



2025:CGHC:34404-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 318 of 2025

- 1 - Bhupendra Netam @ Bhupendar Dhruw S/o Premlal Aged About 40 Years R/o Village Badegobra, P.S. Mainpur, District Gariyaband, Chhattisgarh.
- 2 - Mohanlal Yadav @ Mohan Yadav S/o Late Samaru Ram Yadav Aged About 36 Years R/o Village Badegobra, P.S. Mainpur, District Gariyaband, Chhattisgarh.
- 3 - Lakhanlal Yadav @ Lakhan Yadav S/o Gopiram Yadav Aged About 37 Years R/o Village Badegobra, P.S. Mainpur, District Gariyaband, Chhattisgarh.

... Appellants

versus

Union of India Through National Investigation Agency, Raipur, Branch Naya Raipur, Raipur, Chhattisgarh. Police Station Mainpur, District Gariyaband, Chhattisgarh. (As Per Honble Court Order Dated 05-05-2025)

... Respondent

(Cause-title taken from Case Information System)

For Appellants	:	Mr. Ravipal Maheshwari, Advocate
For Respondent	:	Mr. B. Gopa Kumar, Advocate



Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

Per Ramesh Sinha, Chief Justice

21.07.2025

1. Heard Mr. Ravipal Maheshwari, learned counsel for the appellants as well as Mr. B. Gopa Kumar, learned counsel appearing for the respondent-NIA.

2. This criminal appeal under Section 21(4) of the National Investigation Agency (Amendment) Act, 2019 (for short, 'NIA Act') is directed against the impugned order dated 14.01.2025 passed by the Special Judge (NIA)/Sessions Judge, Raipur (C.G.) in Special Sessions Trial No.03/2024 (*State Vs. Mohan Lal Yadav alis Mohan Yadav and others*), arising out of Crime No.94/2023 registered at Police Station Mainpur, District Gariyaband (C.G.), by which the appellant's application under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking bail for offences under Sections 147, 148, 149, 302, 307, 120-B, 121, 121-A of the Indian Penal Code, 1860 (for short, 'IPC'), Sections 4, 5, and 6 of the Explosive Substances Act, 1908 (for short, 'Act of 1908'), Sections 25 and 27 of the Arms Act, 1959 (for short, 'Arms Act') and Sections 16, 17, 18, 20, 23, 38, 39, and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short, 'UAPA'), has been rejected finding no merit.

3. The prosecution case, in brief, is that on 17.11.2023, at about 3:40 PM, after the conclusion of vote casting, the deceased, I.T.B.P.



Constable Jogendra Kumar, was returning along with the security force. When they reached near Badegobra, an intentional bomb blast was carried out with the intent to kill. As a result of the said bomb blast, Constable Jogendra Kumar sustained grievous injuries and subsequently died. On the basis of the said incident and complaint, the concerned police station registered a criminal case against the accused persons, including the present appellants, for offences punishable under Sections 147, 148, 149, 302, 307, 120-B, 121, 121-A of the IPC, Sections 4, 5, and 6 of the Explosive Substances Act, 1908, Sections 25 and 27 of the Arms Act, 1959, and Sections 16, 17, 18, 20, 23, 38, 39, and 40 of the UAPA.

4. The appellant preferred an application under Section 483 of the BNSS before the Special Judge (NIA), Raipur, District Raipur, which was rejected by the impugned order dated 14.01.2025, against which, this criminal appeal has been filed.

5. Mr. Ravipal Maheshwari, learned counsel appearing for the appellants has argued that the appellants are innocent villagers, having no nexus whatsoever with the alleged offences. They have been falsely implicated in the present crime merely on the basis of suspicion, without any cogent or credible evidence connecting them to the incident in question. It is respectfully submitted that no incriminating material has been recovered from the possession of the appellants. The articles allegedly seized, such as *Rapa*, *Gaiti*, and *Sabbal*, are ordinary agricultural tools commonly found in rural households and cannot be



considered evidence of any involvement in the alleged crime. The learned counsel for the appellants further submit that arrest of the appellants on 14.06.2024 was arbitrary as the Investigating Officer failed to comply with the mandatory provisions of law by not producing them before the nearest Judicial Magistrate within 24 hours of their detention, in violation of the constitutional safeguards enshrined under Article 22 of the Constitution of India. There is no direct allegation against the appellants. Their names do not appear in the FIR, nor is there any eyewitness account connecting them to the alleged offence. The appellants have been implicated merely on conjecture and suspicion, without a fair or proper investigation. It is further submitted that the alleged seizure of articles after an inordinate delay of eight months is highly suspicious and lacks evidentiary value. The said articles appear to have been falsely planted to strengthen the prosecution's weak case. There is no credible evidence to suggest their association with any banned organization such as CPI (Maoist). No incriminating documents or material connecting the appellants to any unlawful activities have been recovered. It has been contended that the appellants are the sole breadwinners for their respective families and have been in judicial custody since 14.06.2024. Their prolonged incarceration is causing irreparable hardship to their family members, who are struggling for survival. The appellants undertake to fully cooperate with the ongoing investigation and the trial proceedings. They are permanent residents of the village as mentioned in the cause title and there is no likelihood of their absconding or tampering with



evidence. The appellants are prepared to furnish adequate surety and shall abide by all terms and conditions as may be imposed by this Court. In view of the aforesaid submissions and in the interest of justice, the appellants humbly prays for grant of bail.

6. On the other hand, Mr. B. Gopa Kumar, learned counsel appearing for the NIA/respondent vehemently opposed the prayer for grant of bail and submitted that the evidence which have been collected during the course of investigation against the appellant goes to show his active participation and involvement in the naxal operations. He further submits that the present case arises out of a heinous and grave act of terrorism, namely the IED blast executed on 17.11.2023 by members of the banned terrorist organization CPI (Maoist) targeting security personnel and polling staff returning from election duty, resulting in the death of an ITBP constable. It has been submitted that the appellants are Over Ground Workers (OGWs) of CPI (Maoist) and have played a significant role in providing logistics, materials, and support for the said terrorist act. The charge sheet supported by oral, documentary, and material evidence establishes their involvement in the larger conspiracy to wage war against the State. It has been further contended that the recoveries were made pursuant to disclosures under Section 27 of the Indian Evidence Act, including detonators, wires, switches, and other materials used for preparing IEDs, thereby connecting the appellants to the crime. Their involvement in conspiracy meetings and aiding Maoist cadres is corroborated by witnesses under Section 164 Cr.P.C. and independent evidence. It has been argued that the offences committed



are punishable under IPC, Explosive Substances Act, Arms Act, and Unlawful Activities (Prevention) Act, 1967, and carry grave implications for national security. Section 43-D(5) of UAPA bars grant of bail where prima facie involvement is established. It has been further argued that the NIA Special Court has rightly rejected bail, finding the allegations against the appellants prima facie true and supported by substantial evidence. In light of the seriousness of the offence, gravity of allegations, and statutory embargo under UAPA, no interference is warranted with the impugned order and as such, the criminal appeal filed by the appellant deserves to be rejected.

7. Learned counsel for the respondent / NIA placed reliance upon the judgments rendered by the Hon'ble Supreme Court in the following cases to buttress his submissions:

- **National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1,**
- **Sanjay Chandra v. CBI, (2012) 1 SCC 40,**
- **Afzal Khan @ Babu Murtuzakhan Pathan v. State of Gujarat, (2009) 3 SCC 499**
- **State of U.P. through CBI v. Amarmani Tripathi, (2005) 8 SCC 21,**
- **Gurwinder Singh v. State of Punjab & Another in Criminal Appeal No. 704 of 2024.**



The learned counsel further placed reliance upon the judgment rendered by the Kerala High Court in the following matters:

- **Mohammed Nainar v. State of Kerala, 2011 CRLJ 1729.**
- **Thasleem v. State of Kerala, 2016 (1) KLT 721.**

15. We have heard the learned appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

16. At this stage, it would be relevant to quote Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, which is reproduced below for easy reference:

“43D(5) -Notwithstanding anything contained in the Code (Criminal Procedure Code, 1973), no person accused of an offence punishable under Chapters IV and VI of this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release.

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

17. A bare perusal of Section 43D(5) of the UAPA shows that the provision imposes a specific statutory embargo on the grant of bail to an



accused person charged under Chapters IV and VI of the Act, which relate to terrorist activities and terrorist organizations. The section mandates that unless the Court, upon perusal of the case diary or charge-sheet, is satisfied that there are no reasonable grounds to believe that the accusations are prima facie true, bail cannot be granted. Conversely, where there exist reasonable grounds to believe that the accusations are prima facie true, the bar under Section 43D(5) squarely applies, and the Court is prohibited from enlarging such accused on bail. The legislative intent is clear: in cases involving terrorism-related offences, the threshold for bail is significantly heightened in comparison to ordinary criminal cases. The safeguard to prevent misuse of this provision is built into the requirement that the Public Prosecutor must be given an opportunity of being heard. However, the section does not create an absolute bar against bail in every circumstance. Judicial pronouncements, particularly the judgment of the Hon'ble Supreme Court in **Zahoor Ahmad Shah Watali** (supra) clarify that at the stage of considering bail, the Court must not conduct a roving inquiry into the merits of the prosecution's case but only ascertain whether the accusations are prima facie supported by the materials on record.

18. In the case of **Mohammed Nainar** (supra) the Hon'ble Kerala High Court interpreted and examined the provisions of Section 43D(5) of the UAPA and held that the nature of the charge is a vital factor, and the nature of evidence is also pertinent in considering the question of bail.



19. In the case of **Zahoor Ahmad Shah Watali** (supra), the Hon'ble Supreme Court of India has held that in bail applications under the Unlawful Activities (Prevention) Act, 1967, a different approach is required. The Court also held that:

“When it comes to offences punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43D of the 1967 Act, inserted by Act 35 of 2008 w.e.f. 31st December, 2008.”

20. In the case of **Thasleem** (supra), the Hon'ble Kerala High Court held that under Section 43D(5) of the UAPA, the Court is bound to refuse bail if there are reasonable grounds for believing that the accusation against the accused is prima facie true.

21. In the case of **Sanjay Chandra** (supra), the Hon'ble Supreme Court of India specifically held that the Court has to consider the nature and gravity of the charges and whether there is a reasonable belief that the accused has committed the offence.

22. In the case of **Afzal Khan @ Babu Murtuzakhan Pathan** (supra), the Hon'ble Supreme Court held that in a case involving the security of the State, bail should ordinarily be rejected.

23. In the case of **Amarmani Tripathi** (supra), the Hon'ble Supreme Court laid down the following well-established principles for considering bail:



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

24. In a recent judgment of the Hon'ble Supreme Court in the case of **Gurwinder Singh** (supra), the Hon'ble Supreme Court was of the view that the material on record prima facie indicated the complicity of the accused as a part of the conspiracy, as he was knowingly facilitating the commission of a preparatory act towards the commission of a terrorist act under Section 18 of the UAPA and for this reasons, the Hon'ble Supreme Court rejected the bail application.

25. Upon a careful consideration of the submissions advanced by learned counsel for the parties, perusal of the charge-sheet and material collected during investigation, as well as the nature and gravity of the offences alleged against the appellants, this Court is of the opinion that the prosecution has placed sufficient material on record to



prima facie establish the involvement of the appellants in the larger conspiracy to carry out terrorist activities, including the IED blast which resulted in the death of a security personnel. The appellants' association with the proscribed terrorist organization CPI (Maoist), their alleged role in providing logistics, materials such as detonators, wires, and other support essential for the execution of the offence, along with their participation in conspiracy meetings, has been substantiated through statements of protected witnesses, recoveries made pursuant to their disclosures, and other documentary evidence.

26. In view of the statutory bar under Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967, this Court cannot lightly disregard the materials placed on record which, at this stage, establish a prima facie case against the appellants. Mere prolonged detention or socio-economic hardship cannot outweigh the serious and grave nature of allegations involving offences against national security. The Hon'ble Supreme Court has consistently held that when there is reasonable ground to believe that the accusation against the accused is prima facie true under UAPA, the Court shall not grant bail to the appellants.

27. In view of the above, we find that the impugned order passed by the Learned Special Court (NIA), Raipur rejecting the bail application reflects a correct appreciation of facts, materials on record, and the law applicable to such cases. This Court finds no infirmity, perversity, or illegality in the said order warranting interference in appellate jurisdiction.



28. Accordingly, this Criminal Appeal stands **dismissed**. However, this Court hopes and trusts that the trial Court shall make an earnest endeavour to conclude the trial expeditiously preferably within a period of 6 months from the date of receipt of this judgment in accordance with law, if there is no legal impediment and the appellant is directed to co-operate with the trial.

29. Office is directed to send a certified copy of this order to the trial Court concerned for necessary information and compliance forthwith.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Anu

**HEAD NOTE**

In cases involving offences against the State and where an accused is charged under Special Enactments, bail cannot ordinarily be granted. The Courts are required to exercise greater caution and adopt a stricter approach while considering bail in such cases, keeping in view the seriousness of the allegations, the security of the State, and the statutory restrictions imposed on the grant of bail under such special laws.