



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CNR No. DLHC010456852024

+ CRL.A. 676/2024

MOHAMMAD SAQIB@ SAQIB IFTEKARAppellant
Through: Mr.Sarim Naved, Adv.

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr.Rahul Tyagi, SPP with
Ms.Priya Rai, Mr.Avinash
Kumar Singh, Mr.Priyansh Raj
Singh and Mr.Amit Rohila,
Advs.
DSP Abhinav Kajla, CIO and
Insp. Lalit Sharma, AIO, NIA

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act') seeking grant of bail in FIR No. RC-38/2018/NIA/DLI, PS NIA



HQ, New Delhi titled *NIA v. Mufti Mohammad Suhail and Ors.*, registered under Sections 120B, 121, 121A and 122 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 17, 18, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA') and Sections 4 and 5 of the Explosive Substances Act, 1908.

2. The appeal challenges the rejection of the bail application of the appellant by the learned Additional Sessions Judge-03, Patiala House Courts, New Delhi (hereinafter referred to as the '*Trial Court*') vide order dated 27.05.2024.

3. The learned counsel for the appellant submits that even as per the allegations contained in the charge-sheet against the appellant, the appellant is not alleged to be part of the core module of the terror plot, but at best, was only a peripheral participant. He submits that the only allegations against the appellant are that he visited Kashmir along with Accused No. 6/*Muhammad Absar* in July 2017 and July 2018 to request PW-27/*Sh. Reyaz Ahmad Najar* to facilitate a meeting with the militants. Admittedly, PW-27 knew the appellant from before as they studied from the same madrasa in Uttar Pradesh. He submits that a holistic reading of the statement of PW-27 would show that the appellant neither requested to facilitate the meeting with the militants, nor showed any interest for the same.

4. He submits that the prosecution also relies on the statement of PW-35/*Sh. Zubair Siddique Lone*, who again does not truly implicate the appellant in any of the offence.



5. He submits that the third witness produced by the prosecution against the appellant is PW-37, Protected Witness D, who again, apart from being a witness of hearsay, does not implicate the appellant in any of the offence.

6. He submits that in any case, as these witnesses stand examined and the appellant has remained in custody for almost 8 years, and the trial is not likely to end any time soon, the appellant be released on bail. In support of his submissions, he places reliance on the judgments of the Supreme Court in *Union of India v. KA Najeeb*, (2021) 3 SCC 713; *Ashim v. National Investigation Agency*, (2022) 1 SCC 695; *Javed Gulam Nabi Shaikh v. State of Maharashtra*, (2024) 9 SCC 813; *Sheikh Javed Iqbal v. State of Uttar Pradesh*, (2024) 8 SCC 293; *Mukesh Salam v. State of Chattisgarh & Anr.*, 2024 SCC OnLine SC 4021; *Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine SC 1920; *Vijay Nair v. Directorate of Enforcement*, 2024 SCC OnLine SC 3597; *Javed Ali@ Javed v. National Investigation Agency*, 2024 SCC OnLine Del 7874; *In re: Manirul Islam@Doctor*, CRM (DB) No. 667/2023, order dated 20.03.2023 (Calcutta High Court); *Padam Singhee v. Directorate of Enforcement*, 2024:AHC:178668; *Central Bureau of Investigation v. Dayamoy Mahato & Ors.*, 2025 SCC OnLine SC 2775; *Jalaluddin Khan v. Union of India*, (2024) 10 SCC 574; *Kareem@Sadam v. State by National Investigation Agency*, SLP (Crl) No. 11626/2025, judgment dated 07.10.2025; *Union of India v. Saleem Khan*, 2025 SCC OnLine SC 1754; *Tapas Kumar Palit v. State of Chattisgarh*,



2025 INSC 222; *Vernon v. State of Maharashtra & Anr.*, (2023) 15 SCC 56; *Niklesh Prakash Patil v. The State of Maharashtra*, 2025:BHC-AS:21761; *Chandeep Singh v. National Investigation Agency*, 2023 SCC OnLine P&H 6332; *Gulfisha Fatima v. State (Govt of NCT of Delhi)*, 2026 SCC OnLine SC 10; and, *Arvind Dham v. Directorate of Enforcement*, 2026 SCC OnLine SC 30.

7. On the other hand, Mr. Rahul Tyagi, the learned Special Public Prosecutor ('SPP'), submits that mere delay in conclusion of the trial cannot be a reason to grant bail to the appellant. He submits that there are serious allegations against the appellant inasmuch as he is the one who introduced the prime motivator of terror module in Jammu & Kashmir, that is, Mufti Mohd. Suhail (A-1) and Anas Younus (A-2), to Naim@ Mohd. Naeem (A-11). The appellant also went to Kashmir with Muhammad Absar (A-6) to try and make contact with the terrorists so that they can obtain training. He also procured arms, and from his possession, incriminating material in the form of pamphlets and others was recovered. He submits that given the seriousness of charges against the appellant, the appellant should not be released on bail.

8. He further submits that as this Court is considering an appeal against the order passed by the learned Trial Court, subsequent material in the form of statements of witnesses recorded before the learned Trial Court after the passing of the impugned order rejecting his bail application, should not be considered by this Court, but the appellant be given liberty to approach the learned Trial Court again for



grant of bail. In support of his plea, he places reliance on the judgments of the Supreme Court in ***Shoma Kanti Sen v. State of Maharashtra & Anr.***, (2024) 6 SCC 591; ***State of AP Through IG, NIA v. Mohd. Hussain***, (2014) 1 SCC 258; ***CBI v. RS Pai & Anr.***, (2002) 5 SCC 82; and ***Shahid Nasir v. National Investigation Agency***, Crl.A. 960/2024 order dated 11.03.2025.

9. We have considered the submissions made by the learned counsels for the parties.

10. In the present case, the appellant had been taken in custody on 26.12.2018 and has, therefore, remained in jail for almost 8 years. Presently, out of 120 witnesses cited by the prosecution, statements of only 40 witnesses have been recorded. The learned SPP has submitted that the respondent shall be dropping 39 witnesses. Even if that be so, the trial is not likely to end any time soon.

11. In ***Khuram Parvez v. National Investigation Agency***, 2026:DHC:5092-DB, we had considered the law relating to the effect of delay in the trial on the Fundamental Rights of the accused under Article 21 of the Constitution of India, and balance to be achieved between this right and the restrictions on bail contained in Section 43D(5) of the UAPA. We would quote from the said judgment as under:

*“52. In **K.A. Najeeb** (supra), the Supreme Court considering the balance to be achieved between the Fundamental Right of an accused for a speedy trial vis-à-vis the restrictions imposed under Section 43D(5) of the UAPA on release of the accused on bail, held that these restrictions do not oust the ability of the*



constitutional courts to grant bail on grounds of violation of Part III of the Constitution. It held that whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail, however, these restrictions will melt down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. It was further held that Section 43D(5) of UAPA is comparatively less stringent than Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, where the court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail. Instead, Section 43D(5) of the UAPA merely provides another possible ground for the court to refuse bail, in addition to the well-settled considerations like gravity of offence, etc.. We quote from the judgment as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute 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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the 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.”

53. The above judgment and various others of the Supreme Court were considered by the Supreme Court in **Gulfisha** (supra), and the Supreme Court framed the question to be considered as “in prosecution under the UAPA, when delay and prolonged incarceration are invoked as grounds for bail, what is the principled approach by which a constitutional court is to examine such a plea.”

54. In answer to the above question, the Supreme Court held as under:

“30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

31. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair. The expression “procedure established by law” reflects that balance. The UAPA, as a special statute enacted to address offences alleged to affect the security of the State and the stability of civic life, represents a legislative judgment as to the conditions under which bail may be



granted at the pre-trial stage. Section 43D(5) of UAPA embodies the exercise of that judgment.

*32. In **Union of India v. K.A. Najeer**, 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.

34. The constitutional inquiry into delay is not an inquiry into guilt. It is an inquiry into whether continued detention remains constitutionally permissible in the circumstances of the case. That inquiry is necessarily contextual. Context includes the nature of the allegation, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to delay, and the risks attendant upon release. Delay cannot be



detached from these considerations and treated as a solitary determinant.

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.

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

55. The Supreme Court also examined the principles governing the scope of judicial inquiry under Section 43D(5) of the UAPA at the bail stage, and held as under:



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

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

- i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;*



ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and

iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full-fledged trial.

82. Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.”

56. The correctness of the above judgment, insofar as interplay between Article 21 of the Constitution of India and Section 43D(5) of the UAPA is concerned, has been doubted by the Supreme Court in **Syed Ifikhar Andrabi v. National Investigation Agency, Jammu**, 2026 INSC 503. It explained **K.A. Najeeb** (supra), as under:

“31. In K.A. Najeeb, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the



presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will 'melt down' where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

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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."

57. Further, while highlighting the low conviction rate in UAPA, the Supreme Court opined that:-

"42.3. Thus, from the aforesaid figures, it is evident that the country-wide percentage of conviction under the UAP Act for the five years comprising the period 2019-23 hovers between 2% to 6%. In other words, there is 94% to 98% possibility of acquittal in such cases in the country. When it comes to the Union Territory of Jammu and Kashmir, the percentage of conviction is abysmal, to say the least. For the aforesaid period, the annual rate of conviction is always less than 1%. It means that at the end of the trial, there is 99% possibility of acquittal in such cases. With these kind of statistics staring at our face, the question is, should we continue the detention of the appellant or defer the consideration to a later stage, simply because the charges are serious?"

58. We must also note that this issue concerning the interplay between Article 21 of the Constitution and Section 43D(5) of the UAPA Act, has now been referred to a larger Bench in **Tasleem Ahmed v. State Govt. of NCT of Delhi** (order dated 22.05.2026 passed by the Supreme Court in SLP (Crl.)



2867/2026). In the said order, the Supreme Court has observed that delay cannot be the sole ground for releasing the accused on bail and that the inquiry into delay is contextual and must take into account the nature of the allegations, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to the delay, the role attributed to the accused, the prima facie material, the availability of intermediate safeguards, and the risks attendant upon release. It has further observed as under: -

“20. We are also conscious that an unqualified reading of the proposition that lapse of time by itself must compel bail in every case under the UAPA may have serious consequences. Such an approach may leave little room for courts to examine the nature of allegations, centrality of role, protected witnesses, risk of intimidation, possibility of reactivation of networks, nature of delay and whether such delay is attributable to the accused himself/herself, public order concerns and national security implications. On the other hand, an equally unqualified insistence on Section 43D(5) without regard to prolonged incarceration would imperil Article 21. The Constitution does not command either extreme. It is this precise issue that may warrant attention of the appropriate bench dealing with the issues.

21. The question, therefore, is not whether Article 21 survives Section 43D(5). It undoubtedly does. The true question is how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life.



22. We clarify that nothing in this order is intended to whittle down, dilute, read narrowly, or detract from the authority of K.A. Najeeb. ...”

59. In the said order, after having referred the issue to the larger Bench, the Supreme Court still went on to consider the case of the appellant therein for bail and, taking into account the substantial period of incarceration already undergone by the appellant therein, released the appellant on interim bail for a period of 6 months.

*60. In **Union Territory of Ladakh and Ors. v. Jammu and Kashmir National Conference and Anr.**, (2024) 18 SCC 643, the Supreme Court has also held that merely because a question of law is referred to a larger Bench, the High Court must not refrain from considering the matter before it in accordance with the law binding on it. It has opined as under:*

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later coordinate Bench. In any case, when



faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Co. Ltd. v. Pranay Sethi. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

12. We shall now test the plea of the appellant for bail on the above parameters.

13. As noted hereinabove, the trial is not likely to end any time soon. The allegations in the charge-sheet against the appellant are as under:-

iii) Role in Crime (in brief)	<i>A-5 is a member of the Pro-IS group Harkat-ul-Harb-E-Islam. He propagated the ideology of ISIS and supported the ideology of Jaish-E-Muhammad for which he al-so established contacts in the Tral region of Jammu & Kashmir for arranging certain local terrorists for committing terrorist acts within India and to wage war against Government of India.</i> <i>A-5 was instrumental in the formation of the group led by Mufti Mohammad Suhail (A-1) wherein A-5 contributed by arranging for weapons through his contacts in the western UP.</i>
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	<i>He knowingly facilitated waging of war against Government of India by concealing of the design of his group members. He also supported proscribed terrorist organizations like ISIS, Jaish-E-Muhammad and Al-Qaida.</i>
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XVII. Following is the summary of incriminating seizures made from the house Saqib, S/o Iftekhar (A-5) dated 26/12/2018, working as Imam in Jama Masjid, Baksar Flyover, Baksar, Uttar Pradesh-

Mobile

Total-03 Mobiles (Samsung, Gionee & Nokia),

One Tablet Model no. GT-N8000 Build No. KOT49H.N8000xxUDNE6 (navy blue colour without SIM Card

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ID. Procurement of Pistols from Meerut: (1st Visit):

a) The initial investigation revealed that A-1, A-2, A-3, A-4 & A-5 went to Meerut in the first week of July, 2018 to procure pistols from Radhana Inayatpur, Meerut, UP. Naim (A-11) was instrumental in their procuring the weapons.

b) The investigation revealed that during the first week of July, 2018, Suhail (A-1) went to Simbhaoli in western UP alongwith Anus Yunus (A-2), Zafar (A-4) and Zubair (A-3) by a Maruti Swift Car white colour (belonging to Zubair (A-3) and took Saqib (A-5) from Jama Masjid Baksar, Hapur and reached at the tea



stall near bus stand of Radhna Inyatpur, Nairn (A-I I) and Kasim (s/o Sh. Zafaryab) a resident of this village was already there when Kasim called Matloob (PW-11).

c) Matloob (PW-11) handed one Pistol and one Katta and one packet (Cartridge) rounds (20) to Mufti Suhail (A-1). In this transaction A-5 introduced A-11 to the group who promised them that weapons can be arranged for a price.

d) Evidence gathered by Investigation to substantiate the transactions in Meerut (First Visit):

i. Witness Matloob (PW-11) in his statement testified that during the transaction of weapons dealings by Naim (A-11) and Suhail (A-1) he witness the transaction of arranging 01 country-made pistol, 01 country made Katta and 20 Nos. ammunition on the direction of Naim (A-11) and that these were handed over to A-I.

ii. Matloob (PW-11) also identified the arms which were given to A-1 after seeing the photographs of pistols at the time of seizure.

iii. Voluntary Disclosure and Pointing out by Naim (A-11): The investigation has also corroborated the fact of this meeting from the disclosure/pointing out on 12/01/2019 wherein A-11 pointed out the places where A-11 met with A-I and the place where Pistols were purchased. During the visit A-1, A-2, A-3, A-4, and A-5 came at Village Radhna Inyatpur and collected one country made pistol, one country made pistol and a packet of bullets from Matloob (PW-11).

iv. After taking the said arms and ammunition Mufti Suhail (A-1) and his team returned to Delhi and dropped Saqib (A-5) and Kasim at Simbhaoli (UP).



e) Corroboration of above from CDR Analysis: CDR Analysis of Suhail (A-1), Zubair (A-3) and Anas (A-2) was conducted to corroborate the facts coming up from the disclosures of accused and from statement of witnesses. CDR Analysis confirms that Suhail (A-1), Zubair (A-3) and Anas (A-2) (their mobile numbers are 9910660673, 9811626865 & 8750150219) went to Meerut in the first week of July 2018. The locations and movements of phone numbers used by accused persons as mentioned above are consistent with the facts as come up in the evidence discussed above. Details are attached in the CDR Report (D-192.).

17.7.9 .Jammu &Kashmir Visits by AS, & A6 to link Harkat-ul-Harb-EIslam with Kashmiri Militants:

I. Investigation has evidence that Mufti Saqib (A-5) and Maulvi Absar (A-6) visited Jammu, Srinagar and Tral (Pulwama) in Jammu & Kashmir twice during the month of July, 2017 and July, 2018 to link their group with Kashmiri militants (specifically for attending training and collection of weapons to carry out violent acts.

This has been substantiated by following facts:-

a) Absar (A-6) in his disclosure dated 17/01/2019 led by pointing out memo dated 17/01/2019 voluntarily disclosed that in July, 2018 he and Saqib (A-5) had gone to Tral, Pulwama, J&K and stayed in the house of a common friend Riyaz Ahmed Najar(PW-15), (r/o Village-Amirabad, PS- Tral, Distt.Pulwama) with an intention to meet 'Mujahideens' (militants) of Jaish-e-Muhammed, and for getting training and



collect weapons to carry out jihad. Further, upon their return to Delhi, A-5 & A-6 described about their Tral visit to Suhail (A-1), Anas (A-2), Zubair (A-3) and Zafar (A-4) at Pacific Mall, near Koushambi Metro Station. A6 pointed out the location also.

b) In his disclosure dated he has testified that he contributed Rs.1000/- (One Thousand rupees) for purchase of weapons.

c) Riyaz Ahmed Najar (PW-15) in his statement has also testified following facts:

- i. That in the month of July, 2018 Saqib (A-5) and Absar (A-6) had come in his house (at Amirahad, PS-Tral, Pulwama, J&K) and stayed there for 04 to 05 days.
- ii. That Absar (A6) told Riyaz (PW-15) to arrange meeting with 'Mujahidins' of (JEM) and A-6 told to Riyaz(PW-15) that he will not return back without meeting them.
- iii. That after promise by Zubair (PW-16) (S/oMohd Sadiq Lone, r/o Amirabad, Tral, Dist-Pulwama, J&K, a friend of Riyaz) that he will arrange their meeting with Mujahideens as and when it will finalize, both A-5 & A-6 returned from Tral, Srinagar. A-5 & A-6 exchange the mobile numbers also with Zubair (PW-16).
- iv. Zubair Siddique Lone(PW-16), S/o Mohd Sadiq Lone, r/o Amirabad, Tral, Dist-Pulwama, J&K in his statement testified following facts:

- That in the month of July, 2018 Saqib (A-5) and Absar (A-6) visited village-Amrabad, PS-Traland stayed in the house of Riyaj Ahmad Najar.
- That Absar (A6) told to arrange meeting with Mujahidins of (JEM).
- That after promising by Zubair (PW-16) (a friend of Riyaj) that he will arrange meetings with Mujahideens as and when it will final both A-5 & A-6 returned from Tral, Srinagar. A-5 & A-6 exchange the mobile numbers also.



- That Zubair knows two of his childhood friends namely Mukhtar and Jahagir who joined terrorist organization.

b. Saqib (A-5) in his disclosure led by pointing out dated 08/01/2019, has disclosed that during his onward journey to Tral, Pulwama he stayed in the house of master Showket Ahmad Khan, S/o Talib Hussain, House No- 95, Ward No- 09, Opposite Water Tank, Rajouri for a night in the year 2017. In an another disclosure dated 10/01/2019, he pointed out the house of Riyaj Ahmad Najar (PW-15), R/o Amirabad, PS-Tral, Pulwama, J&K in which A-5 & A-6 stayed twice i.e. in the year 2017 & July, 2018.

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“17.7.15. Evidence Against: Saqib (A-5):

Substantiation through evidence against accused Saqib (A-5) has been done under following headings:

I. (A-5) is a member of the Pro-IS Group Harkat-ul-Harb-E-Islam: this is substantiated from the fact that A-5 took active part in proceedings of the group including procuring of arms & ammunition through his contacts from Radhana Inayatpur, Meerut, UP. The facts have already discussed in the relevant para (Para No-17.7.6 (III)).

II. Investigation has substantiated that A-5 established contacts in Tral region of Jammu & Kashmir for arranging certain local terrorists for committing terrorist acts in India. Investigation has also established that A-5 with A-6 visited Jammu, Srinagar and Tral (Pulwama) in Jammu & Kashmir twice (during the month of July, 2017 and July, 2018) to tie up with their friends to request them to arrange for training with Jaish-E-Muhammad. Their contacts Riyaj Ahmed Najar (PW-15) and Zubair (PW-16) were



identified by the investigation and their depositions have been recorded. The circumstances and players leading to the preparation of the facts have already been discussed in the relevant paras (Para No-17.7.9).

b. Cyber Examination Report-VI:

Investigation has substantiated by analysis of data recovered from the mobile devices GIONEE X1 of A-5 that he was in touch with the peoples who were supporting and propagating materials related to terror organisation like Jaish e Mohammed (JEM), Taliban and was preparing to wage war against the Government of India.

c. Chats (recovered in seized phone of accused and social media recovery done u/s 27 IEA), Disclosure followed by pointing outs and statements of Prosecution witnesses will prove his visit of Tral (Pulwama) to meet terrorists of Jaish-e-Mohammed for getting training to carry out jihad.

d. **Cyber Examination Report-VI:** Chats recovered from Facebook and WhatsApp from the device of Saqib (A-5). Some incriminating contents are as under:-

- CERT-IN's report, Page No 4138, date 10/17/2018 4:38:03 PM: Shahzad has sent a voice message "PTT-20181017-WA0029.opus", in which he says "**Indian are "Buzdil"**",
- CERT-IN's report, Page No 414: 10/18/2018 6:15:50 PM: Translation of Shahzad's message says "**Fifty thousand nine hundred rupees**", also he has mentioned "**57900**"
- CERT-IN's report, Page No date 10/19/2018 2:03:18 AM: Translation of Saqib's message says "**Hazrat Balance has arrived**", "**57900**".



- CERT-IN's report, Page No: 10/19/2018 3:22:36 AM: Translation of Shahzad's message says "50000 to Baba, 4000 to Ammi jaan, 1000 to you, 900 to Maulana Absar, 2000 Jihad per Subullah"
- CERT-IN's report, Page No 16840 date 10/23/2018 4:52:23 AM: Translation of Shahzad's message says "Kaushah Kalam is occupied by occupied Kashmir, Mr. Maulana Mohammad Masood Azhar Sahib's latest message of Kashmir *Offer Mujahidin Jeep Mohammad".
- CERT-IN's report, Page No date 16847 date 10/26/2018 1:59:08 PM: Shahzad's message says "**Bayan Mout ki tayyari Mufti Abdur Raouf Asgar 35:50**". One of his contacts in Kashmir. He was also communicated through WhatsApp with another accused of the same case RC-38/2018/NIA/DLI, **namely Mohd. Gufran**, who has sent him a message in support of Taliban.
- CERT-IN's report, Page No 16850 date 10/29/2018 5:52:05 PM: Message sent by shahzad, which has mention of ***Tehreek-e-Azadi Jammu Kashmir*** <https://t.me/TehreekEAzaadi>
- CERT-IN's report, Page No 16865 date 11/7/2018 6:06:49 AM: Shahzad has sent a document namely "**Aye- Musalman-Behan.pdf**"
- CERT-IN's report, Page No 16896 date 12/19/2018 3:02:28 AM: Saqib has sent an audio message "PTT-20181219-WA0003.opus". **It has mention of lashkar and mujahid.**
- CERT-IN's report, Page No 16897 date 12/19/2018 3:05:11 AM : Shahzad has sent an audio message "PTT-20181219-



WA0004.opus". The audio says "Allah Es Beche Ko Mujahid Banaye... Zalimoka Katil Karne Wala Banaye"

- CERT-IN's report, Chat-654.txt, Page no: 3822, Sr no. 268: Chat participant namely "Mufti Riyaz ks" (919797203362). Application used for sharing messages is WhatsApp. **WhatsApp number used by Saqib (918700316459)**
- CERT-IN's report, Page No 3823 date 10/9/2018 9:56:27 AM: Translation of Saqib's message **"Please give Zubair Bhutto's number I got out of my mobile"**.
- CERT-IN's report, Page No 3824 date 10/20/2018 1:15:02 AM: **Riyaz has messaged "Ma haar giya, Ma majboor hoo, Ma apna vada poora Na kar saka, agar aap meri juga hoti aap be aisa karti humari halat hi aise hai. Maloom Nahi hai ajant kon hai aur apna kon hai, is liye aap hazrat maaf kariye.**
- CERT-IN's report, Page No 26425: Gufran has sent message to Saqib, in support of Taliban.

III. Conclusion on the involvement of Saqib (A-5): The investigation has established that A-5 was a member of Harkat-Ul-Harb-E-Islam and that he had entered into a conspiracy to link up this group with the Jaish-E-Muhammad (JEM) group through his contacts in Jammu and Kashmir. The fact that he had received and transferred amounts received from Shahzad Kamal (A-18) ('Shahzad bhai Arb' as per chats recovered from A-5's social media recovery) and that part of this amount was to be used for Jihad substantiates that A-5 was part of the conspiracy designed and furthered by A-1"



5 Mufti Mohd. Saqib (A-5) ➤ A-5 is a member of the Pro-IS group Harkat-ul-Harb-E-Islam. ➤ A-5 propagated the ideology of ISIS and supported the ideology of Jaish-E-Muhammad for which he also established contacts in the Tral region of Jammu & Kashmir for arranging certain local terrorists for committing terrorist acts within India and to wage war against Government of India. ➤ A-5 was instrumental in the formation of the group led by A-1 wherein A-5 contributed by arranging for weapons through his contacts in the western UP. ➤ A-5 knowingly facilitated waging of war against Government of India by reconciling of the design of his group members.	Testimonial Evidence:- ➤ Oral evidence of Protected Witness 'D' which was recorded u/s 161 Cr.P.C. ➤ Oral evidence of Reyaz Ahmad Najar S/o Late Ali Mohammad Najar, r/o- vill- Amirabad, PS Tral, Dist- Pulwama, J&K, recorded under Section 161 Cr.P.C. ➤ Oral evidence of Zubair Siddique Lone Mohd Sadiq Lone, Amirabad, Tral, Dist- Pulwama, J&K, recorded under Section 161 Cr.P.C. ➤ Oral evidence of Mohd Uvaish Pasha S/o Shri Bahadur Ali, r/o Vill- Thunapur, PS-Bhot, Dist- Rampur, UP, recorded under Section 161 Cr.P.C. ➤ Forensic Examination Report of Dr. V S Baswani, Scientific Consultant, (Explosive Expert) related to the recoveries made during searches on 26th Dec, 2018 says that the seized materials were collected for fabrication of IEDs. Documentary Evidence:- ➤ Search/Seizure Memo dated 26.12.2019 related to seizure of articles from the room (Masjid premises) and house of Saqib. ➤ Disclosure cum Recovery Memo dated 03.01.2019 pertaining to disclosure and recovery of email and social media accounts such as Gmail, Telegram, Facebook, and IMO. ➤ Pointing out Memorandums
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		of different dates and the different places of J&K where he visited and met with some persons to join militancy. ➤ CDR Analysis report. ➤ Extracted data of mobile phones related to A-5 is already mentioned in the para No. 17.7. Material Evidence: ➤ Recovery of 3 mobile phones, SIM cards and one Tablet from the house of the accused Mohd Saqib during the raid/search conducted on 26.12.2018.
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14. The prime witnesses against the appellant for his visit to Kashmir along with A6/Muhammad Absar, are PW-27/Sh. Reyaz Ahmad Najar, PW-35/Sh. Zubair Siddique Lone, and PW-37/Protected Witness D, who all already stand examined before the learned Trial Court. We have also perused the statements tendered by them before the learned Trial Court, and find no reason to deny bail to the appellant on their imputations against the appellant.

15. The learned SPP had submitted that as the testimony of these witnesses had been recorded post the rejection of bail by the learned Trial Court by the order impugned before us, therefore, we should not consider this subsequent material. In the peculiar facts of the present appeal, we are unable to accept the said submission. We are of the opinion that, given the long period of incarceration of the appellant and the long pendency of the present appeal, wherein, its hearing was



in fact adjourned for the learned Trial Court to record the testimony of the witnesses relevant to the appellant (Refer Order dated 08.01.2026 and 07.04.2026), it would not be just and proper for us to not consider the said material and to remand the appellant back to the learned Trial Court.

16. As far as the allegation of the appellant introducing A-1/*Mufti Mohammad Suhail* to A11/*Naim @ Mohd. Naeem @ Nayeem Choudhary* for procurement of arms is concerned, A-11 is stated to be a relative of the appellant and the case against the appellant is based on the alleged voluntary disclosure and pointing out by A-11.

17. We have intentionally refrained ourselves from giving a detailed analysis of the statements of the witnesses already recorded, as it is likely to prejudice the trial. We may only state that *prima facie* we do not find them grave enough to prolong the period of detention of the appellant during trial.

18. Similarly, the electronic evidence of chats allegedly recovered from the phone of the appellant, though grave in nature, given the long period of incarceration of the appellant pending trial, does not warrant denial of bail to him.

19. Having considered the statements of the witnesses and the allegations against the appellant, and being moved particularly by the long period of incarceration of the appellant, we are of the opinion that the appellant has been able to make out a case for being released on bail.

20. Accordingly, we direct that the appellant be released on bail,



subject to the following conditions:-

- a. The appellant shall execute a personal bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court;
- b. The appellant shall surrender his passport, if any, before the learned Trial Court. If he does not hold a passport, an affidavit to that effect shall be filed before the learned Trial Court;
- c. The appellant shall not leave the country without prior permission of the learned Trial Court. Any application seeking permission to travel shall disclose the destination, duration, purpose of travel and complete contact details during such travel;
- d. The appellant shall not leave his native place i.e., District Hapur, except to travel to Delhi to attend his Trial or to report at the NIA Office as part of his bail conditions;
- e. The appellant shall only use one mobile phone and/or landline number during the course of the trial, which shall always be kept in the switch-on mode;
- f. The appellant shall furnish his current residential address, the mobile/landline number and his e-mail address to the Investigating Officer and to the learned Trial Court. He shall not change his residence or contact particulars without giving at least seven days' prior intimation to the Investigating Officer and the learned Trial Court;
- g. The appellant shall appear before the learned Trial Court on



each date of hearing, unless exempted by the learned Trial Court from such appearance;

- h. The appellant shall not exhibit any conduct that has the effect of delaying the proceedings;
 - i. The appellant shall not directly or indirectly contact, influence, threaten or communicate with any prosecution witness, protected witness, complainant, person acquainted with the facts of the case or the co-accused or their family members;
 - j. The appellant shall not tamper with evidence, electronic material, records, devices or documents relating to the case;
 - k. The appellant shall not make any public statement, including through print, electronic media or social media, touching upon the merits of the case, the evidence, the witnesses or the pending trial;
 - l. The appellant shall not participate in any activity which may prejudice public order or the integrity of the trial;
 - m. The appellant shall not upload/share/disseminate or circulate any anti-national material on any social media platform or otherwise;
 - n. The appellant shall report to the NIA BRANCH OFFICE, LUCKNOW, once every fortnight, or at such interval as may be directed by the learned Trial Court. The Branch Office shall maintain a separate register of attendance with respect to the appellant;
21. In the event of breach of any condition, it shall be open to the



prosecution to seek cancellation of bail before the appropriate court.

22. The impugned order rejecting the appellant's bail application is, accordingly, set aside. The appeal is disposed of in the above terms.

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

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

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

SEPTEMBER 14, 2026/rv/as