that the allegation against the named accused persons of commission of crime of killing of five Police Personnel including the Officer in the rank of the Superintendent of Police, Pakur, but, there is no reference of any allegation upon the appellant for making conspiracy.

11. It has been contended that there is no material on record to suggest his involvement in the planning, financing, or execution of the alleged crime. No incriminating recovery has been made from him, no electronic surveillance links him to the banned organization, and no financial transaction records have been produced. In absence of such corroborative evidence, the implication of the petitioner is wholly unjustified.

12. It has further been contended that the Petitioner has been in custody since 07.11.2022, suffering pre-trial incarceration. He had approached the Trial Court and this Hon'ble Court on earlier occasions, but his bail applications were rejected on 02.02.2026 by the learned District & Additional Sessions Judge-III, Dumka, On 20.07.2023 in Cr. Appeal (DB) No. 572/2023 by this Hon'ble Court on merit and on 07.04.2025 in Cr. Appeal (DB) No. 66/2024, dismissed as not pressed in view of prosecution assurance of speedy trial. Despite repeated assurances, the trial has not progressed and there is no likelihood of early conclusion.

13. It is stated that the prosecution has cited 46 witnesses, out of which only 12 have been examined till date, leaving 34 more to be examined. The delay is not attributable to the petitioner but to systemic causes and it is settled position of law that prolonged pre-trial detention itself becomes a ground for bail under Article 21 of the Constitution of India.

14. It has further been contended that the several co-accused similarly placed, have already been granted bail by this Hon'ble Court. The Petitioner, being identically situated, is entitled to the benefit of parity.

15. It has further been contended that the continued incarceration of the petitioner is violative of his fundamental right to life and liberty under Article 21 of the Constitution

of India and keeping the petitioner in custody indefinitely without conclusion of trial amounts to punishment before conviction, which is impermissible in law.

16. Learned counsel appearing for the appellant has submitted that in the facts of the present case, the impugned order may be quashed and the consequential order may be passed for release of the appellant in connection with the aforesaid case.

Analysis

17. We have heard learned counsel for the appellant and gone through the finding recorded by the learned Additional Sessions Judge in the impugned order. We have also gone through the ground agitated on behalf of the appellant in the memo of appeal and the averment made in the counter-affidavit.

18. Admittedly against the order dated 29.03.2023, the appellant preferred *Criminal Appeal (DB) No. 572 of 2023* before this Court, which was dismissed on merits vide order dated 20.07.2023, for ready reference the relevant paragraphs of the order dated 20.07.2023 are being quoted herein which reads as under:

> 6. The matter was heard on 30.06.2023 and the case diary was called for along with the criminal antecedent report. The State was also given liberty to file affidavit, if any. The case diary has been received.
>
> 7. Mrs. Vandana Bharti, learned Spl. P.P. appearing for the State has submitted that the name of the appellant has been transpired

in the case diary, as would appear from paragraph-150 and 151 thereof, wherein, the independent witnesses have taken the name of the appellant who had attended the meeting held on 29.06.2013 for the commission of a big crime in the District of Dumka at Jamani.

8. Learned Spl. P.P., on the aforesaid premise, has submitted that since the name of the appellant has been surfaced in course of investigation while conspiring to conduct a big crime and as such, it is incorrect on the part of the appellant to take the ground of innocence of the appellant.

9. The submission has been made that the learned trial Court has considered the said fact by going through the case diary and after taking into consideration the fact that the several Police Personnel have been killed including the Superintendent of Police, Pakur, therefore, has rejected the prayer for regular bail of the appellant.

10. The contention has also been made that so far as the reliance put on behalf of the appellant regarding orders granting bail, appended as Annexure-2 series to the paper book, wherein, the co accused persons, namely, Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal, Sahebram Hembram @ Akash Hansda, Diwan Singh Kisku @ Diwan Singh Hembrom @ Mistri Hembrom @ Bhai, Kanchan @ Kanchan Yadav @ Awadh Kishore Yadav and Kiran Tudu @ Pakku Tudu @ Usha @ Fuleen Tudu have been directed to be released on bail by the learned Single Judge of this Court vide orders dated 08.11.2019, 04.11.2020, 09.03.2021, 25.06.2021, 04.10.2021 passed in B.A. Nos.1125 of 2019, 8294 of 2020, 2572 of 2021, 4931 of 2021 and 8951 of 2021 respectively, but the case of aforesaid accused persons stand in different footing to that of the appellant.

11. Therefore, the orders granting bail in their favour by this Court will have no applicability in the facts and circumstances of the present appeal.

12. Learned Spl. P.P. appearing for the State, therefore, submits that impugned order needs no interference taking into consideration the nature of allegation and the seriousness of crime.

13. Mr. R.S. Mazumdar, learned Senior Counsel appearing for the appellant has submitted by referring to the name of the petitioner of B.A. No.1125 of 2019, namely, Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal, whose name is also available in paragraph-150 of the case diary and as such, it is incorrect on the part of the State to take the ground that the identically placed accused persons have not been granted the benefit of bail.

14. It has further been contended by the learned Senior Counsel for the appellant that the order passed by the Court while rejecting the bail application, cannot be said to be a speaking order, since, there is no reference of any conspiracy having been taken, as referred in paragraph-150 and 151 of the case diary, save and except, the reference has been made that the case diary has been perused, therefore, the rejection of the bail application cannot be said to be based upon justifiable reason, rather, it is based upon the non-consideration of material fact, hence, the order impugned also requires interference on this ground.

15. This Court has heard the learned counsel for the parties, perused the case diary as also the finding recorded by the learned trial Court in the impugned order.

16. This Court, before proceeding to examine the legality and propriety of the impugned order, deems it fit and proper to refer certain facts.

17. The admitted fact herein is that initially the F.I.R. was instituted under the penal offence of the Indian Penal Code and Section 27 of the Arms Act and Section 17 of the C.L.A. Act, but, in course of investigation, Sections of U.A.(P) Act have also been inserted, i.e., the penal offences as under Section 16(1)(a)/18 U.A.(P) Act.

20. This Court is now proceeding to deal with the material surfaced in course of investigation by the Investigating Agency.

21. It is evident from paragraph-150 and 151 of the case diary wherein, the independent witness, namely, Lukhi Ram Baski had disclosed the name of the appellant, who had participated in the meeting held on 29.06.2013 for commission of crime which may be serious in nature, so that, the message be go to the State that the Banned Organization, i.e., the M.C.C. is still active in the State of Jharkhand.

22. It has come in the aforesaid paragraphs that immediately after three days, i.e. on 02.07.2013, the Police Party had been killed by the Banned Organization, i.e., the M.C.C. The Five Police Personnel including the Superintendent of Police, Pakur.

23. Initially, the FIR was instituted under the penal provision of the Indian Penal Code, Arms Act and the Criminal Law Amendment Act, but, in course of investigation, it has come that the said incident was in the background of a meeting conducted by conspiring to commit incident, so as to give a message

24. The argument which has been advanced on behalf of the appellant that there is no evidence of implicating the appellant in the instant case, according to our considered view, is not fit to be acceptable as per the material which has come in course of investigation, as under paragraph-150 and 151 of the case diary, wherein, specific attributability of the appellant has been shown by the independent witnesses while disclosing his name along with the names of the others who had participated in the meeting by the Banned Organization, i.e., the M.C.C.

25. The further argument of Mr. Mazumdar, learned Senior Counsel appearing for appellant is that the several accused persons have been granted bail.

26. We have examined the aforesaid fact and found that one Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal who was also involved in the conspiracy, has been granted bail by the learned Single Judge of this Court.

27. The ground has been taken by the learned Senior Counsel for the appellant that when Srimant Soren has been granted bail, then why not the said benefit to the appellant herein, since, the case of the appellant will be said to be identically placed with the said Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal.

28. But, we are not in agreement with such submission, for the reasons, i.e., the order was passed by the learned Single Bench of this Court in exercise of power conferred under Section 439 of the Cr.P.C.

29. Earlier to the Scheduled Offence, the case was being heard so far as the consideration of the regular bail is concerned under the provision of Section 439 of the Cr.P.C., but, taking into consideration the nature of seriousness of allegation, the

Scheduled Offences have been decided to be heard by the Division Bench by way of an appeal.

30. The Forum of appeal has been carved out when the National Investigation Agency Act, 2008 came into being, wherein, the specific provision has been provided under Section 21.

31. The Forum has been carved out that the order passed by the Court rejecting the prayer for bail under Section 439 Cr.P.C., is to be heard by the Single Bench of this Court. But, so far as the Scheduled Offence is concerned, the same is to be heard by the Division Bench of this Court as under the provision of Section 21(4) of the Act, 2008.

32. The fact about hearing of the appeal by the Division Bench has also been considered by the Hon'ble Apex Court rendered in the case of Vikramjit Singh Vrs. State of Punjab, reported in (2020) 10 616 wherein, the Hon'ble Apex Court has laid down the ratio that if the case pertains to the Scheduled Offences and tried by the Special Court, then it is to be heard by the Division Bench of the High Court.

33. This Court, therefore, is of the view that when the matter is to be heard by the Division Bench under the statutory command, then it is bounded upon the appellate Court to look into the propriety of the order passed by the court, which is under challenge in the appeal.

34. The question of parity as is being sought for on the ground that one Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal has been granted bail by the learned Single Judge of this Court under Section 439 Cr.P.C.

35. The law is well settled that apart from the merit, the power is to be exercised under Section 439 Cr.P.C., is also upon the discretion of the concerned Court. However, the said discretion cannot be an arbitrary and unreasonable that is always within the fore corner of the statute.

36. There is no dispute that ordinarily bail ought to be granted, but in serious cases which are specified under Section 437, which involve allegations relating to offences carrying long sentences or other special offences, the court should be circumspect and careful in exercising discretion.

37. But the fact herein is that whether the order dated 08.11.2019 passed in B.A. No.1125 of 2019 by the learned Single Judge in the case of Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal granting him the privilege of bail, can be said to be a binding precedence upon the Court, wherein, it appears from the aforesaid order that the fact about conspiracy as referred in the case diary as under paragraph-150 and 151 having not been taken into consideration.

38. Herein, the order dated 08.11.2019 passed in B.A. No.1125 of 2019, since, has been passed by the learned Single Judge of this Court under Section 439 Cr.P.C., therefore, the same would have been followed by the Division Bench if the entire material would have been considered by the Court.

39. Since, as would appear from the order dated 08.11.2019 passed in B.A. No.1125 of 2019 that there is no consideration of the fact about conspiracy, as has been surfaced against the present appellant, as also, against the petitioner, namely, Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal of his involvement in the conspiracy, as would appear from paragraph-150 and 151 of the case diary.

40. But, we are not making any comment upon the said order, since, we are not sitting in an appeal against that order, but we can well in exercise of the appellate jurisdiction, is having jurisdiction not to accept on the basis of the principle of parity.

41. In the instant case there is accusation of the offence against the appellant under Chapter IV of the 1967 Act have been alleged and it is settled proposition of law that the Court while considering bail under Section 43D(V) of the 1967 Act has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima-facie true and if a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.

42. Further, the Hon'ble Supreme Court while taking into consideration of provision of Section 43D(V) of the 1967 Act in the case of National Investigation Agency Vrs. Zahoor Ahmad Shah Watali, reported in 2019 (5) SCC 1 has categorically held in the

case that once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 Cr.P.C.), do not make out reasonable grounds for believing that the accusation against him is prima-facie true.

43. This Court, therefore, is of the view that the order granting bail in favour of Srimant Soren @ Simon Soren @ Ujjual @ Ujjawal cannot be accepted by this Court on the ground that the part of allegation of conspiracy attracting the ingredients of Section 18 of U.A.(P) Act, has not been taken into consideration.

44. The third argument of Mr. Mazumdar, learned Senior Counsel is that the impugned order has been passed without assigning any reason, meaning thereby, the order is cryptic and non-speaking and as such, the same may be remanded.

45. There is no dispute that the concerned Court who is dealing with the matter of Offence having rigorous in nature, the detailed and reasoned order is to be passed, i.e., the entire material is to be taken into consideration.

46. The word “consideration” means active application of mind and if the concerned Court is not taking the fact in the impugned order, as would appear from the impugned order, then, it cannot be said that the concerned Court has applied its mind actively. But, on the aforesaid ground, can the matter is fit to be remitted that is the concern of the Court at this stage.

47. But the question herein is that when we are sitting in appeal and after having gone through the allegation against the appellant as referred under paragraph-150 and 151 of the case diary, wherein, specific allegation has been leveled of conspiring by attending the meeting held on 29.06.2013, can it be proper to remit the matter before the concerned Court by quashing and setting aside it.

48. There is omission on the part of the concerned court that when the court concerned has perused the case diary, it was the bounded duty to refer the imputation of allegation as surfaced and referred at paragraph-150 and 151 of the case diary, but on that ground, if it will be remitted, will it not be a futile exercise or empty formality, that is to be seen, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of Sri Ganesh Vrs. State of Tamil Nadu & Anr., reported in (2017) 3 SCC 280, wherein, at paragraph-12, it has been held as under:-

> "12. We thus find that the approach of the High Court in the present case was incorrect and completely misdirected. Even if we were to remand the matter back to the High Court for fresh consideration, in our view it would be an empty formality in the face of finding of fact rendered by the trial court. We, therefore, allow this appeal and set aside the judgment and order [Krithika Lakshmi v. State, 2015 SCC OnLine Mad 13850] under appeal. The view taken by the trial court is restored and the matter stands disposed of in terms of the directions issued by the trial court as stated above."

49. The interpretation of principle of futile exercise or empty formality is that if there is no chance of change in the outcome, then why for the purpose of passing fresh order, the matter is to be remanded. The matter would have been different, if there is any chance of change in the outcome.

50. Since, we have already gone through the imputation of allegation as surfaced at paragraph-150 and 151 of the case diary and from its perusal, it is evident that specific allegation of conspiracy is there against the appellant then even if it will be remanded again, the concerned Court will pass fresh order by making reference of imputation as contained at paragraph-150 and 151 of the case diary.

51. Therefore, we are of the view that the culpability has been surfaced at paragraph-150 and 151 and as such, there is no chance of change in the outcome, as such, this Court is of the view that remanding the matter by quashing and setting aside the order impugned will be said to be futile exercise.

52. In that view of the matter, this Court is of the view that since there is specific allegation having been surfaced as under

paragraph-150 and 151 of the case diary of committing conspiracy of commission of crime, in which, five Police Personnel including Superintendent of Police of the District of Pakur had been killed, therefore, this Court is of the view that the impugned order requires no interference.

53. In the result, the instant appeal fails and it is dismissed.

19. It is evident from the aforesaid judgment that the prosecution, through the learned Spl. P.P., relied upon paragraphs 150 and 151 of the case diaries, where independent witnesses named the appellant as having attended a meeting on 29.06.2013 at Jamani, Dumka, convened by the banned organization MCC to plan a major crime and shortly thereafter, on 02.07.2013, five police personnel, including the Superintendent of Police, Pakur, were killed.

20. Further while dismissing the appeal the Court emphasized that parity could not be claimed, as the Single Judge's bail order did not consider the conspiracy allegations, and discretionary powers under Section 439 Cr.P.C. cannot bind the appellate forum in scheduled offence cases.

21. It is further evident from the aforesaid order/judgment that this Court has also examined the statutory framework under Section 43D(5) of the UAPA, noting that bail in such cases requires the Court to be satisfied that accusations are not prima facie true. Referring

to ***NIA v. Zahoor Ahmad Shah Watali, [2019 (5) SCC 1***], it has been observed by this Court that once charges are framed, strong suspicion exists, the burden lies on the accused to disprove prima facie allegations and since the case diary clearly attributed conspiracy to the appellant, the Court concluded that specific allegations of conspiracy leading to the killing of police personnel had surfaced against the appellant, and therefore, the impugned order rejecting bail required no interference.

22. Thus, it is manifest that by order dated 20.07.2023 this Court has adjudicated upon the case of the appellant on merits, having duly considered the culpability of the appellant with reference to paragraphs 150 and 151 of the case diaries. Furthermore, this Court has also undertaken appreciation of the plea founded upon parity.

23. From the foregoing discussion, it stands clearly revealed that the present appeal has been instituted predominantly on the ground of delay in the conduct of the trial, which is urged as constituting an infraction of the fundamental right to speedy justice guaranteed under Article 21 of the Constitution of India. In addition thereto, reliance has also been placed upon the ground of parity, by citing the orders dated 22.04.2024 and 07.05.2025 rendered in Criminal Appeal (DB) No. 2142 of 2023 and Criminal Appeal (DB) No. 292 of 2025 respectively, whereby the said

appeals were allowed and the appellants therein, namely Madhwa Dehri and Daud @ Daud Hembrom, were directed to be released on bail.

24. In the aforesaid context, it needs to refer herein that the main objective of the Act 1967 is to make powers available for dealing with activities directed against the integrity and sovereignty of India. As per Preamble, Act 1967 has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore, the aim and object of enactment of UAPA is also to provide for more effective prevention of certain unlawful activities.

25. To achieve the said object and purpose of effective prevention of certain unlawful activities the Parliament in its wisdom has provided that where an association is declared unlawful by a notification issued under Section 3, a person, who is and continues to be a member of such association shall be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine.

26. Clause (m) of Section 2 of the 1967 Act defines “terrorist organization”. Chapters III onwards of the 1967 Act incorporate various offences. Chapter IV has the title “punishment for terrorist activities”. Clause (k) of Section 2 provides that “terrorist act” has the meaning assigned to it

under Section 15 and the terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

27. At this juncture, it will be purposeful to discuss the core of Section 43(D)(5) of the Act 1967 which mandates that the person shall not be released on bail if the Court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true apart from the other offences the appellant is accused of committing offences under Sections 17, 18 and 21 of the UA(P) Act, 1967.

28. Further, it is settled proposition of law that at the stage of granting or non-granting of the bail, the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and the elaborate examination or dissection of the evidence is not required to be done at this stage.

29. The exercise to be undertaken by the Court at this stage of granting bail of giving reasons for grant or non-grant of bail that is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. Rather, the Court is merely expected to record a finding on the basis of broad probabilities regarding the

involvement of the accused in the commission of the stated offence or otherwise.

30. It needs to refer herein that the Hon'ble Apex Court in **Gurwinder Singh Vs State of Punjab and Another** reported in **2024 SCC OnLine SC 109** while taking into consideration of the judgment as rendered in the **National Investigation Agency v. Zahoor Ahmad Shah Watali (Supra)** has observed that, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail and lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond.

31. The Hon'ble Apex Court further observed that the conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under

UAP Act and the 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope.

32. In the aforesaid context, it has further been observed by the Hon'ble Supreme Court that the Courts are, therefore, burdened with a sensitive task on hand and in dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail and the 'justifications' must be searched from the case diary and the final report submitted before the Special Court.

33. In the aforesaid background, the Hon'ble Apex Court has held that the test for rejection of bail is quite plain and Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It has further been observed that it is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). For ready reference, following paragraphs of the aforesaid Judgment are being quoted herein under:

> "27. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the

powers of the Special Court to release an accused on bail. It lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

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

29. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge--"

34. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or

Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

35. This Court, on the basis of the aforesaid settled position of law is now proceeding to examine that whether impugned order by which bail has been rejected requires interference by this Court.

36. Since no fresh ground or change in circumstance is available herein, therefore, the learned counsel for appellant has also taken the ground of long custody i.e. about 3 years and 10 months approximately and probable delay in conclusion of trial has also been taken as one of the grounds. The learned counsel for the appellant has also raised the issue of parity and submitted that since other co-accused persons namely Madhwa Dehri and Daud @ Daud Hembrom have been granted bail therefore the appellant herein also

deserves to be released on bail by interfering with the order impugned.

37. In the instant case there is accusation of the offence against the appellant under Chapter IV of the 1967 Act have been alleged and it is settled proposition of law that the Court while considering bail under Section 43D(5) of the 1967 Act has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima-facie true and if a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.

38. Further, the Hon'ble Supreme Court while taking into consideration of provision of Section 43D(5) of the 1967 Act in the case of ***National Investigation Agency Vrs. Zahoor Ahmad Shah Watali*** (Supra) has categorically held in the case that once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to

satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 Cr.P.C.), do not make out reasonable grounds for believing that the accusation against him is prima-facie true.

39. In the instant case the argument which has been advanced on behalf of the appellant that there is no evidence for implicating the appellant in the alleged offence, but it is considered view of this Court that this contention is not fit to be accepted as per the material which has come in course of investigation, as under paragraph-150 and 151 of the case diary, wherein, specific attributability of the appellant has been shown by the independent witnesses while disclosing his name along with the names of the others who had participated in the meeting by the Banned Organization, i.e., the M.C.C., as the same has been taken note by this Court in the order dated 20.07.2023.

40. So far the issue of parity is concerned it is settled position of law that the principle of parity is to be applied if the fact of the case is exactly similar, then, only the principle of parity will be applied in the matter of passing order but if there is difference in between the facts, then, the principle of parity, is not to be applied.

41. It is further settled connotation of law that the Court cannot exercise its powers in a capricious manner and has

to consider the totality of circumstances before granting bail and by only simply saying that another accused has been granted bail, is not sufficient to determine whether a case for grant of bail on the basis of parity has been established. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230*** wherein it has been held as under:

> "25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed :(SCC p. 515, para 17) 17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same.Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside."

> 26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12- 2020 [Pravinbhai Hirabhai Koli v. State of Gujarat, 2020 SCC OnLine Guj 2986] , [Khetabhai Parbatbhai Makwana v. State of Gujarat, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhrajsinh Bhagubha Vaghela (A-13) to whom bail was granted on 22- 10-2020 [Siddhrajsinh Bhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was "assigned similar role of armed with stick (sic)". Again, bail was granted to Vanraj Koli (A16) on the ground 32 that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A15) and Sidhdhrajsinh (A-13) who were armed with sticks had 42 been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

42. Further, the Hon'ble Apex Court in ***Tarun Kumar Versus Assistant Director Directorate of Enforcement***, reported in ***(2023) SCC OnLine SC 1486*** has observed that parity is not the law and while applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.

43. In the backdrop of the aforesaid settled legal position, this Court has gone through material available on record.

44. This Court has gone through the orders dated 22.04.2024 and 07.05.2025 rendered in Criminal Appeal (DB) No. 2142 of 2023 and Criminal Appeal (DB) No. 292 of 2025 respectively, whereby the said appeals were allowed and the appellants therein, namely Madhwa Dehri and Daud @ Daud Hembrom, were directed to be released on bail, based upon which parity has been claimed.

45. It is evident from the order dated 22.04.2024 passed in Criminal Appeal (DB) No. 2142 of 2023 the co-ordinate Bench of this Court while allowing the appeal of the said co-accused has taken into consideration that the said co-accused was not named in the First Information Report and he has been implicated on account of the confession of some of the co-accused persons and further the appellant is in custody since 02.05.2017 i.e. long incarceration of 7 years. For ready reference the relevant paragraphs are being quoted as under:

> "The petitioner is not named in the First Information Report and it has been submitted by the learned counsel for the petitioner that he has been implicated on account of the confession of some of the co-accused persons. It appears that a similarly situated co-accused namely, Kanchan @ Kanchan Yadav @ Awadh Kishore Yadav has been granted bail by this Court in B.A. No. 4931 of 2021. The appellant is in custody since 02.05.2017.
>
> Regard being had to the manner of implication and the fact that one of the co-accused has been granted bail by this Court, we while setting aside the order dated 23.11.2023 passed in MCA Case No. 844 of 2023, arising out of Kathikund

P.S. Case No. 55 of 2013, corresponding to S.T. No. 78 of 2018 (G.R. Case No. 991 of 2013), by the learned Additional Sessions Judge-IV, Dumka, direct that the appellant be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each, to the satisfaction of learned District & Additional Sessions Judge-III, Dumka in connection with Kathikund P.S. Case No. 55 of 2013, corresponding to S.T. No. 78 of 2018 (G.R. Case No. 991 of 2013), subject to the condition that the appellant shall remain physically present before the learned trial court on each and every date till the conclusion of the trial.

This appeal is allowed."

46. Further, upon perusal of the order dated **07.05.2025** passed in ***Criminal Appeal (DB) No. 292 of 2025***, it becomes evident that the Co-ordinate Bench of this Court, while allowing the appeal of the said co-accused, has taken into account the manner of implication, namely, that the extremists had taken the names of each other and, consequently, the said co-accused stood implicated merely on the basis of such naming. The Bench has further placed reliance upon the circumstance of prolonged incarceration, noting that the appellant therein had already undergone custody for a period of approximately **eight years**. For ready reference, the relevant paragraphs of the said order are extracted hereinbelow:

"Learned A.P.P has opposed the prayer for bail of the appellant and has stated that the appellant has been made accused primarily on account of the fact that the extremists were taking the name of each other.

Regard being had to the manner of implication of the appellant and the period of custody undergone by him, we while

setting aside the order dated 14.02.2025 passed in M.C.A. No.92 of 2025 arising out of Kathikund P.S. Case No. 55 of 2013 by the learned Additional Sessions Judge-V, Dumka, direct that the appellant be released on bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned Additional Sessions Judge-V, Dumka, in connection with Kathikund P.S. Case No.55 of 2013 corresponding to S.T. No.78 of 2018, subject to the condition that the appellant shall remain physically present before the learned trial court on each and every date till the conclusion of the trial.

This appeal is allowed and disposed of."

47. Insofar as the present appellant is concerned, it is noted that he has remained in custody since **07.11.2022**, amounting to a period of approximately **three years and ten months**. Moreover, as borne out from the materials collected during investigation, particularly paragraphs 150 and 151 of the case diary, there is specific attributability to the appellant, inasmuch as independent witnesses have disclosed his name along with others who allegedly participated in the meeting convened by the banned organisation, namely the M.C.C. This aspect has already been duly taken note of by this Court in its order dated **20.07.2023**.

48. In view of the aforesaid, this Court is of the considered opinion that the orders granting bail in favour of co-accused Madhwa Dehri and Daud @ Daud Hembrom cannot enure to the benefit of the present appellant, and the

plea of parity sought to be raised on that basis is unsustainable.

49. This Court, in view of the principle of parity as discussed hereinabove and taking into consideration the material available against the present appellant and also the culpability of the present appellant in alleged commission of crime, is of the view that the principle of parity cannot be extended to the present appellant.

50. So far the issue of custody and probable delay in trial is concerned, this Court is conscious that Article 21 of the Constitution of India refers about the right to liberty. The applicability of Article 21 of the Constitution of India has been taken into consideration by the Hon'ble Apex Court but simultaneously the consideration has also been given how to make a balance in between Article 21 of the Constitution of India and the imputation against the accused which is serious in nature like that of the present case wherein the culpability of the present appellant under the U.A.(P) Act, 1967 (herein referred as Act 1967) is one of the core issue.

51. The Hon'ble Apex Court in its recent judgment in the case of ***Gulfisha Fatima versus State (Govt. of NCT of Delhi) 2026 LiveLaw (SC) 1*** while appreciating the implication of Article 21 vis-vis Section 43D (5) of the Act 1967 and taking into the consideration the ratio laid down in the case of ***Gurwinder Singh v. State of Punjab (supra)***

has categorically observed that if prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint, for ready reference, the relevant paragraphs of the aforesaid judgment are being quoted as under:

> *"32. In Union of India v. K.A. Najeeb, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.*
>
> *33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.*
>
> *35. The proper constitutional question, therefore, is not whether Article 21 is superior to Section 43D (5). The proper question is how Article 21 is to be applied where Parliament has expressly conditioned the grant of bail in relation to offences alleged to implicate national security. The law does not contemplate an either-or approach. Nor does it contemplate an unstructured blending of statutory and constitutional considerations. What is required is disciplined judicial scrutiny that gives due regard to both.*
>
> *47. A closely allied consideration is the role attributed to the accused. Prosecutions under the UAPA may allege varying degrees of participation, ranging from peripheral acts to strategic, organisational, or ideological centrality. The constitutional*

significance of prolonged incarceration cannot be assessed uniformly for all accused regardless of role. Where the attribution suggests a central or organising role in the alleged design, the need for circumspection before constitutional intervention displaces a statutory embargo is correspondingly greater. Conversely, where the role is peripheral or episodic, prolonged incarceration may more readily assume a punitive character.

56. It therefore becomes necessary to state, with clarity, the governing approach. In prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint. Rather, delay serves as a trigger for heightened judicial scrutiny. The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including (i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration, viewed cumulatively in the facts of the case, has become demonstrably disproportionate so as to offend the guarantee of personal liberty under Article 21.

58. In Gurwinder Singh v. State of Punjab, this Court expressly cautioned against the mechanical invocation of prolonged incarceration as a ground for bail in cases involving serious offences under special enactments. The judgment reiterates that the gravity of the offence, the legislative context, and the prima facie material on record cannot be eclipsed merely because the trial has taken time.

59. This Court in CBI v. Dayamoy Mahato reiterated that while Article 21 remains paramount, it does not operate in a vacuum divorced from competing constitutional interests. The Court emphasized that claims to liberty must be examined in the totality of circumstances, particularly where allegations implicate organised criminality or matters of public interest. Delay, though undoubtedly significant, was held not to assume the character of an absolute or solitary determinant. The emphasis, once again,

was on structured judicial reasoning rather than on formulaic outcomes."

52. It needs to refer herein that the Hon'ble Apex Court in the case of **Gurwinder Singh v. State of Punjab(supra)** taking into consideration the ratio of judgment of ***Union of India vs. K.A. Najeeb, [(2021) 3 SCC 713]*** has observed that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail, for ready reference, the relevant paragraph is being quoted as under:

> "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 organisation 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 be used as a ground to grant bail. Hence, the aforesaid argument on behalf of the appellant cannot be accepted."

53. Thus, in light of the aforesaid settled principles of law, it is evident that mere delay in the conduct of trial, when the charges pertain to grave offences of the present nature wherein a police convoy led by the Superintendent of Police, Pakur, was allegedly ambushed by members of the banned organisation (M.C.C.), resulting in the unfortunate death of the Superintendent of Police along with other officers, cannot, by itself, constitute a valid ground for grant of bail.

The gravity of the offence and its impact on public order and the administration of justice outweigh the plea of delay, and the constitutional guarantee under Article 21 cannot be invoked in isolation to dilute the seriousness of such allegations.

54. There is no dispute and it cannot be disputed that the jurisprudence of Article 21 has, as it develops, recognised various facets to be intrinsic to the right to life and liberty such as speedy trial, timely completion of investigation, fair trial etc. but at the same time circumspection in granting the relief of bail in offences that harmful to society such as in this case, stems from a place of concern, understandably legitimate at that, about public order, societal security, overall peace and the general deterrent force in criminal law.

55. The scales of justice must balance on the one hand- the constitutionally consecrated and jealously guarded right under Article 21 and on the other, the recognition that individual liberty is not absolute and is subject to just exceptions i.e. the paramount considerations of national interest and societal interest.

56. There can be no manner of doubt on the proposition that Article 21 rights are placed on a pedestal, and rightly so, at the same time, though, the individual cannot always be the centre of attention. We observe, therefore, that while

in view of Article 21 rights must always be protected, but however, in cases where the security of the society and nation is called into question, the long incarceration cannot be the sole ground of consideration.

57. The act of the accused persons must be looked at, on the whole, and all relevant factors must be given due consideration while granting or denying bail. Needless to add, any Court seized of bail application(s) arising out of such offences must record, in their order the reasons and factors that weighed with them in the ultimate outcome.

58. In view of the discussion made above it is the settled fact that the rights of an individual are always subservient to the nation/societal interest.

59. Further, in the case of **Gurwinder Singh vs. State of Punjab (supra)** the Hon'ble Supreme Court has expressed its concern to the threat raised by terrorist organizations and held that where the accusations against the accused are prima facie true, the mandate contained in the proviso to Section 43D(5) of the UA(P) Act would become applicable and the accused would not be released on bail.

60. Adverting to the facts of the case, it is evident that by order dated **20.07.2023** passed in *Criminal Appeal (DB) No. 572 of 2023*, this Court had already examined the merits of the matter and assessed the individual culpability of the present appellant, ultimately dismissing the appeal. It is

further noted that there has been no change in the circumstances or factual matrix since that adjudication. The only grounds now urged are those founded upon parity and prolonged incarceration, both of which have already been considered and dealt with in the preceding paragraphs.

61. Further in the counter affidavit the stand has been taken by the respondent state that the criminal trial is presently pending and the prosecution evidence is in progress. The case is, therefore, at an active and material stage, and the prosecution witnesses are being examined before the learned Trial Court and total of 47 prosecution witnesses have been cited by the prosecution against the appellant in Charge Sheet No. 34 of 2019 dated 22.04.2019 and out of the aforesaid 47 prosecution witnesses, 12 prosecution witnesses have already been examined before the learned Trial Court. The remaining 35 prosecution witnesses are yet to be examined for completion of the prosecution evidence. The trial is accordingly continuing and substantial prosecution evidence still remains to be recorded.

62. It has been affidavited that the release of the appellant on bail at this stage, when several prosecution witnesses remain to be examined, carries a reasonable apprehension of the appellant influencing, intimidating or

otherwise interfering with the prosecution witnesses and the fair course of trial.

63. It has further been affidavited that the respondent State is taking all necessary steps for producing the remaining witnesses and for ensuring expeditious completion of the prosecution evidence and considering the gravity of the offences and the fact that 35 prosecution witnesses remain to be examined, the continued judicial custody of the appellant is necessary to ensure the fair, uninfluenced and uninterrupted conduct of the trial.

64. In that view of the matter, this Court is of the view that since there is specific allegation having been surfaced as under paragraph-150 and 151 of the case diary of committing conspiracy of commission of crime, in which, five Police Personnel including Superintendent of Police of the District of Pakur had been killed, therefore, this Court is of the view that the impugned order requires no interference.

65. It needs to refer herein that this Court has also taken into consideration herein the applicability of the judgment rendered by the Hon'ble Apex Court in the case of ***Syed Iftikhar Andrabi Vs. National Investigation Agency, Jammu***, reported in ***2026 INSC 503.*** In the said case the Hon'ble Apex Court while taking into consideration the ratio rendered in the case of ***Union of India Vs. K. A. Najeeb (Supra)*** and based upon the applicability of Article 21 of the

Constitution of India, has observed that it is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. It has further been observed that even under the UAP Act, '*bail is the rule and jail is the exception*'; of course, but in an appropriate case, bail can be denied having regard to the facts of that particular case. For ready reference the relevant paragraph is being quoted herein which reads as under:

> ***35.*** *The often-invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution.* ***Therefore, we have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.***

66. It is beyond doubt that Article 21 of the Constitution of India mandates consideration of the period of incarceration while adjudicating matters of bail. This Court, upon due regard to the pronouncement of the Hon'ble Apex Court in the relevant case and its applicability to the facts herein, has deemed it appropriate to weigh the gravity of the accusation levelled against the petitioner. The allegation pertains to the killing of the Superintendent of Police, Pakur District, along with other police personnel. The nature of the charge is of the gravest kind, and the complicity of the appellant in the commission of the alleged offence has prima facie surfaced during the course of investigation conducted by the police authorities.

67. This Court, considering the gravity of the accusation made against this appellant, is of the view that it will not be proper to apply the principle *of "bail is the rule and jail is the exception"* for the reason that for consideration of the matter of bail, the balance is to be maintained in between the long incarceration and the nature of accusation made against the concerned accused person. Herein, the accusation is very serious and, as such, merely on account of the fact that the appellant is in custody for three years and 10 months, this Court has thought it proper not to interfere with the impugned order.

68. Thus, taking into consideration that this Court has earlier expressed its view while rejecting the prayer for grant of bail of the present appellant referred hereinabove, as also there is no vital change in circumstances as also taking into consideration the statement given on behalf of the respondent in counter affidavit that the trial is going on expeditiously, this Court is of the view that the order impugned dated 02.02.2026 passed in Misc. Criminal Application No. 45 of 2026 in connection with Session Trial No.50 of 2023 requires no interference.

69. This Court, on consideration of the fact as aforesaid and applying the observation made by Hon'ble Apex Court to the effect that the balance is to be maintained in Article 21 of the Constitution of India and in maintaining the rule of law, is of the view that the present appeal deserves to be dismissed.

70. In the result, the instant appeal fails and it is dismissed.

71. However, liberty is reserved to the appellant that, in the event the trial is not concluded within a reasonable period of time, he shall be at liberty to move an appropriate application before the Court concerned seeking his release, which shall then be considered on its own merits and in accordance with law.

72. It is made clear that any observation made herein will not prejudice the case of the appellant in course of trial and the view as expressed by this Court is only limited to the instant appeal.

73. With the aforesaid observations, the instant appeal stands dismissed and is, accordingly, disposed of.

I agree

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.) **(Sanjay Prasad, J.)**

Date : 30/09/2026

Birendra/**A.F.R.**

Uploaded on 01/10/2026