

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-751-2026

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
21.05.2026	27.05.2026	FULL PRONOUNCED	28.05.2026

Avtar Singh alias Tari...Appellant

Versus

State of Punjab...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Bikramjit Singh Baath, Advocate
for the appellant.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
85	31.03.2025	Phillaur, Jalandhar	10, 13, 16(1)(b), 17, 18, 18(b) of UAPA, Section 3(1)(TU) of SC/ST Act and Sections 113, 299 of BNS 2023

Bail Application number before the Sessions Court	CNR No.PBJL01-016042-2025
Date of Decision	14.10.2025

1. Aggrieved by the dismissal of regular bail by the Additional Sessions Judge, Jalandhar vide order dated 14.10.2025, the appellant had come up before this Court by filing the present appeal under Section 415 BNSS 2023.
2. The schedule of National Security Act 2008 (in short ‘NSA’) mentions UAPA as one of the scheduled statutes and in the present case, UAPA has been invoked, as such, the appeal would lie under Section 21 of NSA and not under Section 415 of BNSS 2023. However, in the interest of equity, justice and fair play, the present appeal shall be treated as an appeal filed under Section 21 of NSA.

3. Per paragraph 13 of the appeal as well as custody certificate dated 20.05.2026, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	46	04.04.2025	113(3) of BNS 2023	Garhshankar, District Hoshiarpur

4. The appellant seeks bail on parity with co-accused namely Sukhbir Singh alias Rajan to whom this Court had granted bail vide order dated April 23, 2026 in CRA-D-291 of 2026 (Annexure A3). The appellant’s counsel submits that the appellant would have no objection whatsoever to any stringent conditions that this Court may impose, including that if the appellant repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, the State may file an application to revoke this bail before the concerned Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and to which the appellant shall have no objection. Counsel for the appellant further submits that he shall not use his right of speech expression beyond what is permitted under Article 19 of the Constitution of India.

5. The State’s counsel opposes the bail.

6. The facts of the case are being taken from reply dated May 19, 2026 filed by Deputy Superintendent of Police, Sub Division Phillaur, Jalandhar (Rural), Punjab. It shall be appropriate to refer to the following portions of the reply.

“4. That FIR No. 85 dated 31.03.2025 U/s 299, 113 of BNS, 2023 along with Section(s) 10, 13, 16(1)(b), 17, 18, 18(b) of Unlawful Activities Prevention Act (UAPA) and Section(s) 3(1)(T,U) of SC/ST Act (offence punishable U/s 10, 13, 16(1)(b), 17, 18, 18(b) of Unlawful Activities Prevention Act and Section(s) 3(1)(T,U) of SC/ST Act added later on whereas offences U/s 299, 113 BNS deleted later on vide DDR No. 40 dated 23.06.2025) was registered at Police Station: Phillaur, Jalandhar (Rural) on the basis of a statement suffered by complainant namely Khushi Ram (son of Gian Chand) wherein he stated that he is the Panch of Village Nangal and is also in-charge of Bahujan Samaj Party, Halqa Phillaur, District Jalandhar. On 31.03.2025 at about 06:30 AM, when he had gone for morning walk and had reached near the statue of Dr. Bhim Rao Ambedkar, the complainant noticed a blue colour flag in front of the statue on which it was written "Punjab Referendum Shastar ke Adhin SFJ 2020) along with a yellow colour flag on which it was written "Sikhs are not Hindu, Sikhs reject Indian Constitution, Khalistan Referendum voting 19th August in Washington D.C". Furthermore, on the glass affixed on the statue, the words "Sikhs are not

Hindus" was written. The complainant stated that on reading the said words, his religious feelings were hurt. Furthermore, the complainant stated that a video on social media was found in which Gurpatwant Singh Pannu had taken the responsibility of the said act and had used objectionable words. Hence, instant FIR was registered U/s 299 BNS against Gurpatwant Singh Pannu and unknown persons.

5. That pursuant to the registration of instant case FIR, the police officials reached the spot and took both the flags (blue and yellow) into police possession. Furthermore, the glass on which "Sikhs are not Hindus" was covered with a cloth and after conducting videography of the same, the writing on the glass was removed.

NOTIFICATION DECLARING SFJ AS UNLAWFUL

6. That in compliance of the order passed by this Hon'ble Court, notification declaring SFJ as unlawful association is placed on record as ANNEXURE R-1.

OFFENCE U/S 113 BNS MADE OUT:

7. That on 02.04.2025, Inspector/SHO Sanjeev Kapoor perused the video recording of Gurpatwant Singh Pannu and found that the act in the instant case was committed by Gurpatwant Singh Pannu and unknown for between religious persons causing enmity communities and cause them to fight against each other. Thus, the said act was committed to create terror and threaten the unity, integrity, sovereignty and security of India. Hence, vide DDR No. 20 dated 02.04.2025, offence punishable U/s 113 of BNS, 2023 was added in the instant case."

7. The allegations against the present appellant-Avtar Singh alias Tari are mentioned in paragraph 10 onwards which reads as follows:

"10. That on the basis of abovesaid information, a raid was conducted at the house(s) of Sukhvir Singh @ Rajan and petitioner Avtar Singh @ Tari on 06.04.2025, where they were found present. The said Sukhvir Singh @ Rajan and petitioner Avtar Singh @ Tari were joined in investigation and they disclosed the following facts:

i. Sukhvir Singh @ Rajan was friends with Balkaran Singh who went to Canada about 10 years ago and is still residing in Canada.

ii. In the month of March, 2025, Balkaran Singh telephonically called Sukhvir Singh @ Rajan and told him that he is an associate of Gurpatwant Singh Pannu and upon instructions of Gurpatwant Singh Pannu, Balkaran Singh propagates the work of "Sikhs for Justice (SFJ)" in India. Sukhvir Singh @Rajan further told that Balkaran Singh asked him to put flags of SFJ, Khalistan and raise slogans of "Khalistan Zindabad" and in return, Sukhvir Singh @Rajan would be paid Rs. 10,000/-.

iii. Sukhvir Singh @ Rajan agreed to do the said task and he also made the petitioner Avtar Singh @ Tari to do the said task.

iv. About 15-20 days ago, in the month of March, 2025, both of them (Sukhvir Singh @ Rajan and petitioner Avtar Singh @ Tari) went on petitioner Avtar Singh @ Tari's motorcycle bearing registration no. PB-08-CC-8413 and dropped the flags of "Khalistan" near Gurudwara Nanaksar Jagrawa (Ludhiana) for the said task, Balkaran Singh had deposited Rs. 10,000 / into the account no.6247376616 (Bank of India, Branch Noorpur Chatha) of Sukhvir Singh @ Rajan. Out of the said amount, Sukhvir Singh @ Rajan deposited Rs. 5,000/- into the account of petitioner Avtar Singh @Tari.

v. On 25.03.2025, Balkaran Singh telephonically called Sukhvir Singh @ Rajan from Canada and told him to write "Khalistan Zindabad" on the walls of an educational institution at Village Morawali, District Hoshiarpur. Furthermore, Balkaran Singh told Sukhvir Singh @ Rajan to put flags of "Khalistan" on the said spot. Accordingly, on 26.03.2025, Sukhvir Singh @ Rajan and petitioner Avtar Singh @Tari went on petitioner Avtar Singh @ Tari's motorcycle bearing registration no. PB-08-CC-8413 to Village Morawali, Hoshiarpur and wrote "Khalistan Zindabad" on the walls of educational institution and put the "Khalistan" flags thereto.

vi. Sukhvir Singh @ Rajan further disclosed that another associate of Gurpatwant Singh Pannu namely Inderjit Singh Chadha, who is a resident of USA, used to send him instructions on "Signal" App to commit different tasks promoting the "Khalistan" movement. In return for the said task, Inderjit Singh Chadha used to send money into his account no. 6247376616.

vii. In the intervening night of 30-31.03.2025, Sukhvir Singh @ Rajan and petitioner Avtar Singh @ Tari committed the offence in the instant case and in return, Rs. 30,163 / was deposited into the account of Sukhvir Singh @

Rajan by Balkaran Singh. Out of the said amount, Sukhvir Singh @ Rajan gave Rs. 10,000/- to the petitioner Avtar Singh @ Tari.

viii. Sukhvir Singh @ Rajan disclosed that he used to receive instructions on "Signal" App from different IDs ie. "Singh22 with mobile no. +143777xxxxx", "DhadhhaPaji USA with mobile no. +151071xxxxx and +143878xxxxx" and "DhadhhaPaji USA with mobile no. +1151071xxxxx".

ix. After committing the task/offence, they used to make a video of the same and the said video was sent to the handlers through petitioner Avtar Singh @Tari's phone. Upon receiving the video on "Signal" App, the handlers operating from abroad used to upload the same on internet.

11. That on the basis of the above said information, Sukhvir Singh @ Rajan and petitioner Avtar Singh @ Tari were arrested in the instant case on 06.04.2025.

12. That on the basis of disclosure statement suffered by Sukhvir Singh @ Rajan, one mobile phone make VIVO having IMEI (sim slot 1) No. 869669052254655/51, IMEI (sim slot 2) No. 869669052254648/51 having SIM No. 98701-xxxxxx with Signal ID "SUKHBIRABE" was recovered.

13. That on the basis of disclosure statement suffered by petitioner Avtar Singh @ Tari, one motorcycle bearing registration no. PB-08-CC-8413 and one I-phone having IMEI No. 351876499477949, 351876499451043 with Signal ID "GABBAR SINGH" bearing SIM No. +143878xxxxx was recovered. It is pertinent to mention herein that the video with regard to commission of offence in the instant case was sent to Balkaran Singh from the Signal ID of Petitioner which was in his phone."

8. It shall be appropriate to refer to para 23 of the reply which mentions role of the appellant and the same reads as follows:-

"23. That the petitioner came to be nominated as an accused, in the instant case, on the basis of an information received by a patriot after he was shown a picture of suspects by police officials. The petitioner along with co-accused Sukhvir Singh @ Rajan put flags and writings on the statue of Dr. Bhim Rao Ambedkar upon the instructions of Balkaran Singh, a handler operating from Canada and a member of "Sikhs for Justice". The said act was committed so as to strike terror and threaten the unity, integrity, sovereignty and security of India. The modus operandi of the entire network has been duly explained in Para No. 9 of the present Reply. It is pertinent to

mention herein that on the basis of disclosure statement suffered by petitioner Avtar Singh @Tari, one motorcycle bearing registration no. PB-08-CC-8413 and one I-phone having IMEI No.351876499451046 with Signal ID "GABBAR SINGH" bearing SIM No. +14387878580 was recovered. It is pertinent to mention herein that the video with regard to commission of offence in the instant case was sent to Balkaran Singh from the Signal ID of Petitioner which was in his phone."

9. Given above, case of the appellant is almost identical to the case of co-accused/Sukhbir Singh alias Rajan, to whom this Court had granted bail. There cannot be a absolute ditto copy of the facts but prima facie allegations are almost identical, as such the appellant is entitled to bail on parity. Furthermore, the appellant is entitled to bail even on merits and also considering his custody i.e. 01 year 01 month & 05 days as per custody certificate dated 20.05.2026, coupled with the nature of allegations and role attributed to him.

10. In Angela Harish Sontakke v. State of Maharashtra, SLP (CRL)-6888-2015, decided on May 04, 2016, the Hon'ble Supreme Court holds,

[2]. We have heard the learned counsels for the parties. Charges have been framed against the accused appellant under Sections 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40(2) of the Unlawful Activities (Prevention) Act, 1967, amended 2008 and Sections 387, 419, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code, 1860. Undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed.

[3]. The accused appellant has been in custody since April, 2011 i.e. for over five years. The trial is yet to commence in as much as the learned State Counsel has submitted that the 9th of May, 2016 is the first date fixed for the trial. There are over 200 witnesses proposed to be examined. The accused appellant is a lady. She has also been acquitted of similar charges leveled against her in other cases. Taking into account all the aforesaid facts we are of the view that the accused appellant should be admitted to bail.

11. In UOI v. KA Najeeb, [2021] 1 S.C.R. 443; 2021-INSC-50, Feb 01, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

[3]. The prosecution case in brief is that one Professor TJ Joseph while framing the Malayalam question paper for the second semester B.Com. examination at the Newman College, Thodupuzha, had included a question which was considered objectionable against a particular religion by certain sections of society. The respondent in association with other members of the Popular Front of India (PFI), decided to avenge this purported act of blasphemy. On 04.07.2010 at about 8AM, a group of people with a common object, attacked the victim-professor while he was returning home with his mother and sister after attending Sunday mass at

a local Church. Over the course of the attack, members of the PFI forcefully intercepted the victim's car, restrained him and chopped off his right palm with choppers, knives, and a small axe. Country-made bombs were also hurled at bystanders to create panic and terror in their minds and to prevent them from coming to the aid of the victim. An FIR was consequently lodged against the attackers by the victim-professor's wife under Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326, 506(H), 307, 149 of IPC; and Section 3 of Explosive Substances Act.

[4]. It emerged over the course of investigation that the attack was part of a larger conspiracy involving meticulous pre-planning, numerous failed attempts and use of dangerous weapons. Accordingly, several dozen persons including the present respondent were arraigned by the police. It was alleged that the respondent was one of the main conspirators and the provisions contained in Sections 153A, 201, 202, 212 of IPC, along with Section 16, 18, 18-B, 19 and 20 of the UAPA were also thus invoked against him. However, owing to him being untraceable, the respondent was declared an absconder and his trial was split up from the rest of his co-conspirators. The co-accused of the respondent were tried and most of them were found guilty by the Special Court, NIA vide order dated 30.04.2015 and were awarded cumulative sentence ranging between two and eight-years' rigorous imprisonment.

[18]. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

[19]. 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.

[20]. 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. Unlike the NDPS 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 pre-condition under the UAPA. Instead, Section 43-D (5) of 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.

[21]. In light of the above discussion, we are not inclined to interfere with the impugned order. However, we feel that besides the conditions to be imposed by the trial Court while releasing the respondent, it would serve the best interest of justice and the society-at-large to impose some additional conditions that the respondent shall mark his presence every week on Monday at 10 AM at the local police station and inform in writing that he is not involved in any other new crime. The respondent shall also refrain from participating in any activity which might enrage communal sentiments. In case the respondent is found to have violated any of his bail conditions or attempted to have tampered the evidence, influence witnesses, or hamper the trial in any other way, then the Special Court shall be at liberty to cancel his bail forthwith. The appeal is accordingly dismissed subject to above- stated directions.

12. In *Thawaha Fasal v. UOI*, [2021] 8 S.C.R. 797, Oct 28, 2021, the Hon'ble Supreme Court holds,

[4]. On 1st November 2019, the complainant who is the Sub-Inspector of Police attached to Pantheerankavu Police Station in Kozhikode city in Kerala found that the accused nos.1 to 3 were standing in suspicious circumstances in front of Medicare Laboratory in Kozhikode city. After seeing the police vehicle, the accused no. 3 ran away. However, the accused nos.1 and 2 were apprehended. The accused no.1 was carrying a shoulder bag and the accused no.2 was carrying a red plastic file. Nine items were seized from the shoulder bag of the accused no.1. From the red plastic file of the accused no.2, two items were seized. The First Information Report was registered on the same day under Sections 20, 38 and 39 of the 1967 Act alleging that the accused nos. 1 and 2 were the members of the Communist Party of India (Maoist) [for short "CPI (Maoist)"] which is a terrorist organisation within the meaning of Clause (m) of Section 2 of the 1967 Act which is listed at Item No. 34 in the First Schedule to the 1967 Act. By the order dated 18th April 2020, the Government of India granted sanction in exercise of powers under Section 45 of the 1967 Act to prosecute the accused no.1 for offences punishable under Sections 38 and 39 of the 1967 Act. Under the same order, a sanction to prosecute the accused no.2 for the offences punishable under Sections 13, 38 and 39 of the 1967 Act was granted. As can be seen from the order dated 18th April 2020, NIA had recommended for grant of sanction under the aforesaid Sections. It is pointed out across the Bar by Shri S.V. Raju, the learned Additional Solicitor General of India (ASG) that the case is fixed for framing of

charge. However, it was also pointed out across the Bar that a report from the Forensic Science Laboratory is not yet received.

[33]. Thus, as far as the accused no.1 is concerned, it can be said he was found in possession of soft and hard copies of various materials concerning CPI (Maoist). He was seen present in a gathering which was a part of the protest arranged by an organisation which is allegedly having link with CPI (Maoist). As regards the accused no.2, minutes of the meeting of various committees of CPI (Maoist) were found. Certain banners/posters were found in the custody of the accused no.2 for which the offence under Section 13 has been applied of indulging in unlawful activities. As stated earlier, sub-section (5) of Section 43D is not applicable to the offence under Section 13.

[34]. Now the question is whether on the basis of the materials forming part of the charge sheet, there are reasonable grounds for believing that accusation of commission of offences under Sections 38 and 39 against the accused nos.1 and 2 is true. As held earlier, mere association with a terrorist organisation is not sufficient to attract Section 38 and mere support given to a terrorist organisation is not sufficient to attract Section 39. The association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organization which are borne out from the materials forming a part of charge sheet. At formative young age, the accused nos.1 and 2 might have been fascinated by what is propagated by CPI (Maoist). Therefore, they may be in possession of various documents/books concerning CPI (Maoist) in soft or hard form. Apart from the allegation that certain photographs showing that the accused participated in a protest/gathering organised by an organisation allegedly linked with CPI (Maoist), prima facie there is no material in the charge sheet to project active participation of the accused nos.1 and 2 in the activities of CPI (Maoist) from which even an inference can be drawn that there was an intention on their part of furthering the activities or terrorist acts of the terrorist organisation. An allegation is made that they were found in the company of the accused no.3 on 30th November, 2019. That itself may not be sufficient to infer the presence of intention. But that is not sufficient at this stage to draw an inference of presence of intention on their part which is an ingredient of Sections 38 and 39 of the 1967 Act. Apart from the fact that overt acts on their part for showing the presence of the required intention or state of mind are not borne out from the charge sheet, prima facie, their constant association or support of the organization for a long period of time is not borne out from the charge sheet.

[39]. It is true that without recording a satisfaction as contemplated by sub-section (5) of Section 43D, the order granting bail to the accused no.1 could not have been confirmed by the High Court. However, we have examined the material against both the accused in the context of sub-section (5) of Section 43D. Taking the materials forming part of the charge sheet as it is, the accusation against both the accused of the

commission of offences punishable under Sections 38 and 39 does not appear to be prima facie true.

13. In Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya v. National Investigation Agency, Dec 01, 2021, [2021] 9 S.C.R. 607 607, the Hon'ble Supreme Court holds,

[6]. The appellant was arrested on 6th July, 2012 on the basis of a production warrant sent to Nagpur Central Jail, Maharashtra. The appellant was in jail earlier in connection with another case(FIR No. 28/2007 dated 11th May, 2007) in which he was acquitted by the competent Court of jurisdiction by a judgment dated 15th February, 2014.

[7]. It has come on record that there are 298 prosecution witnesses in the calendar of witnesses as referred to in the charge sheet but it has been stated in the counter affidavit filed by the respondent that the prosecution in all likelihood may examine only 100 to 105 prosecution witnesses.

[8]. The charges against the accused appellant are undoubtedly serious but the charges will have to be balanced with certain other factors like the period of incarceration which the appellant has undergone and the likelihood period within which the trial can be expected to be finally concluded. That apart, the appellant is 74 years of age.

[9]. Learned counsel for the respondent vehemently opposed the appeal filed by the accused appellant seeking post arrest bail and submits that the delay is in no manner be attributable to the prosecution and this Court may direct the trial Court to take up the case on day-to-day basis and conclude the trial at the earliest.

[10]. That the requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "Act 2008") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the Act 2008 but the ground realities are totally different as in the instant case, after the charge-sheets came to be filed way back in 2012, the charges have been framed after 7 years of filing of the charge-sheet on 20th June, 2019.

[11]. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW-1/de-facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6th July, 2012 and has completed nine and half years of incarceration as an undertrial prisoner.

[12]. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot

indefinitely be detained pending trial. 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 him on bail.

[13]. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.

[15]. In the above circumstances, we are of the view that the appellant accused has made out a case for grant of post-arrest bail pending trial.

14. In *Jahir Hak v. State of Rajasthan*, [2022] 3 S.C.R. 101, Apr 11, 2022, the Hon'ble Supreme Court holds,

[10] No doubt, in the said case, as pointed out by the learned counsel appearing on behalf of the State, the Court was dealing with an order passed by the High Court granting bail, whereas, in this case, the converse is true, that is, the impugned order is one rejecting the application for bail. The fact remains that the appellant has been in custody as an undertrial prisoner for a period of nearly 8 years already. The appellant, it may be noted, is charged with offences, some of which are punishable with a minimum punishment of 10 years and the sentence may extend to imprisonment for life. Learned counsel for the appellant also points out that one of the co-accused namely Shri Aadil Ansari has been released on bail on 30.09.2020 by this Court. No doubt, in this regard, we keep in mind the submission of the State that the role attributed to the said accused is different.

[11] The condition in Section 43D(5) of the Act of 1967 has been understood to be less stringent than the provisions contained in Narcotic Drugs and Psychotropic Substances Act, 1985, as already noticed by us. We would think that in the nature of the case against the appellant, the evidence which has already unfolded and above all, the long period of incarceration that the appellant has already undergone, time has arrived when the appellant be enlarged on bail. We bear in mind the fact that the prosecution seeks to examine as many as 109 witnesses of which only 6 witnesses have been fully examined so far. Accordingly, we allow the appeal, set aside the impugned order and direct that the appellant shall be released on bail subject to such conditions as shall be fixed by the trial Court.

15. In *Ramjan Gani Palani v. NIA*, [2022] 4 S.C.R. 1050, Apr 27, 2022, the Hon'ble Supreme Court holds,

[9]. We have perused the impugned order and carefully considering the arguments advanced by learned counsel for the parties, duly recorded in paras 8 and 9 of the impugned judgment and are of the prima facie view that there is sufficient material on record to deny the discretionary relief of bail to the petitioner. Much is sought to be made of the five Ghol fish netted by the petitioner and his crew members over five days of

remaining on the high seas by referring to the high market value of the prize catch. The petitioner would be entitled to justify his presence in the fishing boat, at the scene of crime which is sought to be described as a sheer coincidence during the trial. The explanation offered by the petitioner of having responded to the call “Mohammed-Mohammed-Ramzan-Ramzan” on Channel No.8, instead of Channel No.16 which is the specifically earmarked channel for communication with fishermen and for Ship-to-Ship contact, would also be available to him at that stage. But at the threshold, this appears to be a case where the petitioner has been fishing in troubled waters and as per the respondent No.1/NIA, has got caught in his own net.

16. In *Yedala Subba Rao and Anr. v. UOI*, 2023-INSC-382, Apr 17, 2023, the Hon’ble Supreme Court holds,

[21]. We have examined material relied upon against the appellants in paragraph 5 of the additional affidavit of the respondent as well as the chargesheet. Taking the material against the appellants as it is and without considering the defence of the appellants, we are unable to form an opinion that there are reasonable grounds for believing that the accusations against the appellants of commission of offence under the UAPA are *prima facie* true. Hence, the embargo on the grant of bail under proviso to subsection (5) of Section 43D will not apply in this case. We, however, make it clear that the findings recorded in this Judgment are only *prima facie* observations recorded for the limited purposes of examining the case in the light of the proviso to subsection (5) of Section 43D of the UAPA. The trial shall be conducted uninfluenced by these observations.

[22]. As narrated earlier, the appellants are in custody for four and half years. The charge has not been framed and the prosecution proposes to examine more than 140 witnesses. Some of the accused are absconding. Thus, there is no possibility of the trial commencing in the near future.

17. In *Vernon v. State of Maharashtra* [2023] 10 S.C.R. 867; 2023 INSC 655, July 28, 2023, the Hon’ble Supreme Court holds,

[43]. In the case of *Zahoor Ahmad Shah Watali* (*supra*) [National Investigation Agency -vs- Zahoor Ahmad Shah Watali (2019) 5 SCC 1] reference was made to the judgment of *Jayendra Saraswathi Swamigal -vs- State of Tamil Nadu* [(2005) 2 SCC 13] in which, citing two earlier decisions of this court in the cases of *State -vs- Jagjit Singh* (AIR 1962 SC 253) and *Gurcharan Singh -vs- State of (UT of Delhi)* [(1978) 1 SCC 118], the factors for granting bail under normal circumstances were discussed. It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tempered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. Juxtaposing the appellants’ case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have

lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967 Act, we have referred to the materials available against them at this stage. These materials cannot justify continued detention of the appellants, pending final outcome of the case under the others provisions of the 1860 Code and the 1967 Act.

18. In Pradeep Rameshwar Sharma v. NIA, 2023-INSC-755, CRA No. 2505 of 2023, Aug 23, 2023, the Hon'ble Supreme Court holds,

[6]. The case of the prosecution put forth is that the appellant who is a retired police officer, in connivance with Sachin Waze another senior police officer had planted gelatin sticks in a Scorpio Vehicle near the residence of a prominent businessman. In that regard, apart from referring to the role of Sachin Waze who is alleged to have also conspired with Mansukh Hiren to park this Scorpio Vehicle, the allegation is also that the appellant had a role with Sachin Waze in the murder of Mansukh Hiren. It is in that background, the charge as alleged is made against the appellant herein.

[10]. In that regard, as already referred to, the appellant was arrested as far back as 17.06.2021 and has been in custody throughout, except for the brief period when this Court had released him on interim bail so as to attend to the medical treatment of his wife. In so far as the appellant is concerned, he has been interrogated and a charge sheet has been filed. Since all witnesses out of more than 300 witnesses named are to be examined and, in that regard, further investigation under Section 173(8) is pending, and a supplementary charge sheet would be filed, the process will not conclude in the near future. In so far as the role alleged against the appellant, as already noted by the High Court the charge sheet does not disclose that the appellant was involved in the conspiracy of planting gelatin sticks in the Scorpio vehicle. As per the charge, the appellant is stated to have conspired with Sachin Waze and others to eliminate Mansukh Hiren which is a matter of circumstantial evidence to be proved by the prosecution.

19. In Gurwinder Singh v. State of Punjab & Another, SLP (Criminal) No.10047 of 2023, 2024-INSC-92, February 07, 2024, the Hon'ble Supreme Court holds,

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

[19]. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The ‘justifications’ must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, ‘prima facie’ standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of ‘strong suspicion’, which is used by Courts while hearing applications for ‘discharge’. In fact, the Supreme Court in *Zahoor Ali Watali* [(2019) 5 SCC 1] has noticed this difference, where it said:

“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.”

[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 Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

[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’.

[32]. The Appellant’s counsel has relied upon the case of KA Najeeb (supra) [(2021) 3 SCC 713] to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb’s case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb’s case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.

[33]. Hence, we are of the considered view that the material on record prima facie indicates the complicity of the accused as a part of the conspiracy since he was knowingly facilitating the commission of a preparatory act towards the commission of terrorist act under section 18 of the UAP Act.

[34]. For the aforementioned reasons the bail application of the Appellant is rejected and consequently the appeal fails...

20. In Javed Gulam Nabi Shaikh v. State of Maharashtra, [2024] 7 Digital SCR 992; 2024-INSC-645, July 03, 2024, the Hon’ble Supreme Court holds,

[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.

[18]. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

[19]. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

[20]. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

[21]. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

[22]. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.

[23]. The appellant is ordered to be released on bail subject to the terms and conditions which the trial court may deem fit to impose. However, we on our own would impose the condition that the appellant shall not leave the limits of Mumbai city and shall mark his presence at the concerned NIA office or police station once every fifteen days. Any other condition which the trial court may deem fit to impose, it may do so in accordance with law.

21. In *Sheikh Javed Iqbal v. State of U.P.*, [2024] 7 S.C.R. 1054; 2024 INSC 534, July 18, 2024, the Hon'ble Supreme Court holds,

[5]. First Information Report (FIR) was lodged against the appellant by the informant Inspector Tej Bahadur Singh under Sections 121A, 489B and 489C of IPC. It came to be registered as Crime No. 01 of 2015. Informant stated that fake Indian currency notes of the denomination of Rs. 1,000 and Rs. 500, totalling a sum of Rs. 26,03,500.00, were recovered from the possession of the appellant on 22.02.2015 at about 09:10 PM from the Indo-Nepal border. He was apprehended by a

constable of the ATS team and brought to the ATS Headquarter. In the course of investigation, the appellant disclosed his name as Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari, resident of Narayani Parsa, Belwa, Nepal. In addition to the fake Indian currency notes, one Nepalese driving licence of the appellant and one Nepalese citizenship certificate also of the appellant were recovered besides two mobile phones. According to the police, appellant had confessed that he was engaged in the illegal trade of supplying counterfeit Indian currency notes in Nepal. The appellant was arrested on 23.02.2015.

[32]. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

[33]. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant.

[34]. Consequently, we pass the following order: -

- (i) The impugned order dated 03.04.2023 of the High Court is set aside and quashed;
- (ii) Appellant is directed to be released on bail subject to fulfilment of the following conditions: -
 - (a) Trial court shall impound the passport and/or citizenship document(s) of the appellant. If those are in the custody of the prosecution, those shall be handed over to the trial court.
 - (b) Appellant shall not leave the territorial jurisdiction of the trial court; he shall furnish his address to the trial court.
 - (c) He shall appear before the trial court on each and every date of the trial.
 - (d) In addition to the above, the appellant shall mark his attendance before the police station which the trial court may indicate once in every fortnight till conclusion of the trial.
 - (e) He shall not tamper with the evidence and shall not threaten the witnesses.
- (iii) If there is any violation of the bail conditions as above, it would be open to the prosecution to move the trial court for cancellation of bail.

22. In Jalaluddin Khan v. UOI [2024] 8 S.C.R. 633; 2024-INSC-604, Aug 23, 2024, the Hon'ble Supreme Court holds,

[19]. Therefore, on plain reading of the charge sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission of offences punishable under the UAPA is prima facie true. We have taken the charge sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a prima facie finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under the UAPA was prima facie true. No antecedents of the appellant have been brought on record.

[20]. The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.

23. In *Athar Parwez v. UOI*, [2024] 12 S.C.R. 1093; 2024-INSC-995, Dec 17, 2024, the Hon'ble Supreme Court holds,

[19]. Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the Constitutional Courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time. Gross delay in conclusion of the trial would justify such invocation leading to a conclusion of violation of Part III the Constitution of India, which may be taken as a ground to release an undertrial on bail...

[31]. It is thus apparent that the first test as has been laid down by the various judgments of this Court referred to above, stands satisfied relating to Section 43-D(5) of the UAPA, 1967...

[32]. The Appellant was arrested on 12.07.2022. He has undergone custody for more than two years and four months. Chargesheet was filed on 07.01.2023 but till date charges have not been framed which is an admitted position. There are 40 accused and 354 witnesses cited by the prosecution to be examined. There can be no doubt that the trial is not likely to complete soon, and as has been laid down by various judgments of this Court as has been referred to above, the Appellant cannot be allowed to languish in jail indefinitely and that too without a trial. If such an approach is allowed Article 21 of the Constitution of India would stand violated....

24. In *Harpreet Singh Talwar v. State of Gujarat*, [2025] 6 S.C.R. 291; 2025 INSC 662, May 13, 2025, the Hon'ble Supreme Court holds,

[25]. Having given our anxious consideration to the submissions advanced by both sides and upon careful perusal of the material on record, we are of the view that the Appellant has not been able to make out a case for grant of regular bail at this stage.

[26]. We say so for the reason that despite no direct recovery of contraband effected from the Appellant, the Prosecution's case is that he played a coordinating and enabling role in facilitating the import of narcotics concealed as talc through M/s Magent India—which he allegedly controlled through a proxy. The consignment, although not seized with heroin, shares structural and logistical similarities with those where heroin was ultimately found.

[27]. The charge against the Appellant must also be evaluated in light of the broader matrix of facts, including

- (i) his alleged meetings in Dubai with a principal foreign accused;
- (ii) the transfer of documents through intermediaries for the clearance of a flagged consignment;
- (iii) efforts to retrospectively fabricate invoices and assign responsibility to others;
- (iv) the use of multiple firms allegedly connected to him to obfuscate the true nature of the transactions; and
- (v) his telephonic calls to certain co-conspirators.

These aspects, supported by the statements of protected witnesses and circumstantial linkages, currently meet the threshold of *prima facie* satisfaction regarding the Appellant's complicity.

[28]. This Court is cognizant of the fact that no heroin or narcotic substances were directly recovered from the consignment linked to the Appellant. However, the investigative narrative does not rest solely on physical recovery but proceeds on the basis of conspiracy and facilitation. In such cases, the absence of direct seizure is not dispositive, particularly where there exists a pattern of covert coordination, fictitious entities, and barter-based compensation—features which, according to the prosecution, mark the smuggling architecture employed in the present matter.

[29]. The Appellant faces serious charges, which allegedly carry grave societal ramifications, including the facilitation of cross-border drug trafficking—an offence with well-documented links to organised crime and public health degradation. The seizure in the connected consignment is part of what the Prosecution claims to be the largest heroin bust in Indian history, valued at over INR 21,000 crores. The scale and sophistication of the operation, involving foreign syndicates, shell firms, medical visas, and false documentation, elevates this case far beyond routine NDPS violations.

[30]. This Court also cannot ignore the fact that multiple key witnesses still remain to be examined, and the trial while underway, will take time in completion. Out of 24 most vulnerable or material witnesses, two have died, and two others are untraceable. One of the deceased witnesses, a retired Customs Officer, was found dead on the very day he was scheduled to record his statement under Section 164 CrPC. The risk of witness tampering or elimination—whether directly attributable to the Appellant or not—is a real and present concern that militates against the grant of bail at this stage.

[31]. Moreover, the Appellant's criminal antecedents, though not involving prior accusations under the NDPS Act, include multiple DRI and customs proceedings involving smuggling of cigarettes, undervaluation of imports, and alleged complicity in corruption offences. These antecedents are relevant only for the limited purpose of evaluating the Appellant's propensity to interfere with the process of justice if enlarged on bail.

[32]. NIA has also highlighted that several accused remain absconding, including the primary foreign conspirators. In that context, the Appellant's foreign travel, overseas connections, and financial capacity cannot be overlooked in evaluating the possibility of flight risk. These are not speculative concerns but flow directly from the Appellant's prior conduct and profile.

[33]. We are conscious of the settled principle that pre-trial incarceration should not translate into punitive detention. The Appellant has been in custody since 24.08.2022, and while we do not find that this duration alone warrants bail under the present circumstances, the Appellant shall remain at liberty to renew his prayer for bail after a period of six months, or upon substantial advancement in the trial, whichever is earlier. Such a course would allow the Prosecution to complete the examination of its core witnesses while preserving the accused's right to seek release at a later and more appropriate stage.

[34]. Before parting with this matter, we deem it necessary to clarify that, at this stage, it would be premature and speculative to extend the allegations against the Appellant to the domain of terror financing. While the prosecution has invoked provisions of the UAPA and has broadly linked the smuggling enterprise to trans-national syndicates with suspected affiliations, there is no compelling reason to currently link the Appellant and proscribed terrorist organisations, either within or outside the country. The evidentiary foundation to sustain such a grave allegation must be clear and compelling—something that, can be seen only after a substantial portion of evidence is led by both the parties.

[35]. In light of the foregoing discussion, and without expressing any opinion on the merits of the case, we dismiss the instant appeal with the following directions:

- i. We are not inclined to enlarge the Appellant on regular bail at this stage. He shall be at liberty to renew his plea for regular bail after a period of 6 months, or at a stage where the ongoing trial has progressed substantially;
- ii. The NIA is directed to submit to the Special Court an additional list of witnesses who, in its assessment, are sensitive or material, inasmuch as their testimony may have a direct bearing on the role of the Appellant or other co-accused in the ongoing trial and connected investigation;
- iii. The Special Court is directed to list the matter twice in a month and record the statements of Prosecution witnesses on a continuous and uninterrupted basis; and
- iv. If the Presiding Officer of the Special Court has not been posted thus far, we request the Hon'ble Chief Justice of the High Court of Gujarat to do the needful within a week.

25. In CBI v. Dayamoy Mahato (2025) Criminal Appeal No. 5400-5401 Of 2025, 2025-INSC-1418, Dec 11, 2025, the Hon'ble Supreme Court holds,

[21.3]. Lastly, when it comes to the sum total of circumstances not being considered, we are not particularly impressed by that ground. It is a matter of record that an earlier application for bail, about a decade ago in the year 2016, had been rejected with the High Court recording that examination of the remaining witnesses should be completed within a year. If in 2022, the Court finds that despite such direction and also the passage of nearly six years, the same could not be achieved, it cannot be said to have not considered the case in its proper light. Second, the trial being at an advanced stage is also not something that can be, in this case, a ground to send the respondent-accused behind bars. The trial is of the year 2010, and as we stand at the end of 2025, still 28 witnesses are to be examined. We may note the glacial pace at which the trial has proceeded cannot justify the incarceration of the accused, particularly when they have already been in prison for a dozen years, and once out, have not given the authorities reason to seek urgent cancellation, or even stay on the impugned judgment when this Court issued notice, or even anytime thereafter.

[22]. In spite of these grave circumstances as discussed in Para 21.1, the High Court granted bail which, we are of the view, it ought not to have. It is clear that the alleged acts of the accused were to register opposition to the manner in which an internal security situation was dealt with by the forces of the State. While the Constitution permits the members of the public, be at whichever group/section of society they belong to, to oppose, within the permits of the law a stand taken by the State- such acts of barbarity cannot be excused. Even more so when unsuspecting humans are given the most horrific, painful deaths. In view of the discussion made above that the rights of an individual are always subservient to the nation's interest, the High Court fell in error in granting bail. It is a well-established position however that this Court does not interfere against the grant of bail unless circumstances warranting such an exercise of power are plainly present in a given set of circumstances. In view of the discussion made in Paras 21.2 and 21.3 we are of the view that interfering with the liberty of the accused, at this stage, particularly when nothing else holds against them, would not be justified. At the cost of repetition, we may state that the appellant could not bring to our notice subsequent development which would justify this interference as serving any fruitful purpose.

26. In the light of the Judicial Precedents of Hon'ble Supreme Court of India, considering the nature of allegations against the appellant and keeping in mind the stage of trial, and the pre-trial custody, we are of the considered opinion that further pre-trial incarceration would cause grave injustice to the appellant.

27. Further, the appellant, through his counsel, undertakes not to indulge in any Anti-India activity and also that he would not cross the limits of his speech and expression beyond what is permitted under Article 19 of the Constitution of India and considering the entire facts and the pre-trial custody, which on the face of it, is excessive for the purpose of pre-trial custody and the undertaking given by the appellant through counsel, we are of the considered opinion that his further custody is not required.

28. Without commenting on the case's merits, in the facts and circumstances unique and peculiar to this case, and for the reasons mentioned above, the appellant makes a case for bail.

29. Given the above, provided the appellant is not required in any other case, the appellant shall be released on bail in the FIR captioned above, subject to furnishing personal bonds and two surety bonds of Rs. 1 Lac each, to the satisfaction of the concerned trial Court and due to unavailability before any nearest Chief Judicial Magistrate or Duty Magistrate/ Ilaqa Magistrate.

30. The appellant shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The appellant shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

31. The appellant shall not seek any unnecessary adjournment, and if he does so, the State shall have the right to apply for cancellation of bail.

32. The appellant shall mention his current address, phone number, e-mail, if any, and present address, native address, and in case of change, he shall inform the SHO of the police station concerned through a registered letter by mentioning the case number. Additionally, he shall also inform the concerned Court before whom the bonds were furnished.

33. Given the background of allegations against the appellant, it becomes paramount to protect the members of society as well as the integrity of the country, and incapacitating the accused would be one of the primary options until the filing of the closure report, discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction. Given the nature of the allegations and the other circumstances peculiar to this case, the appellant shall surrender all weapons, firearms, and ammunition, if any, along with the arms license, to the concerned authority within fifteen days of release from prison and inform the Investigator of compliance. However, subject to the Indian Arms Act, 1959, the appellant shall be entitled to renew and take it back in case of acquittal in this case, provided that this is otherwise permissible under the concerned rules. Restricting firearms would instill confidence in society; it would also restrain the accused from influencing the witnesses and repeating the offense.

34. The conditions mentioned above imposed by this court are to endeavor to reform and ensure that the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

35. In *Md. Tajiur Rahaman v. The State of West Bengal*, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

36. This bail is conditional, with the foundational condition being that if the appellant repeats the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than three years, the State shall file an application to revoke this bail before the trial Court having jurisdiction over this FIR, which shall have the authority to cancel this bail, and as per their discretion, they may cancel this bail.

37. In addition to the above conditions, the Appellants shall abide by all the following conditions as were ordered by the Hon'ble Supreme Court of India in *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, 2026-INSC-2, Jan 05, 2026. It is clarified that the conditions mentioned in *Gulfisha Fatima supra* are to be preferred over the following conditions imposed by this Court:

[434]. vii. The appellants shall not make or publish or disseminate any information, statement, article or post whether in print, electronic or social media concerning the present case or its participants till conclusion of the trial.

viii. The appellants shall not participate in any programme or address or attend any gathering, rally or meeting, whether physically or virtually till conclusion of the trial.

ix. The appellants shall not circulate any post either in electronic form or physical form or circulate any hand bills, posters, banners, etc in any form whatsoever.

xi. The appellants shall maintain peace and good behaviour throughout and in the event of any offence committed during the pendency of the trial, the prosecution would be at liberty to seek for revocation of the bail granted by filing such application before the Trial Court and in the event of such application being filed the Trial Court shall consider it on its own merits.

[435]. In case of breach of any of the afore-stated conditions imposed or in the event of appellants having misused the liberty granted, it shall be open to the Trial Court to cancel the bail which would be necessarily after affording opportunity of hearing to the appellants.

38. Any observation made hereinabove is tentative and is not an expression of opinion on the case's merits, and it shall have no bearing on the trial or on the case of the co-accused, and the trial Court shall not advert to these comments.
39. It is clarified that this bail order shall not be considered as a blanket bail order in any other matter and is only limited to granting bail in the FIR mentioned above.
40. In Amit Rana v. State of Haryana, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that “To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished.”
41. Given the above, the impugned order is set aside and appeal is allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

27.05.2026
Anju rani

Whether speaking/reasoned	YES
Whether reportable	NO