IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-938-2024 (O&M)
RESERVED ON: OCTOBER 14, 2025
DATE OF DECISION: NOVEMBER 04, 2025

Jagwinder Singh @ Jagga **...Appellant**

Versus

National Investigating Agency **...Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Bhanu Pratap Singh, Advocate,
for the appellant.

Mr. Sukhdeep Singh Sandhu, Special Public Prosecutor
For the respondent.

LAPITA BANERJI, J.

The appellant-Jagwinder Singh @ Jagga, has challenged the order dated June 06, 2024, passed by Special Judge, NIA, Punjab, SAS Nagar, Mohali, whereby his bail application in FIR No.136 of August 14, 2020 registered under Section 120-B read with Sections 109, 124-A, 153-B, 201, 204, 212 of Indian Penal Code (hereinafter referred to as "IPC"), Sections 10,13 of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "the UAPA") and Section 2 of Prevention of Insults to National Honours Act, 1971 (hereinafter referred to as "the POINTH Act") at Police Station City Moga, has been dismissed.

PROSECUTION'S CASE

2. On August 14, 2020, at about 8:00 am, two people entered the administrative complex of the Deputy Commissioner's office, Moga. They went to the top floor of the office building and hoisted one saffron/

yellowish colour flag on which the word "*KHALISTAN*" was written, on an iron pole that was already fixed there. Upon returning to the ground floor, they went to the pole on which Indian National flag was fixed within the office complex of D.C office, Moga and cut its rope due to which the flag fell on the ground.

3. FIR No.136 dated 14.08.2020 under Sections 109, 115, 121, 121-A, 124-A, 153-A, 153-B, 212 IPC, Sections 10, 11 and 13 of the UAPA and Section 2 of POINTH Act, Section 66F of the Information Technology Act, 2000 (added subsequently), was registered at Police Station City, Moga.

4. Upon investigation, it transpired that the said offence was committed at the behest of one Gurpatwant Singh Pannu, who is a declared terrorist by the Government of India and a member of an unlawful association/banned organisation by the name of "*SIKHS FOR JUSTICE"(*for short, "SFJ*").* The appellant used to watch "*SFJ*" channel, posted his comments favouring *"SFJ"* on social media and also took part in radicalizing and motivating Sikh youths including his cousin Inderjit Singh (A-1) to join "*SFJ*".

5. Inderjit Singh (A-1) (appellant's cousin) was one of the two miscreants who went on the top floor of D.C's office and hoisted the flag on which the word *"KHALISTAN"* was written and cut the rope of Indian National flag tied to a flag post on the ground floor. The appellant sheltered them and took them to Anandpur Sahib in his Fortuner car. Furthermore, upon return from Anandpur Sahib, the appellant also allowed them to stay in his house from 16.08.2020 to 17.08.2020.

SUBMISSIONS

6. Learned counsel for the appellant submits that although it has been alleged that the appellant was involved in unlawful activities under UAPA but there was no recovery from the appellant apart from a mobile phone and no incriminating material was produced against him which could connect the appellant to any offence, more so, to any offence under UAPA. Apart from the disclosure statement of Inderjit Singh (A-1) who is a co-accused in the present case, there is no evidence collected by the prosecution to connect the appellant (A-4) to the commission of any crime. Furthermore, only 20 out of 149 prosecution witnesses have been examined by the prosecution despite passage of more than 05 years of the appellant being in custody and the prosecution is unnecessarily dragging the conclusion of the trial.

7. In support of his submissions, he has placed reliance upon the judgments of the Supreme Court in the cases of ***Union of India v. K.A. Najeeb,*** *(2021) 3 SCC 713,* ***Shoma Kanti Sen v. State of Maharashtra and another,*** *2024 SCC OnLine SC 498*, ***Vernon v. The State of Maharashtra and another***, *2023 SCC OnLine SC 885*, ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh***, *2024 SCC OnLine SC 1755* and ***Javed Gulam Nabi Shaikh v. State of Maharashtra and another***, *2024 SCC OnLine SC 1693*, wherein it has been held that long custody by itself would entitle the accused being tried under UAPA to the grant of bail by invoking Article 21 of the Constitution of India.

8. *Per contra*, learned Special Public Prosecutor appearing for NIA submits that the appellant was involved in anti national activities. It is the appellant (A-4) who motivated his cousin Inderjit Singh (A-1) to join

"*SFJ*". During investigation a video of Gurpatwant Singh Pannu was recovered from the mobile phone of A-4 wherein an announcement was made that any person who could hoist a *"KHALISTANI"* flag on any government building would be given $2500 in reward. There was one call between the appellant (A-4) and his cousin (A-1) on August 13, 2020 which was the link evidence between the appellant and the offence committed by him. It is A-1 along with A-2 who visited D.C office building on August 13, 2020 to do a proper recce of the place and also had a telephonic conversation with the appellant on the same day. Therefore, the meeting of minds between the appellant and his co-accused (A-1) was sufficiently proved and given the gravity and nature of the offence, the appellant should not be enlarged on bail. The appellant along with the other co-accused had the common intention of committing terrorist acts and therefore, should not be granted bail due to his involvement in anti-national activities, keeping in mind the provisions of Section 43-D (5) of UAPA.

DISCUSSION AND FINDINGS

9. This Court has heard learned counsel for the parties and perused the material on record.

10. At the outset it would be apposite to refer to Section 43-D of the UAPA. The same reads as follows:

> *"**43 D. Modified application of certain provisions of the Code.—***
> *(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.*
>
> *(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—*

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act

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(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case

diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

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

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

11. As per Section 43-D (5) of the UAPA, no person accused of an offence publishable under Chapter IV and VI of the UAPA shall, if in custody, be released on bail unless the Public Prosecutor has been given an opportunity of being heard, on the application made by him for such release and if the Court, on perusing the case diary or the report filed under Section 173 Cr.P.C is of the opinion that there are reasonable grounds for believing that the accusation against such person are *prima facie* proved. Section 43-D (6) further stipulates that restriction for the grant of bail specified in Section 43-D (5) would be in addition to the restriction provided under the Cr.P.C or any other law for the time being in force on granting of bail.

12. A perusal of the status report reveals that no incriminatory material was found against the appellant, at this stage. The allegation against the appellant was that he had watched video of Gurpatwant Singh Pannu and indoctrinated his cousin Inderjit Singh (A-1) to support the formation of separate State of *"KHALISTAN"* and aided/abetted hoisting of *"KHALISTANI"* flag on the top floor of D.C's office. Apart from one phone call on the day previous to the commission of offence i.e August 13, 2020, nothing else has been brought on record to link the appellant with A-1. Nothing else has been brought on record to corroborate radicalization and

indoctrination of the youths by the appellant. No recovery has been made from the appellant, apart from his mobile phone. The appellant has undergone an actual sentence of 05 years and 29 days and the end of the trial is nowhere in sight.

13. Article 21 of the Constitution of India enshrines the fundamental right to protection of life and liberty which also includes the right to a speedy trial. It has been held by the Supreme Court in a catena of judgments that long custody by itself would entitle the accused under UAPA to the grant of bail by invoking Article 21 of the Constitution of India. The Constitutional Court would like to prevent a situation where the lengthy and arduous process of trial becomes the punishment in itself. Reference can be made to the judgment of the Supreme Court in ***K.A. Najeeb's*** case *(supra),* wherein it has been held that long custody would be an essential factor while granting bail under UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under UAPA.

14. The Supreme Court in the case of ***Vernon*** *(supra)* has held that serious allegations against accused by itself cannot be a reason to deny bail to the accused. The relevant extract thereof is reproduced hereunder:-

> "*44. In the case of **Zahoor Ahmad Shah Watali** (supra) reference was made to the judgment of **Jayendra Saraswathi Swamigal v. State of Tamil Nadu** [(2005) 2 SCC 13) in which, citing two earlier decisions of this court in the cases of **State v. Jagjit Singh** (AIR 1962 SC 253) and **Gurcharan Singh v. 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 tampered 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 other provisions of the 1860 Code and the 1967 Act*."

15. In the case of ***Shoma Kanti Sen*** *(supra)*, the Supreme Court has held that generally pre-conviction detention at the investigation stage is necessary to maintain purity in the course of trial and also to prevent an accused from being a fugitive from justice or to prevent further commission of an offence. Once it is apparent that a timely trial is not possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge them on bail as any form of deprival of liberty must be proportionate to the facts of the case and also follow a just and fair procedure. A balance must be made between the prosecution'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 the Constitution. The relevant extract is reproduced hereinafter:

> *"xxx*
> *37. In the case of K.A. Najeeb v. Union of India [(2021) 3 SCC 713], a three Judge Bench of this Court (of which one of us Aniruddha Bose, J was a party), has held that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail in the 1967 Act and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time, relying on Article 21 of Constitution of India. This decision was sought to be distinguished by Mr. Nataraj on facts relying on judgment of this Court in the case of Gurwinder Singh v. State of Punjab [2024 INSC 92]. In this judgment it has been held:-*

> *"32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) 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 of the appellant cannot be accepted."*

38. Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of Najeeb (supra), and in that judgment, long period of incarceration was

held to be a valid ground to enlarge an accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-charge sheet stage has the sanction of law broadly on these reasonings. But any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-charge sheet stage."

39. *As regards second part of Mr Nataraj's argument which we have noted in the preceding paragraph, we accept it with a qualification. The reasoning in Najeeb (supra) case would also have to be examined, if it is the constitutional court which is examining prosecution's plea for retaining in custody an accused charged with bail-restricting offences. He cited the case of Gurwinder Singh (supra) in which the judgment of K.A. Najeeb (supra) was distinguished on facts and a judgment of the High Court rejecting the prayer for bail of the appellant was upheld. But this was a judgment in the given facts of that case and did not dislocate the axis of reasoning on constitutional ground enunciated in the case of Najeeb (supra). On behalf of the prosecution, another order of a coordinate Bench passed on 18-1-2024, in the case of Mazhar Khan v. NIA was cited. In this order, the petitioner's prayer for overturning a bail-rejection order of the High Court under similar provisions of the 1967 Act was rejected by the coordinate Bench applying the ratio of the case of Watali (supra) judgment and also considering the case of Vernon (supra). We have proceeded in this judgment accepting the restrictive provisions to be valid and applicable and then dealt with the individual allegations in terms of the proviso to Section 43-D (5) of the 1967 Act. Thus, the prosecution's case, so far as the appellant is concerned, does not gain any premium from the reasoning forming the basis of Mazhar Khan (supra).'*

[*emphasis supplied*].

16. In the case of ***Javed Gulam Nabi Shaikh*** *(supra)*, the Supreme Court has observed that criminals are not born but made out. Howsoever

serious a crime may be, an accused has a right to a speedy trial as enshrined under the Constitution of India. Moreover, the purpose of bail is only to secure the attendance of the accused at the trial and bail is not to be withheld as a form of punishment. The relevant extract thereof is reproduced hereunder:

> *"13. The aforesaid observations have resonated, time and again, in several judgments, such as Kadra Pahadiya & Ors. v. State of Bihar reported in (1981) 3 SCC 671 and Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225. In the latter the Court reemphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:*
>
> > *"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."*
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> *14. In Mohd Muslim @ Hussain v. State (NCT of Delhi) reported in 2023 INSC 311, this Court observed as under:*
>
> > *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*
> >
> > *22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State reported in 1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner loses his identity. He is known by a number. He loses personal possessions. He has no personal*

> *relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.*
>
> *23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."*
> *Xxxxxxx*
>
> *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*."

17. In the case of ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari*** *(supra)*, it has been held 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.

18. In ***Jalaluddin Khan v. Union of India*** reported in *(2024) 10 SCC 574*, the appellant was, *inter-alia*, charged under Sections 13, 18, 18-A and 20 of the UAPA. He was arrested on July 12, 2022 and a charge-sheet was filed on January 07, 2023. The relevant part of the charge-sheet reads as follows:

> *"xxx*
> *17.1 Bihar Police had received information about a plan to disturb the proposed visit of Hon'ble Prime Minister to Bihar by some suspected persons who had assembled in Phulwarisharif area. On 11.07.2022 at about 19:30 hrs, on secret information, a raid was carried out by the police officers of PS Phulwarisharif, Patna at the rented house/premises of Athar Parvej (A-1) and recovered 05 sets of documents "India 2047 Towards Rule of Islamic India, Internal Document: Not for Circulation", Pamphlets "Popular Front of India 20-2-2021" – 25 copies in Hindi and 30 copies in Urdu, 49 cloth flags, 02 magazines "Mulk ke liye Popular Front ke saath" and one copy of rent agreement on non-judicial stamp by Farhat Bano w/o Md. Jalaluddin Khan (A-2) with tenant Athar Parvej (A-1) son of Abdul Qayum Ansari. The recovered articles and a Samsung mobile phone having SIM card of accused Md. Jalaluddin (A-2) were seized in the instant case. They were related to anti-India activities."*
> *Xxx"*

19. The Hon'ble Supreme Court was of the opinion that nothing in the charge-sheet showed that the appellant had taken part in or committed unlawful activities as defined in UAPA. No material was produced on record to show that the appellant advocated, abetted, advised or incited the commission of terrorist acts or preparatory activity. Succinct reasoning leading to the grant of bail is reproduced herein under:

> *"xxx*
> *30. 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 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 UAPA was prima-facie true. No antecedents of the appellant have been brought on record.

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

32. Before we part with the judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge-sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law.

33. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.
xxx"

20. In the case of "***Mukesh Salam v. State of Chhattisgarh and another***" *SLP (Criminal) No.3655 of 2024*, vide an order dated August 30, 2024, the petitioner was charged under Sections 10, 13, 17, 38 (1) (2), 40, 22-A and 22-C of UAPA and directed to be released on bail as he was in custody since May 06, 2020 and 40 out of 100 prosecution witnesses had been examined. The Apex Court observed that continued detention of the petitioner would not subserve the ends of justice as there was no likelihood of early conclusion of the trial. However, along with the conditions that may be imposed by the Special Judge (NIA Act) following two conditions were imposed as the conditions for grant of bail:

> *"6 (i) The petitioner shall report to the nearest police station once every week and*
>
> *(ii) The petitioner shall remain present before the trial Judge on every date of the trial without fail, unless his presence is dispensed with by the trial Court, and shall cooperate in the early conclusion of the trial."*

21. In a recent case in ***Tapas Kumar Palit v. State of Chhattisgarh***, reported in *2025 SCC OnLine SC 322*, by a judgment dated February 14, 2025, the Supreme Court set-aside the impugned order passed by the High Court, rejecting the bail of the appellant. As per the prosecution's case, the appellant was travelling in a vehicle carrying articles which could be ordinarily related to Naxalite activities. Upon search being conducted, it was alleged that the appellant was in conscious possession of the following articles:

> *"xxx*
> *4. The search was undertaken and the following articles were recovered from the car alleged to be in conscious possession of the appellant herein:-*
>
> *(i) 95 pair of shoes*
> *(ii) Green black printed cloth*
> *(iii) Two bundles of electric wire each of 100 metere*
> *(iv) LED lens and*
> *(v) Walki talki and other articles.*
> *Xxx"*

22. In the present case, no worthwhile material to show meeting of minds/criminal conspiracy has been brought on record by the prosecution, at this stage.

23. It is pertinent to note that after more than 05 years, only 20 out of 149 prosecution witnesses have been examined despite the charge-sheet being filed in September, 2020. No explanation has been provided by the prosecution as to why despite of lodging of FIR more than 05 years back, the trial is proceeding at such a slow pace. Learned Special Public

Prosecutor has also not been able to give any reasonable estimate of the time that may be required for completion of the trial. Therefore, the Court is left with no other option but to release the appellant on bail.

24. In view of the aforesaid discussion and the law laid down by the Supreme Court, especially when the appellant is in custody for more than five years and the end of the trial is not in sight, considering only 20 out of 149 prosecution witnesses have been examined, the appeal is allowed and the impugned order dated June 06, 2024 is set aside. The appellant is ordered to be released on regular bail subject to following conditions besides furnishing of requisite bail bonds to the satisfaction of the trial Court/Duty Magistrate concerned:-

(i) He shall furnish bond of ₹10 lakh with two sureties of ₹10 lakh each;

(ii) He shall surrender his passport in the Trial Court, if he is holding the same and is still with him;

(iii) He shall appear before the Trial Court on each and every date, unless exempted by the Court;

(iv) He shall appear before the Investigating Officer, as and when summoned;

v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness;

vi) He shall not involve in any criminal activity and if during the pendency of trial, he is found involved in commission of any offence punishable under UAPA, the prosecuting agency would be free to approach this Court for recalling this order and cancellation of his bail;

vii) He shall not sell, transfer or in any other manner create third party right over his immovable property;

viii) He shall furnish an undertaking to the effect that in case of his absence, Trial Court may proceed with the trial and he shall not claim re-examination of any witness.

ix) At the time of release of the appellant, the concerned SHO shall be informed. He shall appear before the SHO on every alternate Monday till the conclusion of the trial.

25. In the event there is a breach of any of the abovementioned conditions, or of the conditions to be imposed by the Trial Court independently, it would be open to the prosecution to seek cancellation of the bail of the defaulting appellant without any further reference to this Court. Similarly, if the appellant seeks to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the concerned appellant by making appropriate application before the Trial Court.

(DEEPAK SIBAL)
JUDGE

(LAPITA BANERJI)
JUDGE

NOVEMBER 04, 2025
Shalini

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No