

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 20 of 2026**

**Prabhu Prasad Sao @ Prabhu Sao @ Prabhu Saw @ Prabhu
Sahu @ Prabhu Prasad Sahu**, S/o Brij Mali Sao, R/o
Banari, P.O.- Banari, P.S.- Bhashunpur, Dist.- Gumla.

... **Appellant**

Versus

Union of India through National Investigating Agency

... **Respondent**

PRESENT

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Appellant : Mr. Indrajit Sinha, Adv.
For the Resp.-NIA : Mr. Amit Kumar Das, Spl. P.P.-NIA

Dated : 27/02/2026

1. Heard Mr. Indrajit Sinha, learned counsel for the appellant and Mr. Amit Kumar Das, learned Spl. P.P.-NIA.
2. This appeal is directed against the order dated 26-11-2025 passed by the learned Special Judge, NIA, Ranchi, in Special (NIA) Case No. 03 of 2021 corresponding to RC-03/2021/NIA/RNC, arising out of Garu P.S. Case No. 32/2017, whereby and whereunder, the prayer for bail of the appellant has been rejected.
3. The prosecution case in brief is that an information was received by the Officer-in-Charge of Garu P.S. on 31-08-2017 that during interrogation of Prabhu Sao (appellant), it had come to light that he was a supporter of Sudhakaran, a Central Committee Member of CPI(Maoist) and that he had been purchasing arms, ammunition, explosive materials and other logistic support to members of CPI(Maoist). The said Prabhu Sao

had further revealed that Sudhakaran along with Balram Oraon, Chhotu Kherwar, Ravindra Ganjhu, Mrityunjay ji, Pradeep Singh and 100-110 other members of CPI (Maoist) were camping in Rud Forest and were planning a major incident. Consequently, Prabhu Sao was brought to Garu P.S. where his disclosure statement was recorded. It has been alleged that on 01-09-2017, a joint Police team proceeded for Rud Forest with Prabhu Sao and on his pointing out, 13 live rounds of 7.62mm (SLR), Maoist literature and other items were recovered and Prabhu Sao was arrested.

Based on the aforesaid allegations, Garu P.S. Case No. 32/2017 was instituted for the offences under Sections 120B IPC, Sections 25(1-A), 26 and 35 of the Arms Act, Sections 16, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and Section 17 of the Criminal Law (Amendment) Act.

Considering the gravity of the offence, the Government of India, Ministry of Home Affairs (CTCR division), New Delhi vide F. No. 11011/26/2021/NIA dated 12-04-2021 issued an order under Sub-section 5 of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 directing the National Investigation Agency to take over the investigation of Garu P.S. Case no. 32/2017. Accordingly, the National Investigation Agency re-registered the case as R.C. No. 03/2021/NIA/RNC under Sections 120B, IPC, Section 25(1-A), 26(2) and 35 of the Arms Act, Section 16, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and under Section 17 of the Criminal Law (Amendment) Act, 1908 against 11 named accused persons and 100-110 unknown members of the CPI (Maoist) and took up investigation of the case. After investigation, NIA had submitted a charge sheet on 11-11-2022 under Section 120B, IPC, Sections 25(1-A), 26 and 35 Arms Act, Sections 16, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and under Section 17

of the Criminal Law (Amendment) Act, 1908 against 14 accused persons keeping the investigation pending against the other accused persons.

4. It has been submitted by Mr. Indrajit Sinha, learned counsel for the appellant that the appellant was granted bail on 27-02-2018 in B.A. No. 963/2018 but the appellant did not furnish bail bond as he was in custody in another case and after the grant of bail, when the bail bond of the appellant was not accepted, he had preferred Cr. M.P. No. 2192/204 which, however, was dismissed vide order dated 12-09-2025. Mr. Sinha has submitted that the appellant is in custody since 01-09-2017 and till date no witness has been examined by the prosecution. Though the NIA has given a list of 84 witnesses in the charge sheet and even if the number of witnesses is curtailed to 51, as submitted by Mr. Das, the same also, according to Mr. Sinha, will take a considerable length of time prolonging the incarceration of the appellant. While referring to Para 7.16 of the counter affidavit of NIA, Mr. Sinha has submitted that it is erroneous to state that the defence has adopted dilatory tactics to delay the trial as the defence had merely exercised their right to file an application when one of the witnesses was produced for examination and the trial court can expeditiously dispose of such application and proceed with the trial. Mr. Sinha, learned counsel for the appellant has copiously referred to the order dated 25-06-2024 passed in Criminal Appeal (DB) No. 380 of 2024 vide which the present appellant was granted bail taking into consideration the period of custody undergone by him.

5. Mr. Amit Kumar Das, learned Special P.P.-NIA has opposed the prayer for bail made by the appellant and has submitted that in course of investigation, the various nefarious activities of the appellant in connection with the proscribed organization has come to light and granting bail to the appellant

would amount to giving him a license to tamper with the evidence and threaten the witnesses. Mr. Das has submitted that there are a large number of protected witnesses who would become vulnerable if the appellant is granted bail. Mr. Das, learned Special P.P.-NIA has referred to the case of ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)*** reported in **2026 SCC Online SC 10**. Submission has been advanced that it is on account of the appellant that the trial has got delayed.

6. Mr. Sinha, learned counsel for the appellant in reply has submitted that after the NIA had taken over investigation, charge sheet had been filed on 11-11-2022 and the charge has been framed on 24-09-2025. This would imply that the delay was caused by the prosecuting agency and not the appellant. Mr. Sinha has also relied in the case of ***Gulfisha Fatima v. State (Govt. of NCT of Delhi) (Supra)*** and has submitted that the case of ***Union of India v. K. A. Najeeb*** reported in **(2021) 3 SCC 713** is by a *Three Judge Bench* which is to ensure constitutional safeguards, especially when a protracted trial has led to a long incarceration of an accused. Mr. Sinha has also relied upon the case of ***Kapil Wadhawan v. Central Bureau of Investigation*** reported in **2025 SCC Online SC 3038** and ***Union of India v. K. A. Najeeb*** reported in **(2021) 3 SCC 713**.

7. We have heard the learned counsel for the respective sides and have also perused the affidavits on record as well.

8. The appellant has been arrayed as (A-1) in the charge sheet submitted by the NIA and his role and involvement has been depicted in para 17.48 which reads as follows:

“17.48 ROLE AND INVOLVEMENT OF ACCUSED PERSONS:

17.48.1 PRASAD SAO @ PRABHU SAO (A-1): Prabhu Sao (A-1), is an overground worker and supporter of CPI (Maoist), a proscribed terrorist organization, since

1999. Since then, he worked for top Maoist operatives including Sudhakaran, Nilima, Balram Oraon (A-2), Chotu Kherwar (A-3), Ravindra Ganjhu (A-4), Niraj Kherwar (A-5), Mrityunjay Bhuiya (A-6) and Pradeep Singh Kherwar (A-7) etc. A-1 is a party of the conspiracy hatched by CPI(Maoist) for terrorist activities and wage war against the Government of India and knowingly facilitated the Maoist cadres in preparation to the commission of terrorist acts. A-1 knowingly concealed the existence of a design to wage war against the state. A-1 had supplied arms, ammunition and explosive materials or their parts, other necessary items such as items of daily use, ration, blankets, clothes, uniform and provided logistic support to the cadres of CPI (Maoist). A-1 acquired, was in possession of and delivered prohibited ammunition to the operatives of CPI(Maoist). A- 1 aided the proscribed terrorist organisation CPI(Maoist) and involved in preparatory acts to contravention of the laws of land by supplying prohibited arms, ammunition and explosive substances. At the instance of A-1, police recovered 13 live ammunition, Naxal literature and other items concealed/dumped at temporary camp of Maoist cadres in Rud hilly forested area. A-1 collected levies and extorted money from contractors by putting the contractors in fear of death at the behest of CPI (Maoist) and provided the raised funds to the top Maoist operatives knowing that such funds are likely to be used by the Maoist cadres to commit terrorist acts. A-1 arranged transportation and also provided shelter/accommodation/harbour to an active cadre knowing that the person is a terrorist and a

sympathizer of CPI (Maoist). He has given support to CPI (Maoist), a banned terrorist organisation with intention to further the activity by arranging or managing meetings of top Maoist operatives with villagers and contractors for the purpose of support to the said terrorist organisation. On earlier occasion, in 2007, Ranchi police recovered country made parts of various weapons viz. SLR, 51mm/2" Mortar and grenade from godown of a transport company named Maa Annpurna Transport Pvt Ltd, Rathu Road at the instance of A-1 when he had come to receive the consignment at the behest of CPI (Maoist), hence, he was arrested and a case was registered against him at PS Sukhdevnagar vide FIR No. 67/07 dated 24.01.2007 U/s 122 of the IPC, sections 25(1-A), 26 and 35 of the Arms Act, and section 17 of the CL(A) Act and subsequently he was charge-sheeted in the said case. He was also charge-sheeted in another NIA case No. RC-14/2017/NIA/DLI dated 31.10.2017 (Arising out of crime FIR No. 180/2017 dated 31.08.2017 of PS Chutia, District Ranchi).

Thereby, accused Prabhu Sao @ Prabhu Prasad Sao (A-1) has committed offence under sections under sections 121A, 123, 386, 411 and 120B of the IPC, sections 25 (1-A) and 26 (2) of the Arms Act, 1959 and sections 17, 18, 19, 23, 39 and 40 of the UA (P) Act, 1967.

Apart from the evidence discussed above, the oral, documentary and material evidences collected against the accused and included in Annexure A, B and C establishes the complicity of Prabhu Sao @ Prabhu Prasad Sao (A-1) in the instant case."

9. The role of the appellant as would transpire that the appellant had supplied arms, ammunitions and explosive materials as well as logistical support to the proscribed organization. It has also been mentioned therein that he had harbored an active cadre and had also provided transportation to him which demarcates that he is a sympathizer of the CPI(Maoist). In 2007, some weapons were recovered from the godown of a transport company purportedly at the instance of the appellant.

10. The pre-dominant submission of Mr. Sinha, learned counsel for the appellant is the period of incarceration of the appellant and the delay in completion of the trial. The appellant is in custody since 01-09-2017 and not a single witness has been examined till date. According to Mr. Das, learned Spl. P.P.-NIA, the period of incarceration would hardly be of any consequence considering the gravity of the offence. Mr. Das has relied on the case of ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)*** reported in **2026 SCC Online SC 10** wherein, it has been held as follows:

“27. Accordingly, before turning to the case of each appellant, it becomes necessary to first address certain questions of general application. These include the manner in which pleas founded on delay are to be assessed in prosecutions under special statutes, the contours of the statutory restraint embodied in the Unlawful Activities (Prevention) Act, 1967, and the principles governing the formation of prima facie satisfaction under Section 43D(5) of the Act. This exercise is intended to provide the legal setting within which individual roles and allegations are thereafter examined.

28. *At the threshold, it is necessary to clarify the legal contours within which the plea of delay operates in prosecutions under the UAPA. Delay engages Article 21 at two distinct constitutional planes. First, delay may be of such magnitude and character that continued detention becomes per se unconstitutional, irrespective of the strength of the prosecution case. Second, delay may be pressed as a circumstance to contend that the statutory satisfaction under Section 43D(5) stands diluted or displaced. The present case, on an examination of the record, does not meet either threshold. The inquiry that follows is therefore confined to whether the delay alleged is of such a nature as to constitutionally eclipse the statutory embargo, and not whether delay exists in the abstract.*

32. *In Union of India v. K.A. Najeeb, this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.*

33. *The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby*

delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

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

35. *The proper constitutional question, therefore, is not whether Article 21 is superior to Section 43D(5). The proper question is how Article 21 is to be applied where Parliament has expressly conditioned the grant of bail in relation to offences alleged to implicate national security. The law does not contemplate an either-or approach. Nor does it contemplate an unstructured blending of statutory and constitutional considerations. What is required is disciplined judicial scrutiny that gives due regard to both.*

38. *What assumes significance is that the procedural history and order sheets do not support the assertion that the delay is attributable to prosecutorial inaction or judicial inaction. The common counter affidavit and the Trial Court's orders record that, at various stages, the prosecution expressed readiness to proceed, including readiness to commence arguments on charge, while objections, requests for deferment, and issues relating to sequencing of arguments were raised on behalf of the accused. At the stage of compliance under*

Section 207 CrPC itself, the Trial Court noted that despite repeated directions, certain accused declined to receive copies of the charge-sheet in the manner directed, insisted on alternate modes of supply, or filed successive applications, necessitating further procedural orders and contributing to delay at the pre-charge stage. These aspects emerge from the record and are not matters of conjecture.

440. *Having regard to the nature of the prosecution and the period of incarceration already undergone, it is considered appropriate to direct that the Trial Court shall proceed with the matter with due expedition and shall endeavour to ensure that the examination of witnesses, particularly the protected witnesses relied upon by the prosecution, is taken up and carried forward without delay.”*

11. In the case of **Union of India v. K. A. Najeeb** reported in **(2021) 3 SCC 713**, it has been held as follows:

“17. *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an*

approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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

19. *Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by*

absconson, etc.

Conclusion

20. *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 a.m. 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 the above stated directions.”*

12. Mr. Indrajit Sinha, learned counsel for the appellant has also placed reliance in the case of ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)*** reported in **2026 SCC Online SC 10**, more particularly to the following paragraphs:

“52. *The consequence of the above is that Najeeb (supra) must be understood as a principled safeguard against unconscionable detention. Prolonged incarceration is a matter of serious constitutional concern and carries great weight. It is not, however, the sole determinant. The Court must consider, in totality, whether continued detention has become constitutionally unjustifiable, having regard to the role*

attributed, the statutory context, the limited prima facie material, the trajectory of the trial, the causes of delay, and the availability of intermediate remedies.

53. *This approach does not dilute Article 21. It gives Article 21 structured content in a field where the Constitution itself recognises competing interests. Nor does it render Section 43D(5) absolute. It recognises that statutory restraint must yield in an appropriate case where detention becomes punitive by reason of unreasonable and unjustified delay. What it excludes is a mechanical override based on time alone, divorced from legal context.*

61. *To read Najeeb (supra) as mandating bail solely on account of prolonged incarceration, irrespective of the statutory context or the nature of the allegations, would be to attribute to the decision a consequence it neither intended nor supports. Such a construction would also lead to an interpretive absurdity, whereby a special statute enacted by Parliament to address offences implicating the sovereignty, integrity, and security of the State would stand effectively neutralised by the mere passage of time, even at a pre-trial stage. Such an outcome cannot be countenanced in constitutional adjudication. Accordingly, the finding in Najeeb (supra) is properly situated as a constitutional safeguard to be invoked in appropriate cases, and not as a mathematical formula of universal application.*

62. *Before parting with the discussion on delay, it is clarified that the observations herein are confined to the present stage of the proceedings. The constitutional concern arising from prolonged custody has been duly*

considered on the basis of the record as it presently stands. In the event of continued and unexplained stagnation of the trial, it shall remain open to the appellants to avail such remedies as are permissible in law. The Trial Court is expected to accord due priority to the matter and ensure that the proceedings are carried forward with reasonable expedition.”

13. In ***Union of India v. K. A. Najeeb (supra)***, it has been held that statutory restrictions imposed by Section 43D(5) of the Unlawful Activities (Prevention) Act will not act as a deterrent in granting bail to an accused when there is no likelihood of the trial being concluded in the near future and where the concerned accused has undergone a substantial part of the prescribed sentence. As has been held in ***Gulfisha Fatima v. State (Govt. of NCT of Delhi)***, the finding in *K.A. Najeeb (supra)* acts as a constitutional safeguard to be invoked in appropriate cases and not as a mathematical formula of universal application.

14. In the background of the judicial pronouncements referred to above, what speaks out in the present case is of the long incarceration of the appellant which is since 01-09-2017, i.e. almost eight and half years, and not a single witness has been examined by the prosecution though as per Mr. Das, learned Spl. P.P.-NIA, the list of 84 witnesses as submitted by the NIA has been pruned down to 51 witnesses, but such pruning down cannot be concluded to presume that the trial would be completed anytime soon. It has rightly been pointed out by Mr. Sinha, learned counsel for the appellant that though charge sheet has been filed on 11-11-2022, but the charge has been framed on 24-09-2025 and such delay cannot be fastened upon the appellant.

15. In view of the nature of allegations levelled against the appellant, his period of incarceration which is since 01-09-2017

and that not a single witness has been examined by the prosecution which furthermore reflects, considering that 51 witnesses are to be examined, that the trial is not likely to be concluded in the near future, we are inclined to allow this appeal. Accordingly, the order dated 26-11-2025 passed by the learned Special Judge, NIA, Ranchi, in Special (NIA) Case No. 03 of 2021 corresponding to RC-03/2021/NIA/RNC, arising out of Garu P.S. Case No. 32/2017 is hereby set aside and the appellant is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned A.J.C. XVI-cum-Special Judge, N.I.A. Cases, Ranchi, subject to the condition that the appellant shall remain physically present before the learned trial court on each and every date till the conclusion of trial.

16. This appeal is **allowed**.

17. Pending I.A.(s), if any, stands closed.

(RONGON MUKHOPADHYAY, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Dated: 27th February, 2026.

Preet/-

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