



CRL.A.No.1766 of 2025

1

2025:KER:88273

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 19TH DAY OF NOVEMBER 2025 / 28TH KARTHIKA, 1947

CRL.A NO. 1766 OF 2025

CRIME NO.RC-01/NIA/KOC/2021 OF VIZHINJAM POLICE STATION, TVM

AGAINST THE ORDER DATED 27.08.2025 IN CRMP 117/2025 IN SC NO.4 OF
2021 OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANTS:

- 1 LY NANDANA, AGED 50 YEARS
S/O LY UPAJEEVA, THANGALLA, KUDAWELLA, NAKULUGAMUWA
SRILANKA, PIN - 82300
- 2 HKGB JANAKA DASAPPRIYA
AGED 46 YEARS
S/O HGB PEYASENA, MODARAWATTA, KUDAWELLE WEST, NAKULUGAMUWA,
DADANDUWA, SRILANKA, PIN - 82300

BY ADVS.
SMT.IPSITA OJAL
SHRI.P.K.ANIL

RESPONDENT:

UNION OF INDIA
REPRESENTED BY DEPUTY SOLICITOR GENERAL OF INDIA, HIGH COURT
OF KERALA, ERNAKULAM, PIN - 682031



CRL.A.No.1766 of 2025

2

2025:KER:88273

BY ADVS.
O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
SMT.KRISHNA S., CGC
SMT.DR.MENAKA GURUSWAMY (SR.)

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 19.11.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



Judgment

Sushrut Arvind Dharmadhikari, J.

The instant Criminal Appeal under section 21(4) of the National Investigation Agency Act, 2008 has been filed on behalf of the appellants 1 & 2, being aggrieved by the order dated 27.08.2025 passed in Crl.M.P No.117/2025 in SC No.04/2021/NIA by the Special Court for Trial of NIA cases, Ernakulam; whereby the application filed by the appellants for grant of bail has been rejected.

2. The appellants have been arrested on 27.03.2021 in relation to Crime No.RC-01/NIA/KOC in 2021 registered at Vizhinjam Police Station, Thiruvananthapuram regarding offences punishable under Sections 120B, 125, 465 and 471 of the Indian Penal Code, (hereinafter referred to as IPC) and Sections 18, 20,38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA'), Section 7 r/w 25(IAA) of the



Arms Act, 1959 and Sections 8(C) and 21(C), 23(C), 24, 25 & 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS).

Facts

3. The prosecution story in brief is that on 18.03.2021, the Indian Coast Guard intercepted a Srilankan Fishing vessel, “Ravi Hansi”, Near Minicoy Island, Lakshadweep, where the Indian Coast Guard recovered 300.323 Kilograms of Heroin, AK-47 rifles, and 1000 rounds of 9 mm ammunition of Pakistani Origin from 6 Srilankan Nationals and later on brought to Vizhinjam Harbour, Thiruvananthapuram on 25.03.2021.

3.1 The Indian Coast Guard submitted a confidential FIR regarding apprehension of SLFB “Ravihansi” dated 25.03.2021 to the Superintendent of Narcotics Control Bureau, Kochi, (hereinafter called the NCB). The NCB Sub Zone, Vizhinjam Port prepared the mahazar on 25.03.2021 and the search and seizure



was completed at 15.30 hrs. on 26.03.2021. The NCB Sub Zone, Kochi, Kerala vide Occurrence Report No.2/2021 dated 27.03.2021 registered case for seizure of 300.323 Kgs of Heroin from the boat and thereafter submitted a written complaint at the Vizhinjam Police Station, Thiruvananthapuram. The NCB arrested the appellants on 27.03.2021. During investigation, the National Investigation Agency (hereinafter referred to as 'NIA') recorded statement of 206 witnesses. The appellants approached the Special Court for trial of NIA cases seeking bail. However, the special Judge dismissed the bail applications vide the impugned order dated 27.08.2025.

Appellants' submissions

4. The learned counsel for the appellants submitted that the appellants have been falsely implicated in the case. Though the prosecution case is based on suspicion and indeed, there is nothing on record against the present appellants. No offence, as



alleged, is made out against them as necessary ingredients to constitute the alleged offence are completely missing. The appellants have no criminal antecedents and if the appellants are kept under incarceration for a long period, it will adversely affect the family and cause irreparable loss.

5. As per Article 22(2) of the Constitution of India,

“every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate”.

6. As per the statement of CW5, the exact location of the alleged interception was 8 nautical miles away from Minicoy Light House, therefore, the appellants ought to have been produced before the Magistrate Court of Lakshadweep as nearest Magistrate as stipulated in Article 22(2) of the Constitution. Similarly, Section 183 of the Code of Criminal Procedure mandate that,

“when an offence is committed whilst the person by or



against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.”

Accordingly, in Lakshadweep, there are three court complexes, one in Kavaratti, another in Andrott and in Amini. The Kavaratti Court complex is the nearest one and nothing precluded the Indian Coast Guards to produce the appellants and contraband there. Instead, they travelled miles away to Vizhinjam, Thiruvananthapuram, illegally detaining the appellants herein. Therefore, this is a case where there has been a blatant violation of fundamental rights guaranteed under Article 22(2) of the Constitution of India.

7. The learned counsel for the appellants further contended that there are several procedural lapses in producing the appellants within 24 hours of arrest. Section 57 of the Cr.P.C mandates that,

“No police officer shall detain in custody, a person arrested without warrant for a longer period than under all the



circumstances of the case is reasonable, and such period shall not, in the absence of a Special Order of a Magistrate under Section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

8. The appellants were detained on 18.03.2021 but formally arrested on 27.03.2021 and were produced before the Judicial First Class Magistrate's Court, Neyyatinkara on 29.03.2021. Such inaction constitutes clear violation of Articles 21 and 22 of Constitution of India and Section 57 Cr.P.C, which mandates production of an accused within 24 hours. The learned counsel, relying on the judgment of the Apex Court in the case of ***D.K Basu v. State of West Bengal***¹ (1997) AIR SC 610 and ***Joginder Kumar v. State of UP***² emphasized that unlawful detention renders custody unconstitutional. In yet another case, the Kerala High Court in ***Raashi Sanjay Thripati v. Narcotic Control Bureau***³, has

¹ (1997) AIR SC 610

² (1994) 4 SCC 260

³ Judgment in W.P.(CrI) No.920/2025 dtd.14.08.2025



categorically held that production of an accused before the Magistrate beyond 24 hrs. of arrest, without lawful justification, is in violation of Article 22(2) of the Constitution of India. This Court observed that such failure vitiates both the arrest and remand of the accused, declaring the continued custody unconstitutional.

9. The learned counsel further submitted that no proof of detention on 18.03.2021 has been produced. The multiple FIRs have been lodged for the same appellants which is impermissible. There is prolonged incarceration without trial. Since more than 4½ years have passed, the trial has not commenced. There are about 206 witnesses and completion of the evidence by the trial Courts is impossible in the near future.

10. The Supreme Court in *Union of India v. K.A.Najeeb*⁴ has held that even under stringent provisions of UAPA, prolonged incarceration without trial is a ground to grant bail to safeguard

⁴ (2021) 3 SCC 713



the right to speedy trial under Article 21. In *Seyid Nabeel Ahamed v. Union of India*⁵, it is held that when a trial is unlikely to conclude within a reasonable time, the bar under Section 43D(5) of UAPA cannot override the constitutional right to speedy trial under Article 21.

11. The Supreme Court in the case of *Javed Gulam Nabi Shaikh v State of Maharashtra and Another*⁶, the Supreme Court has held as under.

“8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment.”

12. In *Aravind Kejriwal v. CBI*⁷, the Hon’ble Supreme Court

⁵ Judgment in Crl.A.No.767/2025 dated 23.07.2025

⁶ (2024) 9 SCC 813

⁷ 2024 SCC Online SC 2550



has held as under:

“38. The evolution of bail jurisprudence in India underscores that the ‘issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process’(Gudikanti Narasimhulu v. Public Prosecutor, 1978 (1) SCC 240).The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeeb has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter ‘UA(P)A’) notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time (Union of India v. K.A. Najeeb, AIR 2021 SC 712). The courts would invariably bend towards ‘liberty’ with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.”

13. The learned counsel for the appellants further contended that the vessel ‘Ravihansi’ had developed a breakdown in its engine shaft, was drifting, and had to be towed by another vessel Chaturani -06. The skipper of the boat himself



disclosed that towing assistance had been requested from the boat owner. A vessel that is broken down and admittedly drifting is incapable of independent navigation and control. In such circumstances, its unintentional movement into the Indian waters cannot be construed as a deliberate trespass or an act with criminal intent. The appellants had no intention to undertake any illegal activity within India as they were merely stranded in the high seas due to mechanical failure. It is further submitted that *mens rea and conscious possession are indispensable elements* and in the present case, both are absent. The factual position on record demonstrates that the appellants were victims of circumstances and not perpetrators of any planned operation to smuggle contraband in India and therefore, their continued incarceration, despite absence of intention and the admitted breakdown of the vessel is wholly unjustified. On these grounds, prayer is made to allow the appeal and enlarge the appellants on



bail.

Respondent's submission

14. Per contra, learned counsel appearing for the respondent has vehemently opposed the appeal. She submitted that the offences committed by the appellants are serious in nature and against the integrity and peace of India. The learned counsel for the respondent has raised the following objections:

1. Direct Involvement in the Seizure of Drugs, Arms, and Ammunition.

- Both A-1 and A-2 were caught red-handed on 18.03.2021 aboard the Sri Lankan fishing vessel Ravihansi (IMUL-A-0040-TLE), from which the Indian Coast Guard recovered 300.323 kilograms of heroin, five AK-56 rifles, and 1000 rounds of 9mm ammunition of Pakistani origin.
- They were part of the six-member Sri Lankan crew who had physical custody and control of the contraband and arms on board. Hence, the elements of "possession" and "conscious possession" under the NDPS Act are clearly established.

2. Heroin and Arms of Pakistani Origin - Grave Threat to National Security.

- The seized narcotics and arms originated from Pakistan (Pakistan Ordinance Factory) and were trafficked via the Arabian Sea, as part of a terror-linked narco-network headed by Pakistan-based trafficker Haji Salim.



- The quantity and nature of contraband seized and the military-grade weapons recovered prove that this was not an isolated smuggling incident but a transnational criminal and terrorist conspiracy.
- The offences, therefore, go far beyond a mere NDPS violation and directly endanger the security and sovereignty of India.

3. Interception within India's Maritime Jurisdiction

- The vessel Ravihansi was intercepted 8 nautical miles from the Minicay Lighthouse, well within India's contiguous zone and maritime jurisdiction, giving full jurisdiction to Indian authorities to take action.
- The argument that the vessel was in distress or "drifting" is factually incorrect - the Coast Guard acted on specific technical intelligence about the transshipment of narcotics between Ravihansi and another foreign vessel, confirming deliberate involvement and intent.

4. Evidence Establishing Conspiracy and Knowledge

- Statements of co-accused, including approvers Soundarajan and Ahamed Fasly, and protected witnesses CW-79, CW-80, and CW-81, clearly reveal that Ravihansi was part of a coordinated transnational smuggling operation linked to Suresh Raj (A-6), Ramesh (A-8), and Satkunam @ Sabesan (A-9) in India and Sri Lanka.
- A.H.S. Mendis (A-3), one of the crew members, in his judicial confession under Section 164 Cr.PC, confirmed that communications took place on board Ravihansi through the Thuraya satellite phone during the handover of narcotics from the mothership.
- This proves knowledge, participation, and criminal intent on the part of A-1 and A-2.



5. Large-Scale Conspiracy - Not a Case of Accidental Drifting

- The defence claim that the vessel had a "mechanical fault" and was being "towed" has been disproved by the Coast Guard officers (CW-4 Jagadish Prasad and CW-5 M.S. Prashanth), who confirmed that the interception was based on prior intelligence about a drug transshipment and that Ravihansi's activities were suspicious and deliberate.

6. Recovery of Arms and Ammunition - Indicative of Terror Link

- The recovery of five AK-56 rifles and 1000 rounds of 9mm ammunition from the vessel establishes that the operation was not a simple narcotics smuggling but a narco-terrorism module.
- The weapons were of Pakistani origin, confirming the link to terrorist elements operating through Pakistan and Sri Lanka.
- The presence of these arms with the crew undercuts any claim of "innocence" or "lack of knowledge".

7. Strong Digital, Documentary, and Forensic Corroboration

- The mahazar, digital extraction reports, and communication logs from seized devices corroborate the coordination between the Sri Lankan vessel and handlers in Sri Lanka and India.
- Evidence collected by NCB and later by NIA clearly demonstrates international coordination through Thuraya satellite phones and encrypted messaging.

8. Statutory Bar Under Section 37 NDPS Act and Section 43D(5) and 43D(7) of UA(P)A

- The bar for bail under Section 37 of the NDPS Act (commercial quantity) and Section 43D(5) and 43D(7) of the UAPA squarely applies, as the prosecution has produced prima facie material showing involvement of A-1 and A-2



in a terror-linked narco-trafficking conspiracy and that they had the Indian territory unauthorisedly.

- The burden lies on the accused to prove that they are not guilty, which they have failed to do.

9. Being Foreign Nationals - High Flight Risk

- Both A-1 and A-2 are Sri Lankan nationals with no roots or ties in India.
- If released on bail, there is a serious apprehension that they will abscond or flee to Sri Lanka, making it impossible to secure their presence for trial.
- The offence has international ramifications, and releasing them would prejudice the ongoing prosecution.

10. Trial is Imminent - No Ground for Prolonged Incarceration

- The final report has been filed, charges framed, and the trial is scheduled to begin on 02.02.2026 before the Hon'ble Special Court for NIA Cases, Ernakulam.
- Hence, the argument of prolonged custody or delay in trial does not hold merit.

11. Threat to Witnesses and Integrity of Trial

- The approvers and protected witnesses in the case face genuine security threats from the accused and their international associates.
- Releasing A-1 and A-2 on bail would endanger the lives of witnesses and hamper the trial.

12. International and Organised Nature of Crime

- The operation is part of a transnational organised crime involving drug smuggling, arms trafficking, and terror financing, coordinated across Pakistan, Sri Lanka, UAE, and India.



- Given the scale, coordination, and international dimensions, bail cannot be justified on humanitarian or ordinary criminal law grounds.”

15. The learned counsel for the respondent submitted that the trial had already been scheduled to begin on 02.02.2026 by the Special NIA Court and that will go on day-to-day basis. Already 3 witnesses have been summoned to appear before the Court. There are about 8-10 material witnesses in the case. The trial will be conducted having precedence over other matters and therefore, there would be no delay in trial proceedings. If the appellants are released on bail, there is a big possibility of their fleeing away.

16. Learned counsel for the respondent further contended that none of the precedents cited by the learned counsel for the appellants would be applicable in the facts and circumstances of the case as none of them has considered the provisions under Section 43D(7) which reads as under:

“Notwithstanding anything contained in sub section (5) and (6) no bail shall be granted to a person who has been



accused of an offence punishable under this act, if he is not an Indian citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing”.

17. The learned counsel for the respondent has also placed reliance on the following decisions (1) ***Gurvinder Singh v. State of Punjab & Another*** (2024) 5 SCC 403, (2) ***Jayendar Kumar Gosh v. National Investigation Agency*** 2013 (1) Guwahati Law Reports 74, (3) ***Golan Daulagupu v. National Investigation Agency*** 2013 (2) Guwahati Law Reports 791.

Discussion & Analysis

18. We have heard the submissions advanced by the learned counsel for the parties and perused the charge sheet along with other documents available on record as also the case laws referred to by the learned counsel for the parties.

19. Before examining the facts of the case, we think it appropriate to reiterate the settled legal position laid down by Hon'ble Supreme Court in the case of ***National Investigation***



Agency v Zahoor Ahmad Shah Watali⁸, for deciding an application for bail, which reads that:-.

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

20. Now, we come to the provisions relating to bail under the UAPA i.e. sub-section 5 of Section 43D, same reads as under:

“43-D. Modified application of certain provisions of the Code

“

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless

⁸ (2019) 5 SCC 1



the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

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

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

21. In the case of **Zahoor Ahmad Shah Watali** (supra), the Hon’ble Supreme Court has laid down the principle for considering the bail application under UAPA, the relevant para is quoted as under:

“17. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record



its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act....."

22. Thereafter, in the case of **K.A.Najeeb** (*supra*) the Hon'ble Supreme Court distinguishing the law laid down in the case of **Zahoor Ahmad Shah Watali** (*supra*) held that Courts are expected to appreciate legislative policy against grant of bail but rigour of such provisions will melt down where there is no likelihood of trial being



completed within a reasonable time and period of incarceration already undergone has exceeded a substantial part of prescribed sentence. Presence of statutory restrictions like Section 43D(5) of UAPA per se do not oust ability of Constitutional Courts to grant bail on grounds of violation of Part III of Constitution.

23. After considering the decisions passed in the cases of *Zahoor Ahmad Shah Watali* (supra) and *K.A.Najeeb* (supra), the Hon'ble Supreme Court in the case of *Thwaha Fasal v Union of India*⁹ dealing with the scope of Section 43D(5) of UAPA, held that if Court, after examining material on record, is satisfied that there are no reasonable grounds for believing that accusation against accused is *prima facie* true, then accused is entitled for bail. The Court while examining the issue of *prima facie* case as required by sub-section (5) of Section 43-D is neither expected to hold a mini trial nor is supposed to examine the merits and demerits of the evidence. If a

⁹ (2022) 14 SCC 766



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 or not. While doing so, the Court has to take the material available in the charge-sheet as it is. Mere association with a terrorist organization as a member or otherwise will not be sufficient to attract offence under Section 38 of UAPA unless association is with an intention to further its activities. Stringent restrictions imposed by sub-section (5) of Section 43D of UAPA, do not negate the powers of Constitutional Court to grant bail keeping in mind violation of Part III of the Constitution.

24. The learned counsel for the NIA relied upon a recent decision of Hon'ble Supreme Court passed in the case of *Gurwinder Singh* (*supra*) wherein the Hon'ble Supreme Court has considered its earlier decisions including *Zahoor Ahmad Shah Watali* (*supra*) as well as *K.A.Najeeb* (*supra*) which deal with interpretation of Section



43D(5). In the said case, the Hon'ble Supreme Court dismissed the appeal challenging the dismissal of the bail application by the trial Court and that was upheld by the High Court. Further, the Hon'ble Supreme Court in the case of **Gurwinder Singh** (*supra*) explained in detail the principles governing consideration of bail application in case under the UAPA. Paragraphs 20 to 23 of the said decision reads thus:

“20. 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 Subsection (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.

21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test :

- 1) *Whether the test for rejection of the bail is satisfied?*
 - 1.1 *Examine if, prima facie, the alleged ‘accusations’ make out an offence under Chapter IV or VI of the UAP Act*



- 1.2 *Such examination should be limited to case diary and final report submitted under Section 173 CrPC;*
- 2) *Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')?*

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

- 2.1 *Whether the accused is a flight risk?*
- 2.2. *Whether there is apprehension of the accused tampering with the evidence?*
- 2.3 *Whether there is apprehension of accused influencing witnesses?*

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'.

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 Cr.P.C. must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- (i) **Meaning of 'Prima facie true'** [Para 23]: *On the face of it, the materials must show the complicity of the accused in commission of the offence. The*



materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

- (ii) ***Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared*** [Para 23]: *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. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*
- (iii) ***Reasoning, necessary but no detailed evaluation of evidence*** [Para 24]: *The exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-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.*
- (iv) ***Record a finding on broad probabilities, not based on proof beyond doubt*** [Para 24]: *“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.”*
- (v) ***Duration of the limitation under Section 43D(5)*** [Para 26]: *The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.*
- (vi) ***Material on record must be analysed as a ‘whole’ no piecemeal analysis*** [Para 27]: *The totality of the material gathered by the investigating agency and presented along with the report and including the case diary,*



is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

- (vii) *Contents of documents to be presumed as true [Para 27]: The Court must look at the contents of the document and take such document into account as it is.*
- (viii) *Admissibility of documents relied upon by Prosecution cannot be questioned [Para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.”*

25. Thereafter, the law laid down in the case of ***Gurwinder Singh*** (Supra), has been distinguished by the Hon’ble Supreme Court in the case of ***Sheikh Javed Iqbal*** (supra) holding that when trial gets prolonged, it is not open to prosecution to oppose bail of accused-under trial on the ground that charges are very serious. Bail cannot be denied only on the ground that charges are very serious though there is no end in sight for trial to conclude. The Constitutional Court cannot be restrained from granting bail to accused on account of restrictive statutory provisions in a penal statute if it finds that right of accused-under trial under Article 21 of Constitution of India



has been infringed. Further, Section 43D (5) of UAPA does not oust ability of Constitutional Courts to grant bail on the ground of violation of Part III of the Constitution.

26. Thereafter, the Hon'ble Supreme Court again reiterated the principle in the case of *Jalaluddin Khan v Union of India*¹⁰ wherein it is held that the Court has to examine the material forming part of the charge-sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are prima facie true. While doing so, the Court must take the charge-sheet as it is. When a case is made out for grant of bail, Courts should not have any hesitation in granting bail. If Courts start denying bail in deserving cases, it will be a violation of rights guaranteed under Article 21 of the Constitution.

27. Recently, The Hon'ble Supreme Court referring the verdict given in *Ahmad Shah Watali* (supra), *K.A.Najeeb* (supra), *Thwaha*

¹⁰ 2024 SCC Online SC 1945



Fasal (supra) and *Jalaluddin Khan* (supra), passed the judgment in the case of *Athar Parwez v. Union of India*¹¹, and again reiterated and clarified the principle regarding deciding the bail application under UAPA holding that the right to a speedy trial under Article 21 of the Constitution is paramount, and prolonged detention without charges is unconstitutional. Giving precedence to the protection of Fundamental Rights and emphasizing upon their primacy over the statutory provisions in case of delayed trial, in the above judgments, the Hon'ble Court had even gone to the extent of asserting that the seriousness of the crime for which the accused is facing the trial would not be material as an accused is presumed to be innocent until proven guilty.

28. In the light of above referred judgments, we sum-up the legal position by saying that while considering the bail application

¹¹ Judgment in Criminal Appeal No. 5387 of 2024 [Arising Out Of SLP (CrI) No. 9209 of 2024] dtd. 17-12-2024



under UAPA, it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. By its very nature, the expression “prima facie true” would mean that the material/evidence collected by the investigating agency in order to establish the accusation against the accused concerned in the first information report, must prevail until contradicted or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the alleged offence. It must be sufficient on its face to establish the given facts. The restriction on the powers of the Court to grant bail is less stringent and if the Court, having regard to the material brought before it, is satisfied that in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the



commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. The Court must consider the nature and manner in which the accused is alleged to have committed the offence. Further, for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, but the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. While deciding the bail, the Court should not conduct a mini-trial to determine the admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a *prima facie*



assessment under Section 43-D(5) UAPA, but it was premature and possibly would have prejudiced the trial itself. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merits of the case and the trial Court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without being prejudiced thereby in any manner.

29. Further, in the referred judgments, the Hon'ble Apex Court has also taken care of the liberty guaranteed by Part III of the Constitution of India which covers not only due procedure and fairness but also access to justice and a speedy trial. The Hon'ble Supreme Court has time and again reiterated that under-trials cannot indefinitely be detained in pending trial even in UAPA. 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 them on bail.



The Hon'ble Supreme Court clarified that the presence of statutory restrictions like Section 43-D(5) of the UAPA per-se do not oust the ability of the constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Whereas, at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigorous 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.

30. If the above principal is considered more precisely, there are two conditions for granting bail to accused under trial in UAPA; first, if the Court is satisfied that the entire material collected by the investigation agency do not constitute prima facie case against the accused person and investigation agency has failed to show as to whether there are reasonable grounds for



believing that the accusation against the accused is prima facie true, and secondly, a timely trial would not be possible and the accused has suffered incarceration for a significant period for a substantial part of prescribed sentence which amounts to violation of his Fundamental Rights.

Discussion & Analysis

31. We have heard the submissions advanced by the learned counsel for the parties and perused the charge sheet along with other documents available on record as also the case laws referred by the learned counsel for the parties.

32. Adverting to the facts of the case at hand, we are conscious of the fact that the allegations levelled against the appellants are grave and of serious in nature. Further, the investigation agency recorded the statement of witnesses under Sections 161 and 164 of the Cr.PC which indicates entire seriousness of the offences.



Conclusion

33. In view of the above discussions, it is clear that there is sufficient material available in the charge sheet showing that the appellants have actively participated in and have committed unlawful activities as defined in the UAPA. There are specific materials to show that the appellants advocated, abated, incited commission of many unlawful activities.

34. This Court cannot express undue leniency to persons who are facing serious charges in respect of UAPA, NIA, Arms Act, IPC, NDPS etc. The trial is scheduled to commence on 02.02.2026 and thereafter the same will be set at full motion and therefore, there is every possibility of trial be completed in its due course. Even otherwise, the appellants not being Indian citizens, Section 43D(7) of UAPA would be applicable with full force. Therefore, considering the overall facts and circumstances, at this stage, we are not



inclined to grant bail to the appellants.

35. Accordingly, the instant Criminal Appeal is hereby dismissed. The order passed by the learned trial judge dated 27.08.2025 in Cr.M.P. No.117/2025 in SC 4/2021/NIA is hereby affirmed.

However, we make it clear that the findings recorded in this judgement are only for considering the prayer for bail and the learned trial court may proceed with the case without being prejudiced from any findings given by this court.

Sd/- SUSHRUT ARVIND DHARMADHIKARI
JUDGE

Sd/- P.V.BALAKRISHNAN
JUDGE

APPENDIX OF CRL.A 1766/2025

PETITIONER ANNEXURES

- Annexure 1 THE TRUE COPY OF THE SAID CONFIDENTIAL FIR REPORT REGARDING APPREHENSION OF SLFB RAVIHANSI REG NO. IMUL-A-0040-TLE DATED 25.03.2021
- Annexure 2 THE TRUE COPY OF MAHAZAR PREPARED BY THE NCB DATED 25-3-2021
- Annexure 3 THE TRUE COPY OF ARREST MEMO OF THE FIRST ACCUSED DATED 27-03-2021
- Annexure 4 THE TRUE COPY OF ARREST MEMO OF THE SECOND ACCUSED DATED 27-03-2021
- Annexure 5 THE TRUE COPY OF THE FIR NO 498 OF 2021 REGISTERED AT THE VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM DATED 05.04.2021
- Annexure 6 THE TRUE COPY OF THE LIST OF WITNESSES
- Annexure 7 THE TRUE COPY OF THE STATEMENT OF CW1
- Annexure 8 THE TRUE COPY OF THE STATEMENT OF CW4
- Annexure 9 THE TRUE COPY OF THE STATEMENT OF CW5
- Annexure 10 THE ACCUSED COPY OF THE IMPUGNED ORDER DATED 27-08-2025 IN CRL. M.P. 117/2025 IN SC NO. 04/2021/NIA, PASSED BY THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM
- Annexure 11 THE GOOGLE EARTH MAP SHOWING THE DISTANCES FROM THE OPERATING POSITION OF THE BOAT TO THE NEAREST COURT COMPLEXES ©S
- Annexure 12 THE TRUE COPY OF THE JUDGMENT IN JOGINDER KUMAR V. STATE OF U.P. (1994 AIR 1349) OF THE SUPREME COURT OF INDIA
- Annexure 13 THE TRUE COPY OF THE JUDGMENT DATED 1-2-2021 IN UNION OF INDIA V. K.A. NAJEEB, CRL. APPEAL 98/2021 OF THE SUPREME COURT OF INDIA
- Annexure 14 THE TRUE COPY OF THE JUDGMENT INCRL.A.767/2025 DATED 23-7-2025 BEFORE HON'BLE HIGH COURT
- Annexure 15 THE TRUE COPY OF JUDGMENT IN CRL.A 2787/2024 ARISING OUT OF SLA(CRL)3809/2024 OF THE SUPREME COURT OF INDIA DATED 03-07-2024 IN JAVED GULAM NABI SHAIKH VS. STATE OF MAHARASHTRA AND ANOTHER
- Annexure 16 THE TRUE COPY OF JUDGMENT IN CRL.A 3816/2024 ARISING OUT OF SLP(CRL)11023/2024 AND CONNECTED APPEAL OF THE SUPREME COURT OF INDIA DATED 13-09-2024 IN ARAVIND KEJRIWAL VS CBI (2024 SCC ONLINE SC 2550)



CRL.A.No.1766 of 2025

38

2025:KER:88273

Annexure 17
Annexure A18

**THE TRUE COPY OF RELEVANT PORTION OF THE MAP
TRUE COPY OF THE BAIL APPLICATION FILED BEFORE THE
HON'BLE NIA COURT, ERNAKULAM DATED 23.06.2025**