

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

111

2026:PHHC:094604-DB



**CRA-D-520-2025 (O&M).
Date of decision: 13.07.2026.**

NIRMAL SINGH ALIAS NEELDHARI ALIAS LALLI

...Petitioner(s)

VERSUS

**NATIONAL INVESTIGATION AGENCY (NIA) MINISTRY OF
HOME AFFAIRS, NEW DELHI**

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

PRESENT Mr. P.P. Singh, Advocate, with
Mr. Mehtab Singh, Advocate,
for the appellant.

Mr. Sukhdeep Singh Sandhu, Public Prosecutor,
for respondent- National Investigation Agency (NIA).

VINOD S. BHARDWAJ, J. (ORAL)

This is the second appeal for grant of regular bail to the appellant after first appeal bearing No.CRA-D-350-2020 having been dismissed by this Court vide order dated 06.04.2021.

2 The present appeal has been preferred after a period of more than 05 years of the dismissal of the earlier appeal as aforesaid and has been filed solely on the ground of prolonged incarceration.

3 Learned counsel appearing on behalf of the appellant contends that the sole allegation levelled by the prosecuting agency against the appellant is that he facilitated the transfer of proceeds of crime by collecting drug money from the co-accused, namely, Jajbir Singh Samra, Harpreet Singh @ Happy and Varinder Singh Chahal, and thereafter transferring the same to one Satpal Singh. He contends that even if the prosecution case is taken at its best, the statement of SI Harbaj Singh (Annexure A-6) would enure in favour of the appellant inasmuch as only a sum of Rs.790/- and a mobile phone had been recovered from the appellant herein. It is submitted that there is no other incriminating evidence that has been collected by the Investigating Agency as would establish the connection of the appellant with the other co-accused. He places reliance of the Supreme Court on the judgment in the matter of **Syed Iftikhar Andrabi Vs. National Investigation Agency passed in Criminal Appeal No.2603 of 2026 decided on 18.05.2026**. The relevant extract of the same reads thus: -

27.4. In Najeeb, this Court clarified that Watali arose in a very specific factual context where the High Court had effectively conducted a mini-trial by reappreciating evidence and determining admissibility issues at the stage of bail and, therefore, this Court had to step in to cancel the bail granted by the High Court to the accused therein. The larger Bench in Najeeb, therefore, confined Watali to the impropriety of undertaking extensive evidentiary evaluation at the bail stage by the High Court. Importantly, Najeeb did not treat Watali as

establishing a general rule of near-automatic denial of bail under the UAP Act.

27.5. This view was followed even more explicitly in Sk. Javed Iqbal, where this Court, speaking through one of us (Justice Bhuyan), observed as under:

33.....This decision i.e. NIA v. Zahoor Ahmad Shah Watali has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

27.6. The position of law emerging from Najeeb and Sk. Javed Iqbal is therefore clear: Watali cannot be invoked to justify indefinite incarceration of the accused under the UAP Act. For the aforesaid reasons, the attempt in Gurwinder to read Watali as laying down a general rule of denial of bail notwithstanding the period of incarceration is difficult to reconcile with this Court's own subsequent clarification of what the ratio in Watali actually meant.

27.7. We also note that the Bench in Gurwinder formulated the so-called 'twin-prong test governing grant of bail under the UAP Act. It held that the inquiry under Section 43D(5) must proceed in two sequential stages: first, whether the accusation is prima facie true; and second, only if the first question is answered in favour of the accused, whether ordinary bail considerations, such as, flight risk, tampering with evidence, or influencing witnesses, justify release. If the first stage of this twin-prong test is satisfied against the accused, bail becomes absolutely impermissible.

27.8. With respect, this test flows neither from the text of Section 43D(5) of the UAP Act nor from Najeeb. In fact, on the contrary, it is in teeth of Najeeb which categorically stated that Section 43D(5) of the UAP Act provides no more than another possible ground, namely that the accusations against the accused are

prima facie true, for the competent court to refuse bail, in addition to the well-settled considerations like possibility of tampering with evidence, influencing the witnesses, or the accused evading the trial by absconding etc. If this twin-prong test is accepted, the State need only satisfy a low prima facie threshold while the trial may continue for years with the result that pre-trial incarceration begins to acquire a post-trial punitive character and even then, no court could ever grant bail no matter the length of period of such incarceration because the case stood prima facie made out against the accused. A plain reading of Najeeb will show that it was trying to prevent precisely this possibility from arising when it cautioned that Section 43D(5) must not become 'the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.'

27.9. Therefore, the caution of Najeeb is that continued incarceration cannot go unabated by a mere discharge by the State of the prima facie standard under Section 43D(5). The judgment explicitly held that Section 43D(5) will 'melt down' where prolonged incarceration and delayed trial produce a violation of Article 21. The constitutional inquiry in Najeeb therefore operated independent of, and notwithstanding, the statutory embargo of Section 43-D(5) in the realm of constitutional principles. That being the case, the formulation of Gurwinder becomes difficult to follow. Once the three-Judge Bench in Najeeb recognised that constitutional courts retain the authority to intervene despite the existence of a prima facie case against the accused where prolonged incarceration and delayed trial would breach Article 21, the statutory embargo of Section 43D(5) could no longer be treated as the gateway through which the prayer of bail must first pass.

27.10. As a matter of law, nothing further need be said except that in any case, constitutional courts can always intervene to grant bail despite satisfaction of prima facie threshold under Section 43D(5), and the section need not control the grant of bail

if the accused person's liberty is infringed for a prolonged period of time. The power of the constitutional court to grant such a prayer cannot in our view be diminished by exercise of legislative power.”

4 He contends that notwithstanding the statutory restrictions as imposed in Section 43D(5) of the UAPA, long incarceration itself is a sufficient ground for grant of bail and the prohibition stands diluted once the pace of the trial infringes the right of speedy trial as guaranteed under Article 21 of the Constitution of India. It is submitted that the Supreme Court has made it clear that in such circumstances, the Constitutional Courts are required to interfere despite existence of a prima facie case against the accused. It is submitted that, as per the custody certificate placed on record, the appellant has undergone an actual custody of more than 6½ years and only 46 witnesses out of a total of 159 witnesses cited by the prosecution have been examined so far.

5 Learned counsel for the NIA opposes the bail on the ground that the earlier appeal filed by the appellant for bail was dismissed by a speaking order dated 06.04.2021 passed by this Court CRA-D-350-2020 and thereafter, the appeals preferred by the other appellants were dismissed in March 2026.

6 He further contends that once other similarly placed accused have not been granted the concession of bail, the present appeal filed by the appellant for seeking bail deserves to be dismissed. The period of custody, as well as the stage of the trial are, however, not disputed by the counsel appearing on behalf of NIA.

7 We have heard the counsel appearing for the respective parties and have gone through the documents appended along with the present appeal.

8 At this stage, we take note of the submissions of the counsel for the respondent-NIA that earlier appeal of the appellant had already been dismissed vide order dated 06.04.2021 passed by this Court, however, we are of the opinion that the present appeal is not an appeal based on merits where the test as prescribed Section 43D(5) of the UAPA, would come into play. We take note of the prolonged custody which is nearly 6½ years, already undergone by the appellant herein and the stage of the trial where only 1/4th of the witnesses have been examined so far

9 We thus place reliance on the judgment of the Supreme Court in the matter of **Syed Iftikhar Andrabi (supra)** and the guidelines as extracted above. Consequently, without going into the merits of the case and/or examining whether the allegations against the appellant satisfy the threshold of a prima facie case so as to attract the rigours of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 we are of the opinion that the prolonged period of custody already undergone by the appellant, coupled with the slow pace of the trial and the remote likelihood of its early conclusion, constitute exceptional circumstances warranting the exercise of appellate jurisdiction. Accordingly, the present appeal is allowed. The appellant is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the trial Court/Special Judge, NIA, Punjab, S.A.S. Nagar (Mohali).

10 It is made clear that the appellant shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

11 The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

July 13, 2026.
raj arora

(SUKHVINDER KAUR)
JUDGE

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