IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.820 OF 2025

Shabbir Abubakar Shaikh @ Malbari @]
Shabbir Takla @ Humnaam @ Shahid @]
Shakil s/o Late Abubakar Moinuddin Shaikh]
Age: 53, Occ: Business,]
R/at: 402, A Wing, Asmita Orient,]
Opp- Asmita Club, Station Road,]
Mira Road (E), Mumbai – 401 107]
(Presently lodged in Arthur Road Jail] … Appellant

V/s.

1. The National Investigating Agency,]
7th Floor, MTNL Telephone Exchange,]
Building, Cumballa Hill, Pedder Road,]
Mumbai – 400 026] … Respondent No.1

2. The State of Maharashtra] … Respondent No.2

Mr. Sandeep Karnik a/w Mr. Darsh Gala, Mr. Vivek Upadhyay i/by Mr. Vishwajeet Nimbalkar for the Appellant.
Mr. Anil C. Singh, The Additional Solicitor General of India a/w Mr. Chintan Shah, Special PP, Mr. Prasanna Bhangale, Mr. Krishnakant Deshmukh, Mr. Rajdatt Nagr for Respondent-U.O.I.
Ms. Prajakta P. Shinde, APP for the Respondent-State.
Mr. Sashikant Singh, PI, NIA Mumbai, Present.
Ms. Shipra Singh, PI NIA Mumbai, Present.
Mr. Pravin Ingawale, SP, NIA, Mumbai, Present.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 13th March, 2026.
PRONOUNCED ON : 15th April, 2026.

JUDGMENT (PER : KAMAL KHATA, J.) :-

1) By this Appeal, the Appellant seeks to quash and set aside the Order dated 5th December, 2024 passed by the Hon'ble Special (Spl) National Investigating Agency (NIA) Court in NIA Spl Case No.1409 of 2022. Consequently, the Appellant seeks his release on bail in NIA Spl Case No.1409 of 2022, on such terms and conditions that the Hon'ble Court may deem fit and proper.

Prosecution's Case:

2) Between 2008 and 2018, acting on instructions of the head of D-Company, the Appellant allegedly threatened and extorted approximately Rs.16 crores from PW-4.

2.1) On 3rd February, 2022, the NIA registered an FIR bearing No.RC–01/2022/NIA/Mum for offences punishable under Sections 17, 18, 20, 21, 38 and 40 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), read with Section 201, 387 and 120B of the Indian Penal Code, 1860 (IPC) along with Section 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) on the basis of reliable information received from the Ministry of Home Affairs, Delhi, against the D-Company allegedly headed by Dawood Ibrahim Kaskar.

2.2) On 29th April, 2022, the Appellant allegedly received Rs.25 lakhs from a hawala operator in Malad, Mumbai, pursuant to instructions of Accused No.1, Mr. Arif Shaikh. The prosecution alleges that this Rs.25 lakhs constituted proceeds of terrorism, intended for furthering terrorist activities and larger conspiratorial acts in Mumbai. Out of this amount, Rs.20 lakhs was allegedly handed over to Arif Shaikh, while Rs.5 lakhs was retained by the Appellant.

2.3) During a house search on 9th May, 2022, the investigating agency allegedly recovered and seized Rs.5 lakhs from the Appellant's residence. A signal/blank pistol, resembling a real firearm, was also allegedly recovered from the Appellant's residence and is claimed to have been used for threats and extortion for the benefit of D-Company. The search was conducted at the premise of the Appellant under Section 165 of the Code of Criminal Procedure, 1973 (CrPC). The Appellant came to be arrested on 12th May, 2022 at the behest of Respondent No. 1.

3) The first bail application of the Appellant came to be rejected by the Special Court by an Order dated 21st July, 2022, principally on the ground that the investigation was incomplete and that there existed a possibility of Appellant tampering with prosecution's evidence and influencing witness, thereby impeding the filing of the charge-sheet against the Appellant. Thereafter, the second bail application was also rejected by the learned Spl. Judge, NIA by an Order dated 5th December, 2024. Being aggrieved thereby, the present Appeal has been preferred.

4) Mr. Karnik, learned Advocate for the Appellant, submitted that, the Appellant is innocent and has been falsely implicated in the present

case. According to him, the Appellant is a businessman engaged in property dealings for several years. In so far as the statement of PW-2, PW-6 and PW-11 pertaining to the alleged transaction of Rs. 25 lakhs in April 2022, is concerned, Rs. 5 lakhs recovered was reserved for carrying out business purposes and for 'jakat' and not for funding terrorism or terrorist activities. According to him, the evidence placed on record does not establish that the Appellant had knowledge that the said amount was to be used for terrorist acts, which is a sine qua non under Section 17 of the UAPA. It is further contended that, the statements, narrations, discussions and disclosures of PW-2, PW-4, PW-5, PW-6 and PW-11 pertain to the alleged transactions committed between the years 1999 to 2019 and therefore, are not relevant.

4.1) It is submitted that, the search at the Appellant's house on 9th May, 2022 was in absolute contravention of Section 165(1) of the CrPC. The search report, according to him, clearly indicates that no arms, ammunitions, explosives or any material ordinarily associated with terrorist activities were recovered. The only article found was a signal / blank pistol, which, according to him, does not qualify as a "firearm" within the meaning of the Arms Act, 1959. He, therefore, submits that no offence under the Arms Act could be sustained against him.

4.2) He submits that the learned Special Judge NIA, Court, failed to consider that the FIR does not disclose any specific anti-national activity or incident, nor does it contain any particular allegation against the Appellant.

He further contends that Dawood Ibrahim Kaskar has been designated as a terrorist in his individual capacity and not as a member of any gang.

4.3) Learned Advocate further submitted that, the provisions of UAPA would be attracted only after the inclusion of the names of Dawood Ibrahim Kaskar and Chhota Shakil in the Fourth (4th) Schedule as members of a terrorist organization under Section 2(1) (m) of UAPA, and any alleged acts prior thereto would not fall within its ambit in view of Section 35(1) of the Act.

4.4) The learned Advocate submitted that, the substratum of the F.I.R. is an allegation that members of D-Company were planning either to instigate or trigger incidents of violence across various parts of India, including Mumbai, major cities and the National Capital Region. However, according to him, there is no material on record to substantiate any such imminent or concrete plan. It is, therefore, submitted that, there was absolutely no material on record produced by the prosecution that was sufficient to invoke the rigors envisaged under the provisions of the MCOC Act.

4.5) Mr. Karnik further submitted that, the Appellant is behind bars since 12th May, 2022 i.e. for over two years and eight months, and the charges are yet to be framed. He further contended that, the charge-sheet runs into more than 8,000 pages. Consequently, relying upon the observations made by the Hon'ble Supreme Court in cases of (i) *Jalaluddin*

Khan vs. Union of India (2024) 10 SCC 574, (ii) *Union of India vs. K. A. Najeeb* (2021) 3 SCC 713, (iii) *V. Senthil Balaji vs. Directorate of Enforcement* (2024) SCC OnLine 2626 and (iv) *Athar Parwez v. Union of India* (2024) 20 SCC 57, it is contended that the Appellant is entitled to be released on bail.

4.6) Learned Advocate submitted that the bar contained in Section 43-D (5) of UAPA and Section 21(4)(b) of MCOC Act, has been incorrectly applied, and that the Appellant is entitled to be enlarged on bail.

5) Mr. Anil Singh, the learned Additional Solicitor General (ASG) representing the Respondent – Union of India, submitted that Dawood Ibrahim (wanted accused No. 1) and Chhota Shakil (wanted accused No. 2) are absconding and continue to operate from abroad. He submitted that, by an order dated 3rd February 2022, the Ministry of Home Affairs, Government of India, directed the NIA to investigate the offences involving certain proscribed organizations, namely "Lashkar e Taiba", "Jaish-e-Mohammad" and "Al-Qaida", which are included in the First Schedule to the UAPA.

5.1) He submitted that, on 2nd November, 2022, the NIA sought sanction of the Central Government under Section 45(1) of the UAPA to prosecute all the accused persons, including the Appellant, who is shown at Serial No. 2 in the sanction proposal. The said communication also referred to an Order dated 9th October, 2022 passed under Section 23(2) of the

MCOC Act. According to him, these steps were taken on the basis of confidential information received from the Central Government and the material disclosed through statements of protected witnesses, which indicated that the Appellant was acting at the behest of the wanted accused.

5.2) Learned ASG submitted that, during the course of investigation, and upon scrutiny of the material and documents seized from the house, office and shop of accused No. 3, it was revealed that, under the leadership of Dawood Ibrahim (wanted accused No. 1) and Chhota Shakil (wanted accused No.2) the accused persons were engaged in raising, collecting and channelizing funds for commission of terrorist acts, as well as in extorting money from Indian based businessmen, builders and other individuals by putting them and their families in fear of death, thereby spreading terror amongst the people. It was further submitted that the signal or blank pistol recovered from the house of the Appellant (accused No.2), which closely resembled a real firearm, was deliberately kept for the purpose of intimidation and extortion. It was also contended that, with a view to obliterate incriminating material, including data, communication, the Appellant had formatted his mobile phone and destroyed the SIM card in order to evade detection and conceal his association with the wanted accused Nos.1 & 2.

5.3) Mr. Singh, then drew our attention to the various statements recorded during the course of investigation to demonstrate the involvement of the Appellant in the alleged activities, and to contend that the amount recovered from his possession formed part of the funds intended to support the nefarious activities.

5.4) He further invited our attention to the reply filed by the NIA on 26th June, 2025. It was submitted that the Appellant had amassed substantial funds which were collected at the instance of the wanted accused Nos.1 and 2, who are stated to be operating from Pakistan.

5.5) Mr. Singh relied upon the following Judgments in support of his contentions:

(a) *Zakir Abdul Mirajkar vs. State of Maharashtra* reported in *(2023) 20 SCC 408 (87 & 88)*;

(b) *Gulfisha Fatima vs. State(Govt. of NCT of Delhi)* reported in *(2026) SCC OnLine SC 10 (41 to 58, 61, 71, 78-82, 426);*

(c) *National Investigation Agency vs. Zahoor Ahmad Shah Watali* reported in *(2019) 5 SCC 1 (paragraphs 23 and 24);*

(d) *Gurwinder Singh vs. State of Punjab & Anr.* Reported in *(2024) 5 SCC 403 (44 to 48);*

For all the aforesaid reasons, Mr. Singh submitted that the bail to the Appellant deserves to be rejected.

6) We have heard Mr. Karnik for the accused and the learned ASG Mr. Anil Singh for the Respondent and perused the record carefully.

7) The undisputed fact that, certain electronic evidence was destroyed by the accused-Appellant lends support to the prosecution case and lends support regarding the Appellant's involvement in the alleged crime. Having regard to the nature and gravity of the offences, the burden lay upon the Appellant to make out a case for grant of bail. In our considered view, the Appellant has failed to do so.

8) In *National Investigation Agency v. Zahoor Ahmed Shah Watali* (supra), the Supreme Court, upon considering earlier decisions including *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra* (2005) 5 SCC 299, particularly, paragraphs 36, 37, 38, 44, 45 and 46, *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2004) 7 SCC 528 particularly, Paragraph 18 and *Jayandra Saraswathi Swamigal v. State of Tamil Nadu* (2005) 2 SCC 13 particularly, paragraph 16 held that the exercise to be undertaken by the Court at the stage of grant or non-grant of bail is markedly different from discussing merits or demerits of evidence. The Court is not required to undertake a meticulous examination of the evidence but is expected to form a view, on broad probabilities, as to whether the accusations are prima facie true.

9) In *Gulfisha Fatima Vs. State(Government of NCT of Delhi)* (supra)particularly, paragraphs 41, 58, 61, 71, 78 to 82 and 426 the

Supreme Court elaborated upon the scope of Section 43-D(5) of the UAPA and held that it operates as a gatekeeping provision requiring a focused and disciplined enquiry confined to whether the prosecution material, taken at its highest, satisfies the statutory threshold of prima facie truth. The Court emphasized that the provision requires neither mechanical denial nor casual grant of bail, but a principled application of the statutory standard within its clearly defined limits. It laid down guidelines for the correct application of section 43D (5) as under:

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

10) The Supreme Court further observed that, where the aforesaid requirements are satisfied, the statutory embargo on the grant of bail must operate with full force; conversely, where they are not, the embargo stands lifted. While recognizing the fundamental importance of personal liberty

under Article 21 of the Constitution, the Court also emphasized that such liberty cannot be viewed in isolation from the competing considerations of public order, the integrity of the trial process, and the security of the community. Where the material on record, taken at face value, discloses reasonable grounds for believing the accusation to be *prima facie* true, the statutory restraint must ordinarily prevail.

11) In *Gurvinder Singh v. State of Punjab and Anr.* (supra) (paragraph 44 to 48), the Supreme Court distinguished *K. A. Najeeb* (supra) and held that, mere delay in trial, particularly in cases involving grave offences, cannot by itself be a ground to grant bail. It was observed that where the material available on record indicates involvement in terrorist activities, and where there exists likelihood of influencing witnesses, the grant of bail would seriously prejudice the administration of justice.

12) In *Zakir Abdul Mirajkar vs. State of Maharashtra & Ors.* (supra) referring to the decision in *Govind Sakharam Ubhe v. State of Maharashtra* (2009) SCC OnLine Bom 770, it was held that for the purposes of the MCOC Act, it is not necessary that multiple charge-sheets be filed against an individual accused; charge-sheets pertaining to the organized crime syndicate would suffice to meet the requirement under Section 2(1)(d).

13) In the present case, what is important is the nexus or the link

between the Appellant and the organized crime syndicate. The existence of such link with the organized crime syndicate constitutes the essence of “continuing unlawful activity”. Upon consideration of the material placed on record, we are satisfied that such a nexus between the Appellant and the organized crime syndicate is *prima facie* established.

14) In our view the various statements recorded during the course of investigation prima facie indicate a link between the Appellant and the wanted accused, Chhota Shakil. The recovery of Rs 5 lakhs from the Appellant’s residence, along with a blank pistol, lends corroboration to the prosecution’s case. Further, the destruction of the SIM card and the formatting of the mobile phone further support the inference that the Appellant was engaged in unlawful activities.

15) In our view, there is sufficient material against the Appellant and we find no reason to interfere with the Order dated 5th December, 2024 passed by the Hon’ble Spl Judge NIA. We are also of the view that, if released on bail, there exist a likelihood of the Appellant tampering with prosecution’s evidence and influencing witnesses as well as fleeing from India thereby frustrating the investigation and the trial.

16) We are not persuaded by the Appellant’s explanation that the blank pistol was kept for self-defence. If the Appellant, as a businessman, genuinely perceived any threat to his life or property, he could have applied for a licensed firearm in accordance with law to the competent Authority.

The possession of a blank pistol, in the facts of the present case, gives rise to a reasonable inference that it was intended to be used for issuing threats. Similarly, the explanation that the recovered amount was kept aside for "jakat" or business purposes is unsupported by any material, apart from a bald assertion. We are, therefore, unable to accept the said explanation.

17) Upon an overall consideration of the material placed before us, we find that the accusations against the Appellant are *prima facie* true. Consequently, the Appellant is not entitled to be released on bail.

18) We are of the opinion that, the trial Court has not committed any error while passing the impugned Order. In view of the above, Appeal is accordingly dismissed.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**