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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23rd May, 2026.
Pronounced on: 7th July, 2026
Uploaded on: 7th July, 2026

\+ **CRL.A. 1461/2025 & CRL.M.A. 31308/2025**

MANSOOR ASGHAR PEERBHOY ..... Appellant

Through: Mr. Mehmood Pracha, Mr. Sanawar, Mr. Jatin Bhatt, Mr. Kshtij Singh, Mr. Sikander Raza, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

JUDGEMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant under Section 21 of the National Investigation Agency Act, 2008, *inter alia*, assailing the order dated 19th July, 2025 passed by the Additional Sessions Judge -02, New Delhi District, Patiala House Courts, New Delhi *(hereinafter, 'impugned order')* in ***Sessions Case No. 8726/2016***, arising out of ***F.I.R. No. 166/2008*** registered at P.S. Karol Bagh (Special Cell).

3. *Vide* the impugned order, the third bail application of the Appellant has been dismissed by the Trial Court. The relevant portion of the impugned order is set out below:

"[...]

30. Considering the nature of offence, seriousness of allegations and enormity of charge and the statutory bar u/s 43-D(5) of UAPA, this Court is of the considered opinion that the instant bail application is devoid of any merits and the same is accordingly dismissed.

31. Needless to say that nothing observed herein shall have a bearing upon the merits of the case.

32. Application is disposed off accordingly. Copy of this order be given dasti."

FACTUAL BACKGROUND

4. The factual matrix of the present case is that, on 13th September, 2008, serial blasts occurred at various locations in Delhi, namely Karol Bagh, M-block market Greater Kailash-1 and Connaught Place. In addition, three live bombs were also detected, including one at Central Park, Connaught Place, one near Regal Cinema, and one at the Children's Park, India Gate, Delhi. As a result of the aforesaid incidents, 26 individuals were killed and 135 individuals sustained injured.

5. On the said date, at about 6:25 pm, a terrorist organisation "Indian Mujahideen" sent an email from the email address *al_arbi_delhi@yahoo.com (hereinafter, 'the email')* to various electronic and print media houses in India, Pakistan and other countries, claiming responsibility of the blasts that had occurred in Delhi on 13th September, 2008.

6. The subject of the aforesaid email was, **"MESSAGE OF DEATH"**. The contents thereof are set out below:

"In the name of Allah

Indian Mujahideen strikes back once more.
Within 5 mins from now ...
This time with the Message of Death.
Dreadfully Terrorizing you for your sins.

And thus our promise will be fulfilled, Inshallah

Do whatever you want and stop us if you can.
Exclusively from Indian Mujahideen

And here is the verifying proof...

alarbi_gujarat@yahoo.com-albadt123
alarbi.alhind@gmail.com-aluhud123"

7. A perusal of the text would show that the email was sent a few minutes before the blast. The email included attachments of pictures from previous bomb blast incidents in Rajasthan, Gujarat as well a .pdf document, running into 13 pages. The said pdf document was titled as **"EYE FOR AN EYE, THE DUST WILL NEVER SETTLE DOWN",** released by the 'Indian Mujahideen', in the Land of Hind *(hereinafter, the pdf document')*.

8. In the pdf document, the terrorist organisation 'Indian Mujahideen' described itself as "*the homegrown jihadi militia of Islam*". The relevant extracts from the PDF document are set out below:

> *"It is not hidden from you anymore that after tasting the bitterest of defeats by our hands at Ahmedabad and Surat, the INDIAN MUJAHIDEEN- "the homegrown Jihadi militia of Islam"- have once again attacked to make you face the disastrous consequences of the injustice and oppression inflicted upon the Muslims all over the country.* ***With this message, we once again declare that our intense, accurate and successive***

attacks like the one you will see exactly 5 minutes from now, Inshallah, will continue to punish you even before your earlier wounds have healed. *To dreadfully terrorize you this time, by the Will and Help of Almighty Allah,* ***we are about to devastate your very first metropolitan center, your 'most strategic hindutva hub', your 'green zone'- yes! It's your own capital - New Delhi - with NINE MOST POWERFUL SERIAL BOMB BLASTS, Inshallah, that are almost going to stop the "heart" of India from beating****.*

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By this attack we intend to prove to you the ability and potential of INDIAN MUJAHIDEEN to assault any city of India at any time with the Help and Permission of our Almighty Allah. This accurately planned deadly strike is just another reaction to all those pre- and post- 26 July harassments imposed by your ATS and police on the innocent Muslims with complete, but hidden, backing of Central Congress government, aided by the state governments of Gujarat, Rajasthan, Maharashtra, Madhya Pradesh, Uttar Pradesh, Andhra Pradesh and Karnataka. This shows the never ending hostile hatred in your hearts against Islam and its people. But now it is time that you must realize the fact: you cannot deal with us unjustly any more.

XXX

The INDIAN MUJAHIDEEN salutes those courageous and fearless Muslims of Azamgarh who disciplined the bastard Yogi Adityanath and other wretched Hindus who tried to march from within the Muslims in order to tease them and support an anti-terrorist demonstration. His anti-Islamic slogans deserved bullets instead of stones as an answer, and here is an open challenge to him that if he and his cowardly supporters are able to

gather all their guts and grit to stand in front of us once more - they must try it, and if not, then just wait for a spine chilling brutality from our side.

XXX

*The Central Congress Government which pretends to be the well wisher of Muslim interests has always treacherously hurt them and used them to come in power since Independence. It is this double-faced attitude of the Congress that has secured its vote bank, and still allowed it to silently commit one of the most heinous crimes against the Muslim nation ever witnessed by history - the demolition of Babri Masjid. It has failed to take heed and still continues to cheat the Muslims under the label of "secularism**". These serial bomb blasts at Delhi are yet another intimidation to the Congress Government to desist from agitating the Muslim sentiments anymore.** Your approval to the bills like GUJCOCA and POTA are not at all going to deter or affect the determination of the Mujahideen in any way, rather it will make our tasks easier for us.*

We, the INDIAN MUJAHIDEEN, ask Allah, the Almighty to accept from us these 9 explosions, which were planned to be executed in the holy month of Ramadan.

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The INDIAN MUJAHIDEEN accepts the sole responsibility of Delhi serial blasts, and we claim this, through our consecutive email, which is, unfortunately, still a mystery is very sad to see the bad condition of your cyber forensics who have still failed to find out our technique of sending the "Message of Death".

To end with, we have now proved to you that the more

you trouble us, the more you will be troubled by us. This deadliest strike at Delhi once again makes it clear that our threats are not at all limited to mere words and with the Will and Permission of Allah, the action is in front of your eyes. Let us make it clear to all the enemies of Muslims, especially the Hindus of India, that the BJP backed RSS, VHP, Bajrang Dal, and the entire Sangh Parivar would be the only responsible factors for whatever horrifying tragedies you are to face in the nearest future. The cause will be these wicked bastards and the effect will be on the entire nation. Remember it is not at all difficult for us to attack you in states like Punjab, Haryana, Himachal Pradesh, Orissa, Tamil Nadu, Kerala etc. And by The Grace of Allah there is no shortage of explosives or lack of manpower and we are extremely capable to shed your blood anywhere anytime. The only reason here is that your wrongs against us in other states have crossed the limits of cruelty. If your still think that the arrests, expulsions, killing, murders, fake encounters, tortures, sufferings, cases, trials and tribulations inflicted on us will not be answered back, then here we remind you: that those days have gone.

The battle has now begun and the dust will never settle down."

9. A perusal of the above extracts would show that the pdf document predicted the bomb blasts which were to occur within 5 minutes of the transmission of the email. The pdf document also contained allegations against various governments, including the Central and the State Governments, at the relevant time. Further, it clearly states that 9 explosions were to occur in parts of Delhi.

10. In addition, the pdf document unequivocally claimed that the email would be untraceable, and the techniques used to send the email would not be deciphered by the agencies. It concluded with threats of further attacks in several states, including Punjab, Haryana, Himachal Pradesh, Odisha, Tamil Nadu, Kerala, etc.

11. The aforesaid email and the PDF document, upon being received by various news agencies, were forwarded to the police authorities, whereupon investigations were conducted.

12. Pursuant thereto, the following five FIRs came to be registered:

S.no.	Details of the FIR	Offences Punishable
(i)	***FIR No. 130/2008*** registered at P.S. Greater Kailash	Sections 121/ 121-A/122/123/307/323/427/120-B of Indian Penal Code, 1860 *(hereinafter, 'IPC')* Sections 3/4/5 of Explosive Substances Act, 1908; Sections 16/18/20/23 Unlawful Activities and Prevention Act, 1967 *(hereinafter, 'UAPA')*; Section 66 of Information and Technology Act
(ii)	***FIR No. 166/2008*** registered at P.S. Karol Bagh	Sections 121/ 121-A/122/123/302/ 307/323/427/120B of IPC; Sections 3/4/5 of Explosive Substances Act, 1908; Sections 16/18/20/23 of UAPA; Section 66 of Information and Technology Act

(iii)	***FIR No. 418/2008*** registered at P.S. Connaught Place	Sections 121/ 121-A/122/123/302/ 307/323/427/120B of IPC; Sections 3/4/5 of Explosive Substances Act, 1908; Sections 16/18/20/23 of UAPA; Section 66 of Information and Technology Act
(iv)	***FIR No. 419/2009*** registered at P.S. Connaught Place	Sections 121/ 121-A/122/123/302/ 307/323/427/120B of IPC; Sections 3/4/5 of Explosive Substances Act, 1908; Sections 16/18/20/23 of UAPA; Section 66 of Information and Technology Act
(v)	***FIR No. 293/2008*** registered at Tilak Marg	Sections 121/ 121-A/122/123/120-B of IPC; Sections 3/4/5 of Explosive Substances Act, 1908; Sections 16/18/20/23 of UAPA; Section 66 of Information and Technology Act

13. The relevant FIR in the present case pertains to the Karol Bagh bomb blast *i.e.,* ***FIR No. 166/2008*** registered at P.S. Karol Bagh.

14. The allegation against the Appellant is that he was heading the media cell of the terrorist organisation 'Indian Mujahideen', along with certain other co-accused. According to the prosecution, the Appellant along with the co-

accused, Mubin Kadir Shaikh had sent the email of the Delhi serial bomb blasts, dated 13th September, 2008, by hacking into the Wi-Fi network of M/s Kamran Power Pvt. Ltd., Chembur, Mumbai.

15. Since the allegation against the Appellant pertained to the transmission of email from Mumbai, a separate FIR bearing ***C.R. No. 375/2008*** was registered at P.S. Chembur, Mumbai. Subsequently, the said FIR was transferred to PS. D.C.B. C.I.D., Mumbai and registered as ***D.C.B. C.R. No. 152/2008***. The Appellant was arrested in connection with the said case on 28th September, 2008.

16. Thereafter, the chargesheet pertaining to ***FIR No. 166/2008*** registered at P.S. Karol Bagh was filed before the Ld. Chief Metropolitan Magistrate, Central Delhi District, Tis Hazari Courts. Pursuant thereto, the Appellant was formally arrested in relation to ***FIR No. 166/2008*** on 9th March, 2009 by the Special Cell, Delhi Police.

17. Charges were framed against the Appellant and the other co-accused *vide* the order on charge dated 5th February, 2011 passed by the Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi. *Vide* the said order, ld. Trial Court had directed that a common trial would be conducted in relation to all the five FIRs registered in Delhi.

18. Thereafter, on 6th May, 2011, charges were formally framed against the Appellant in relation to ***FIR No. 166/2008***. *Vide* order dated 6th May, 2011 passed by the Additional Sessions Judge, Tis Hazari Courts, New Delhi, the Appellant was charged for offences punishable under Sections 121/121-A/122/123/302/307/323/427/120-B of IPC, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/20/23 of UAPA as also under Section 66 of the Information and Technology Act.

19. The trial in ***FIR No. 166/2008*** is presently underway. The prosecution has led evidence of 303 prosecution witnesses and only two witnesses are left, whose evidence is partly recorded.

20. The first bail application of the Appellant was dismissed by the Trial Court *vide* order dated 23rd April, 2015.

21. Thereafter, the second bail application of the Appellant was also dismissed by the Trial Court *vide* order dated 8th April, 2022 in ***Case No. 8726/2016.*** The appeal preferred by the Appellant challenging the said order, was subsequently dismissed by this Court *vide* order dated 29th April, 2024 in ***CRL.A. 947/2023*** titled ***'Mansoor Asghar Peerbhoy v. State'***.

22. Pursuant thereto, an SLP being ***SLP (Crl.)No. 3527/2022*** was filed, which was also dismissed by the Supreme Court *vide* order dated 21st January, 2025, granting the Appellant the liberty to apply for fresh bail application if trial is not concluded within six months. The order dated 21st January, 2025 is set out below:

> *"Delay condoned.*
>
> ***We are not inclined to interfere with the impugned judgment(s). However, taking into consideration the long pendency of the case, we request the Trial Court to expedite the trial and make an endeavour to conclude it within a period of six months.***
>
> *The Trial Court shall also consider the feasibility of having day by day trial*. ***In the event of trial being not concluded, liberty is given to the petitioners in SLP(Crl.)No.3527/2022 and SLP(Crl.) Diary No.40052/2024 to file a fresh application for bail in***

which case, the impugned judgment will not stand in the way.

The Special Leave Petitions are disposed of accordingly.

Pending application(s), if any, shall stand disposed of."

23. In terms of the aforesaid liberty, the Appellant had preferred a third bail application, which was also dismissed *vide* the impugned order dated 19th July, 2025.

24. The case of the Appellant is that he has been an undertrial prisoner for approximately 17 years. The present appeal has, therefore, been preferred seeking grant of bail and setting aside of the impugned order dated 19th July, 2025.

25. Recently, *vide* order dated 30th April, 2026 passed by the Supreme Court in ***SLP (Crl.) 3527/2022***, the Supreme Court had directed as under:

"Perused the letter dated 19.07.2025, received from the learned District & Sessions Judge, Patiala House Court, New Delhi seeking extension of time to conclude the trial as mentioned in order dated 21.01.2025 in SLP (Crl.) No.3527/2022.

We deem it fit to grant further period of a eight months from the date of receipt of a copy of this order to conclude trial the in the abovementioned matter.

We request the High Court to dispose of the pending bail application filed by the petitioner within a period of four weeks from the date of receipt of a copy of this order. Ordered accordingly.

The Miscellaneous Application stands disposed of."

26. As can be seen from the above order, from April 2026, a period of 8 months have been granted to conclude the trial in the above matter along with a request to this Court to consider and decide the bail application within four weeks from receipt of the order.

27. On 20th May, 2026, the matter was listed and the Court was apprised of the order in ***SLP (Crl.) 3527/2022*** dated 30th April, 2026, passed by the Supreme Court. Subsequently, the matter was taken up for urgent hearing on the next day *i.e.,* 21st May, 2026, wherein part submissions were advanced on behalf of the ld. Counsels for the parties.

28. Thereafter, on 23rd May, 2026, further arguments on bail application were heard, and judgement was reserved.

SUBMISSIONS ON BEHALF OF THE STATE

29. According to the prosecution, the Appellant was an active member of the terrorist organisation, 'Indian Mujahideen', and headed its media cell along with certain other associates, including Mubin Kadar Sheikh, who is also one of the co-accused of the 13th September, 2008 serial blasts.

30. It is the case of the prosecution that the Appellant and Mubin Kadar Shaikh had visited Mumbai, where they jointly purchased the laptop from a shop known as 'Modern Technology'. It is alleged that the said laptop was used for sending the email.

31. **Evidence of PW-231** – the owner of the computer shop from where the laptops was purchased, had identified the Appellant and Mubin Kadar Shaikh as the individuals who had purchased the laptops, used for sending the email. Although he was not aware of the names of these two individuals, however, he had identified them on the basis of their physical appearance. He deposed

that he was paid a sum of Rs.28,000/- towards the purchase of the laptops, and that he had also issued the receipt ***Exhibit PW-219/ P1*** for the laptops.

32. Further, PW-231 also stated that he would be able to identify the laptop sold to the Appellant and Mubin Kadir Shaikh. During the course of the trial, the sealed laptop was produced before the Court, whereupon PW-231 identified the same by matching the number on the laptop with the corresponding number on the receipt issued by him.

33. **Recovery of electronic devices:** According to the prosecution, the laptops used for transmitting the email had been recovered at the instance of Mubin Kadir Shaikh. Further, when the Appellant was arrested, various other electronic equipments, such as Wi-Fi hotspot finder, Radio Frequency signal Detector, one SEAGATE hard disk, and a spy hidden camera locator were recovered from his possession.

34. **Technical Expertise:** Furthermore, it is also the case of the prosecution that, at the relevant time, the Appellant was employed at Yahoo India Pvt. Ltd. and was posted at the Pune office. Thus, as per the prosecution, the Appellant and Mubin Kadir Sheikh were acting in concert and coordination with each other. It is also stated that the Appellant possessed significant computer knowledge, including knowledge relating to internet access and hacking techniques, which was utilised in furtherance of the alleged conspiracy for the serial blasts.

35. According to the prosecution, an examination of the laptop and hard disk revealed the presence of software tools which were installed, including the file erasing software *i.e.,* HEX “00”. It is stated that the said software is used to erase, and permanently destroy electronic data on hard drives or any other digital storage media.

36. **Retrieval of PDF documents from the laptop:** The State also relies on retrieval of three pdf files from the laptop, including the pdf document which was attached in the email. The details of the said documents which were retrieved are as under:

- *"File 1.pdf - Titled "THE RISE OF JIHAD, REVENGE OF GUJRAT RELEASED BY INDIAN MUJAHIDEEN IN THE LAND OF HIND",*
- *File 2.pdf - Titled "THE CARS THAT DEVASTATED YOU THE TRUTH REVEALED RELEASED BY INDIAN MUJAHIDEEN IN THE LAND OF HIND".*
- *File 3.pdf - Titled "EYE FOR AN EYE THE DUST WILL NEVER SETTLED DOWN RELEASED BY INDIAN MUJAHIDEEN IN THE LAND OF HIND".*
- *A slide (msg.wmv) containing photographs of killed people in earlier bomb blasts with sentence "MESSAGE OF DEATH.*"

37. From amongst the aforesaid four documents, the last two documents were the ones which were attached with the email dated 13th September, 2008.

38. **Recovery of second laptop and deletion of Electronic data:** In addition, it is also stated that there was another laptop which was recovered from the co-accused, Mubin Kadar Shaikh. Upon examination, the said laptop also contained a file erasing and disk wiping software *i.e.,* 'STELLAR WIPE'. The said software had generated a log on 13th September, 2008, indicating the deletion of the aforesaid four documents. It is alleged that the said 'STELLAR WIPE' had been used to wipe out the entire hard drive.

39. **Usage of hacked Wi-Fi network for sending the email:** It is the prosecution's case that the email was transmitted after hacking into the Wi-Fi

of one M/s Kamran Power Controls Pvt. Limited, Chembur, Mumbai. In this regard, reliance is placed upon the testimony of PW-156, Mr. Nikhil Kamath, who was from the said company and had deposed that the company's Wi-Fi was hacked on the relevant date.

40. The further submissions on behalf of Mr. Ritesh Kumar Bahri, ld. APP for the State is as under:

(i) The present case concerns offences of an extremely grave nature involving serial bomb blasts, resulting in large scale loss of life and injuries. It is submitted that five serial bomb blasts occurred while three live bombs were detected and diffused. Even if the provisions of UAPA are not taken into consideration, having regard to the magnitude of the incident and its consequences, the case falls under the category of rarest of rare cases, for which punishment of death may be awarded.

(ii) It is stated that more deaths could have been caused by the Appellant and his co-conspirators. Thus, the gravity of the offence must be considered.

(iii) Reliance is placed upon the decision in ***Brijmani Devi v. Pappu Kumar & Anr., (2022) 4 SCC 497*** to take into consideration the gravity of the offence and nature of punishment.

(iv) According to the prosecution, the evidence on record clearly establishes that the Appellant was heading the media cell of the banned terrorist organisation, 'Indian Mujahideen'.

(v) It is further submitted that the Appellant possessed expertise in cyber security and related fields and he had undergone special training in hacking by taking the hacking course in Hyderabad. It is

also stated that the laptops recovered during investigation contained file erasing software for erasing the volatile data.

(vi) Reliance is placed upon the decision in ***Gulfisha Fatima v. State Govt. of NCT of Delhi 2026 INSC 2***, to contend that the probative value of the material and the documents of the prosecution have to be considered.

(vii) In addition, reliance is also placed upon the decision in ***State of Himachal Pradesh v. Krishanlal Pardhan and Ors. AIR 1987 SC 773*** to submit that in cases involving criminal conspiracy, even if some persons had active participation and the others did not have active participation in commission of all offences, all conspirators would be held liable for acts committed in furtherance of the conspiracy.

(viii) It is also stated that the decision in ***Union of India v. K. A. Najeeb (2021) 3 SCC 713*** would not be applicable in the present case, as in the said case, the trial was yet to begin when bail was being granted.

(ix) Furthermore, it is also submitted that ***K. A. Najeeb (supra)*** recognises that there are different tests applicable for cancellation of bail and for grant of bail. In ***K. A. Najeeb (supra)***, the High Court had already enlarged the accused on bail and the Supreme Court declined to interfere with the same. In the present case, however, the Appellant continues to remain in custody and the prosecution evidence is on the verge of conclusion.

(x) It is contended that there are a total of 14 accused who have to cross-examine the witnesses, and a common trial is being conducted in the five FIRs which have been registered. Hence, trial has taken a

long time to conclude.

(xi) Reliance is also placed upon the decision in ***X v. State of Rajasthan and Anr. 2024 INSC 909*** to contend that only if the trial is delayed for no fault of the accused, then the right to speedy trial is effective.

(xii) Lastly, the trial is presently being conducted on a day-to-day basis and is nearing conclusion. It is submitted that only two witnesses remain for cross-examination. It is stated that the release of the Appellant, at this stage, may impede the expeditious conclusion of the trial.

SUBMISSIONS ON BEHALF OF THE APPELLANT

41. Mr. Mehmood Pracha, ld. Counsel for the Appellant has made the following submissions:

(i) It is vehemently urged that there is no evidence whatsoever to connect the transmission of the email to the Appellant. According to ld. Counsel, the prosecution has failed to establish any direct nexus between the Appellant and the transmission of the email and the Appellant has been falsely implicated in the present case.

(ii) Reliance is placed upon the testimony of ***PW-152***, Dr. Zaki Qureshi, CEO of E-II labs Information Security Pvt. Ltd., 4th Floor, Kingston Heights, Road No.2, Banjara Hills, Hyderabad, Andhra Pradesh to contend that the Appellant was sponsored by his employer at Yahoo to undertake the hacking course. Unlike the case which has been put up by the prosecution, the fee for the hacking course was deposited by Yahoo and not by any co-accused or terrorist organisation. He had joined the course from 14th May, 2007 to 19th May, 2007.

(iii) Further, reliance is also placed upon the testimony of ***PW-156***, Mr. Nikhil Kamath, on behalf of M/s Kamran Power Controls Pvt. Ltd. at 201-202, Eric House, Commercial Complex, 16th Road, Chembur, Mumbai, who stated that he came to know about the alleged hacking of the Wi-Fi of his company from the police officials and media. He also stated that he could not recall his IP address. It is accordingly submitted that the prosecution's theory regarding the use of an unsecured Wi-Fi network stands contradicted by the prosecution's own evidence.

(iv) It is emphasized that the forensic examination in the present case is fraught with serious infirmities. The Forensic Science Laboratory did not have proper forensic tools to conduct the examination of the digital equipment, including the recovered laptops, etc. Consequently, no proper forensic analysis of the recovered electronic devices was undertaken.

(v) It is also submitted that the prosecution sought to rely upon the admission made by the Appellant during police investigation. As per ***PW-226***, Investigating officer of the Mumbai Case, it was claimed that the Appellant had admitted that he had used the Wi- Fi of M/s Kamran Power Controls Pvt. Ltd. However, such admission is inadmissible in evidence.

(vi) Certain objections have also been raised with respect to the documents allegedly attached to the email.

(vii) It is further submitted that the present case is governed by the provisions of the UAPA as they existed prior to the amendments introduced in the year 2008. According to the ld. Counsel, the

restrictions contained in Section 43D(5) of the Act, in its present form, would not be applicable, as the amended provisions came into force only on 31st December, 2008.

(viii) Ld. Counsel points out that out of the 305 prosecution witnesses, the evidence of 303 witnesses already stands concluded. Of the remaining two witnesses, one witness has been partly examined. It is further submitted that there were originally seventeen accused persons facing trial, out of whom one accused has been discharged, one accused has expired, one accused has been granted bail, and the remaining 14 accused persons continue to remain in judicial custody.

(ix) Furthermore, ld. Counsel seeks parity with co-accused Mohd. Hakim, who has been granted bail *vide* order dated 6th October, 2021 in ***CRL.A. 170/2021*** titled ***'Mohd. Hakim v. State (NCT of Delhi)'*** passed by this Court. It is also stated that the SLP against the said order being ***SLP(Crl.) No. 006264/2022*** titled ***'State (NCT of Delhi) v. Mohd. Hakim'*** was tagged along with ***SLP (Crl.)No. 3527/2022*** and was dismissed *vide* common order dated 21st January, 2025, which is extracted above.

(x) It is case of the Appellant that he has been acquitted by the Ld. Ahmedabad City Special Designated Judge for Speedy Trial of Serial Bomb blast Cases Court, City Sessions Judge relating to similar allegations, *vide* order dated 8th February, 2022 in ***Sessions Case No. 38/2009***. It is also the case of the Appellant that he has been granted bail by the High Court of Bombay *vide* order dated 16th July, 2024 in ***Crl.A. No. 702/2024*** titled ***'Mohd. Mansoor***

Asghar Peerbhoy v. The State of Maharashtra', pertaining to alleged sending of the email as a part of the conspiracy concerning the 13th September, 2008 serial bomb blasts.

(xi) In addition, ld. Counsel also relies upon the following decisions:

(A) ***National Investigation Agency v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1***

(B) ***Syed Iftikhar Andrabi v. National Investigation Agency, Jammu, 2026 INSC 503***

(C) ***SLP(Crl.) No. 2867/2026*** titled ***'Tasleem Ahmed v. State Govt. of NCT of Delhi'***

(D) ***Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602***

(E) ***SLP(Crl.) No. 83/2024*** titled ***'Suhail Ahmad Thokar v. National Investigation Agency'***

(xii) Ld. Counsel has also placed considerable reliance on the examination-in-chief and cross-examination of various prosecution witnesses, and submitted that the evidence which has emerged during trial demonstrates that the prosecution has failed to establish its case against the Appellant.

(xiii) Lastly, ld. Counsel contends that the trial has remained pending for an inordinately long period, and that the prosecution has, on several occasions, sought adjournments resulting in further delay. Considering that the Appellant has already undergone incarceration for more than seventeen years as an undertrial and that the trial is yet to attain finality, it was urged that the Appellant deserves to be enlarged on bail.

ANALYSIS

42. The Court has heard the submissions made on behalf of the ld. Counsels for the parties and has perused the records.

43. The case of the Appellant, in a nutshell, is threefold:

(i) The Appellant has been falsely implicated in the present case.

(ii) The evidence relied upon by the prosecution suffers from serious infirmities and fails to establish his involvement in the alleged transmission of the email.

(iii) That the Appellant has remained incarcerated for approximately seventeen years as an undertrial prisoner, the delay in conclusion of the trial is not attributable to him, and having regard to the principles of parity, his acquittal and grant of bail in connected proceedings, and the mandate of Article 21 of the Constitution, he deserves to be enlarged on bail.

44. The issue that arises for consideration in the present appeal is whether the material on record discloses a *prima facie* case against the Appellant and, consequently, whether, having regard to the nature of the allegations and the period of incarceration undergone by him, the Appellant is entitled to be enlarged on bail or not.

THRESHOLD OF SECTION 43(D)(5) OF THE UAPA

45. At the outset, insofar as the applicability of extant, amended Section 43(D)5 of the UAPA to the present case is concerned, this Court while dealing with the second bail application of the Appellant, being ***CRL.A. 947/2023*** titled ***'Mansoor Asghar Peerbhoy v. State'*** had dealt with the same contention. *Vide* judgement dated 29th April, 2024 the Court had observed as under:

"[...]

*32. **The grounds of bail raised by the appellant before this Court are not distinct than the one raised before the learned Trial Court.** The appellant has sought parity with co-accused Mohd. Hakim who has been granted bail by this Court vide order dated 06.10.2021. **Pertinently, in the case of Mohd. Hakim, this Court has taken note of his role** by observing that a limited role has been ascribed to the appellant in the offences alleged, namely, that he had carried a certain quantity of cycle ball-bearings from Lucknow to Delhi, which, according to the allegations, were subsequently used to make Improvised Explosive Devices (IEDs), which were employed in the series of bomb blasts that occurred in Delhi in 2008. **While observing so, the Court held that once charges under the provisions of UAPA have been framed against the appellant, the reasonable grounds to believe that the accusations against the accused are prima facie true, does not arise; which finding of learned Trial Court has not been challenged before this Court and so, the bar engrafted in the proviso to Section 43- D(5), as expatiated upon by the Hon'ble Supreme Court in Watali (supra), would operate**."*

46. In terms thereof, this Court had observed that the grounds of bail raised by the Appellant were not distinct from the ones raised before the Trial Court. The Court also noted that the Appellant had sought parity with the co-accused, Mohd. Hakim, who had been enlarged on bail *vide* order dated 6th October, 2021 in ***CRL.A. 170/2021***. Placing reliance on the said order, the Court noted that once charges under the provisions of the UAPA had been framed against the appellant therein, the reasonable grounds to believe that the accusations against the accused were *prima facie* true would not arise, a finding of the ld.

Trial Court, that had not been challenged before this Court. Consequently, it was held that the bar engrafted in the proviso to Section 43-D(5), as laid down by the Hon'ble Supreme Court in *Watali* (supra), would operate.

47. The said reasoning would be squarely applicable to the present case.

48. Moreover, even if the contention of the Appellant is considered, Section 43(D)(5) deals with 'bail', which is a matter of procedural law and not substantive law, thereby the bar under the said provision would be applicable to pending cases.

49. The said reasoning has also been reiterated by a Co-ordinate Bench of the Bombay High Court in ***Pragya Singh Chandrapalsingh Thakur v. State of Maharashtra, 2017 SCC OnLine Bom 493***. The relevant portion of the decision in ***Pragya Singh Chandrapalsingh Thakur (Supra)*** reads as under:

> *"[...]*
>
> ***47.*** *It is pertinent to note that in the above-said decision of Hitendra Thakur (Supra) also, the Hon'ble Apex Court has clearly held that,* ***"the procedure for grant of bail is procedural in nature and can have retrospective operation". Therefore, we have to hold that, whatever alleged restrictions are put on the rights of the accused to get bail under the provisions of Section 43-D(5) of the UAP Act, they are required to be held as procedural in nature and, therefore, can be said to be having retrospective effect****. It is pertinent to note in this context that, even in respect of Section 113A of the Indian Evidence Act, which has created presumption against the innocence of the accused, the Hon'ble Apex Court has held in the case of Gurubachan Singh (Supra) that the said provision has retrospective effect and can be applied to the death of a woman that has taken place before the amendment. The Hon'ble Apex Court has refused to accept the argument advanced in the said*

case that Accused had vested right to get decided his case as per the provisions prevailing on the date of offence.

***48.** In the instant case, therefore, it has to be held that, as **the Bail Application of the Appellant is being decided after the Amendment Act came into effect and as the provisions relating to bail are considered to be procedural in nature and, otherwise also, these provisions are not, in any way, affecting the right of the Accused to seek bail, it has to be held that sub-section (5) of Section 43-D of UAP Act is applicable to this case and the present application is required to be decided within the scope of the said provisions**."*

50. Thus, the bar engrafted under Section 43(D)(5) of the UAPA would be applicable to the present case.

51. The relevant consideration before this Court is to determine whether the conditions under Section 43(D)(5) of the UAPA are satisfied or not. The said provision is set out below:

*"**43D. 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.*

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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****"*

52. It is no longer *res integra* that if there are reasonable grounds to show that the accusations against the person is *prima facie* true, then the accused person is not to be released on bail. The contours of this threshold under Section 43D(5) of the UAPA have been repeatedly discussed in several judgments by the Supreme Court.

53. In ***Zahoor Ahmad Shah Watali (Supra)***, the Supreme Court has laid down the various aspects that deserves consideration while considering the bail application under the UAPA. The relevant portion of the said decision is set out below:

> ***"21.*** *Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:*
> ***(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;***
> ***(ii) nature and gravity of the charge;***
> ***(iii) severity of the punishment in the event of conviction;***
> ***(iv) danger of the accused absconding or fleeing, if released on bail;***
> ***(v) character, behaviour, means, position and standing of the accused;***
> ***(vi) likelihood of the offence being repeated;***
> ***(vii) reasonable apprehension of the witnesses being***

tampered with; and
(viii) danger, of course, of justice being thwarted by grant of bail. *(State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21, para 18 : 2005 SCC (Cri) 1960 (2)] .)*

22. When it comes to offences punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43-D of the 1967 Act, inserted by Act 35 of 2008 w.e.f. 31-12-2008. Sub-sections (5), (6) and (7) thereof read thus*:*

> *"**43-D. Modified application of certain provisions of the Code**.—(1)-(4)****
> *(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."

***23. <u>By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise</u>**. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and Mcoca. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, Mcoca and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. **<u>By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted.</u>** In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as

required under the other special enactments. 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…..

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24. A priori, the exercise to be undertaken by the Court at this stage – of giving reasons for grant or non-grant of bail – is markedly different from discussing merits or demerits of evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise*."*

54. In ***Zahoor Ahmad Shah Watali (supra),*** the allegation against the accused was that he had acted as a conduit for transfer of funds, received from various organisations, to support separatist elements in Jammu and Kashmir. Various violent activities were undertaken and the mandate was to promote the cessation of Jammu and Kashmir from India. After having analysed the material on record, the Trial court had rejected the bail applications of the accused on the ground that the alleged offences are *prima facie* made out. However, the High Court had granted bail. Upon appeal by N.I.A., the Supreme Court had made the above observations.

55. The decision in ***Zahoor Ahmad Shah Watali (supra),*** has been followed in several decisions including in ***Gurwinder Singh v. State of***

Punjab and Another (2024) 5 SCC 403 and ***Shaikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh 2024 INSC 534***.

56 Accordingly, in terms of the test laid down in ***Zahoor Ahmad Shah Watali (supra)***, this Court has to take a *prima facie* view on the basis of broad probabilities, as to whether the accusations against the Appellant are *prima facie* true or not.

GENERAL PRINCIPLES GOVERNING GRANT OF BAIL

57. While the threshold under Section 43(D)(5) of the UAPA Act governs the specific test for grant of bail under the Act, the general principles governing grant of bail cannot be lost sight of. The Supreme Court has repeatedly laid down conditions for grant of bail in cases involving grave offences.

58. In ***Prasanta Kumar Sarkar v. Ashish Chatterjee and Another (2010) 14 SCC 496***, where the accused was facing trial under Section 302 of IPC, the Supreme Court had laid down the factors that are to be borne in mind for grant of bail. The relevant portion of the said decision reads as under:

> *"[...]*
>
> ***9.*** *We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused.* ***However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are****:*

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

59. A similar enumeration of factors was made by the Supreme Court in ***State of UP (through CBI) v. Amarmani Tripathi (2005) 8 SCC 21***. The Court was dealing with the bail granted by the High Court to a powerful Minister and his wife, accused of conspiring to murder a woman with whom the Minister was alleged to have had an extramarital relationship. While considering the grant of bail, the Court observed as under:

"[...]

18. ***It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of***

course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. *While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)*

> ***"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind****. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
>
> ***(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.***
>
> ***(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the***

complainant.
(c) Prima facie satisfaction of the court in support of the charge. *(See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"*

60. The factors governing grant of bail in serious offences are so well settled that they do not require reiteration through multiple judgments. Some of the surest factors to be considered are the nature and gravity of the offence, severity of the punishment in the event of conviction and the likelihood of the offence being repeated. Even confining the enquiry to these three factors, the gravity of the offence is, by itself, an overwhelming factor, considering the nature of the offence and the scale of casualty that has been caused in the present case.

PRIMA FACIE CASE AGAINST THE APPELLANT

61. Having set out the legal principles governing grant of bail, it is necessary to examine the material on record to determine whether a *prima facie* case is disclosed against the Appellant.

62. The events that took place on 13th September, 2008 were no ordinary incidents. They were a series of coordinated terrorist attacks that struck the nation, resulting in extensive loss of human life and damage to property. The bomb blasts on 13th September, 2008 were serial blasts executed in a synchronized manner, at multiple locations across Delhi, within a short span of time. All the blasts took place between 6 pm to 7 pm. The email was also sent to various media houses, five minutes before the bomb blasts. The blasts took place not only in Delhi, but were preceded by similar attacks across the

country, including in Jaipur on 13th May, 2008, and bomb blasts in Bangalore, on 25th July, 2008. The final blast took place in Ahmedabad, on 26th July, 2008. These attacks resulted in the loss of numerous lives and injuries to hundreds of persons. The banned terrorist organisation, 'Indian Mujahideen' had claimed responsibility for the Delhi and Jaipur bombings, by sending out emails to various media outlets.

63. It is in the aforesaid backdrop that the allegations against the Appellant are required to be examined.

64. According to the prosecution, the Appellant was the head of the media cell of the, 'Indian Mujahideen'.

65. The email that was sent before the blasts, along with the pdf document attached thereto, purportedly claiming responsibility for the 13th September, 2008 blasts, clearly asserted that the identity of the true originator of the said email would not be traceable. The email also ridiculed the cyber forensics and investigation skills of the Indian investigative agencies. The relevant paragraph is set out below:

> **"……**
>
> ***The INDIAN MUJAHIDEEN accepts the sole responsibility of Delhi serial blasts, and we claim this, through our consecutive email, which is, unfortunately, still a mystery is very sad to see the bad condition of your cyber forensics who have still failed to find out our technique of sending the "Message of Death".***

66. The forensic examination revealed that the recovered laptop and the hard disk contained file erasing and disk wiping software tools *i.e.,* Hex '00' and 'STELLAR WIPE', which are stated to be software tools that can

permanently destroy electronic data.

67. The Appellant, along with co-accused Mubin Kadar Shaikh, had purchased the laptop from which the email was transmitted. In this regard, PW-231 identified the Appellant and the co-accused as the individuals who had purchased the said laptops.

68. The forensic examination of the laptop that was used to send the email and the second laptop which was recovered from co-accused, Mubin Kadir Shaikh, revealed the presence of corresponding PDF documents which were sent to various media outlets, along with the email. The details of the documents have been mentioned above.

69. Further, at the time of arrest, various electronic devices including Wi-Fi hotspot finder, a radio-frequency signal detector, a Seagate hard disk and a spy hidden camera locator were also recovered from the Appellant.

70. The email was transmitted by *prima facie* hacking into the Wi-Fi of Mumbai based company *i.e.,* M/S Kamran Power Controls Pvt. Ltd. In this regard, PW-156, the CEO of the said Company has deposed that the Wi-Fi of his company was hacked on the relevant date.

71. The multiple deaths and injuries resulting from the orchestrated serial bomb blasts demonstrate that the offences were of a grave nature, and cannot be equated to ordinary criminal offences. These are offences which required meticulous planning, substantial funding, accumulation of weapons, and methodical execution pursuant to a calculated strategy. The Appellant has been clearly identified and recognised by PW-231 , the computer shop-owner and was found in the company of the co-accused, Mubin Kadar Shaikh.

72. Pertinently, while considering the bail application of co-accused Mubin Kadir Shaikh in ***Crl.A. 343/2022*** titled '***Mubeen Kadar Shaikh v. State of***

Nct of Delhi', the Co-ordinate bench of this Court *vide* judgement dated 29th April, 2024 has observed as under:

> *"[...]*
>
> *30. In the present case, charge sheet was filed before the learned Trial Court on 20.10.2010 and charge was framed on 05.02.2011 against all the accused persons involved in serial blast cases. The learned Trial Court while passing order on framing of Charge dated 05.02.2011 has noted that during investigation of serial blasts in Gujarat, Delhi, Mumbai and Ahmadabad, on the basis of specific leads, appellant-* ***Mubin Kadar Shaikh*** *was arrested from Pune, Maharashtra on 28.09.2008.* ***The text of the alleged threatening email was handed over to the appellant herein and his co-accused Mansoor Agha Khan Peerboy, in a pen drive at Pune and they both made grammatical corrections in the said e-mail draft. Thereafter, on the same day, appellant with co-accused Mansoor Agha Khan Peerboy and Riaz Batkal went to Mumbai in Maruti Esteem Car driven by Mohd. Akbar Ismile Choudhary and at about 06:00 PM they found unsecured wifi connection. Mansoor Agha Khan Peerboy connected the wireless laptop and created the e-mail ID ID al_arbi_delhi@yahoo.com and attached the PDF file and slide the initial and gave the subject "Message of Death". At about 06:25 PM the unsecured wifi connection was hacked and the e-mail was sent to various electronic and print media through unsecured wifi connection of M/S Kamran Power Control Private Limited, Mumbai****.*
>
> ***XXX***
>
> *33. Pursuant to framing of Charge, the prosecution sought to examine 610 witnesses. While disposing of the second bail application filed by the appellant, the learned Trial Court vide impugned order dated 28.04.2022 took note of the allegations raised against*

*the appellant by the prosecution and observed that 260 witnesses had already been examined, which according to prosecution had supported its case. The learned Trial Court further observed that even though appellant-accused had asserted that the witnesses so far examined had failed to prove the prosecution case yet the role of the appellant cannot be viewed in isolation**. Further observed that prosecution witness PW-226, in his testimony has proved recovery of laptops, hard discs, wifi hot spot finder, RF signal detector, net connector, spy finder camera etc. which were recovered at the instance of co-accused Mansoor Peerbhoy. Further, ACP Tukaram Duraphe (PW-226) has testified the CA reports which reveal that both the e-mails were sent through the laptops recovered from the Mubin Kadar Shaikh and Mansoor Asghar Peerbhoy and he had found a secure file erasing and disk wiping software present in one of the recovered laptops**. **Also, another witness (PW-207) in his evidence has stated that upon forensic analysis of the recovered laptops, three PDF files were found which matched with the reference documents given with the case file i.e. the e-mails claiming responsibility of the blasts. The analysis also revealed about the date of over writing / wiping activity on 13.09.2008 at about 06:48 PM soon after the serial bomb blast. The learned Trial Court also took note of the testimony of PW- 231 who stated that appellant with co-accused Mansoor Asghar Peerbhoy had purchased the laptops in question in July, 2008.***

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*48. No doubt, the guilt of accused is required to be proved during trial, however, in light of the fact that appellant, who is admittedly a qualified Computer Engineer, and has been alleged to **be an active member of Media Cell of Indian Mujahideen and as a part of large conspiracy, had prepared the text and content of***

terror mail sent in the name of Indian Mujahideen and for this purpose, he had visited Mumbai and purchased laptops; he has been identified by the shop owner (PW-231) from where the said laptops were purchased and used for sending the warning email and besides the aforesaid two laptops, a spy finder, R.F detector were recovered from his possession. Also, as per testimony of PW-207, the PDF files retrieved from recovered laptops, it was emphasized on behalf of State connecting the appellant in 2008 serial blasts. Having considered the aforesaid, this Court finds that appellant does not deserve to be released on bail*."*

73. The clear finding of the Co-ordinate Bench of this Court in the aforesaid judgement is that the Appellant in the present case acted in close concert with the co-accused Mubin Kadar Sheikh, in transmitting the email that claimed responsibility for the 13th September, 2008 serial blasts. The Court took note of the fact that the Appellant and co-accused Mubin Kadar Sheikh were given the emails in a pen drive at Pune, and they had made corrections to the emails. The Bench further noted that the Appellant along with Riyaz Bhatkal travelled to Mumbai in a Maruti Esteem car, where they found the unsecured Wi-Fi connection of M/S Kamran Power Controls Pvt. Ltd. and created the email ID, **al_arbi_delhi@yahoo.com**, and gave the subject to the email as "MESSAGE OF DEATH". It was also observed that at 6.25 pm, the Wi-Fi connection of M/S Kamran Power Controls Pvt. Ltd., Mumbai was hacked and the email was sent to various media outlets. Accordingly, the bail application of the co-accused Mubin Kadar Sheikh was rejected.

74. The bail applications of the Appellant were dismissed by the Trial Court *vide* order dated 23rd April, 2015 and 8th April, 2022. The relevant

portion of the order dated 23rd April, 2015 reads as under:

"[...]

In May 2008 the accused was told that he would have to use his knowledge to send emails regarding blasts in Gujrat. The accused alongwith Iqbal, Mobin, Akbar and Asif visited Mumbai about 4 times in June 2008 to look for wireless networks to enable them to send such emails which they located at various places. On 26.07.2008, the accused alongwith Mohsin and others left from Pune, reached Mumbai and sent an email at 6.40 pm from a Wi-Fi network at Sanpada.

Investigation further revealed that on 13.09.2008 the accused / applicant Mansoor Peerbhoy alongwith co-accused Mobin Kadar Sheikh, Asif and Akbar left from Pune and reached Mumbai. ***They located a Wi-Fi network of M/s. Kamran at Chembur, created the e-mail id al arbi delhi@yahoo.com by giving name Arbi Hindi and using the password -khyber123 in it and sent the terror mail to print and other media in Delhi about the blasts after attaching the PDF file and slide file with the subject – Message of Death at 6.25 pm.***

Accused Mobin Kadar Sheikh was also arrested and from whom two HCL laptops, wireless broadband router, two hard disks and mobile were recovered. From the laptop P-30 the text of the email dated 13.09.2008 was found alongwith three PDF documents with the titles (i) "THE RISE OF JIHAD, REVENGE OF GUJRAT. REALEASED BY INDIAN MUJAHIDDIN IN THE LAND OF HIND" (ii) "THE CARS THAT DEVASTED YOU THE TRUTH REAVEALED. REALEASED BY INDIAN MUJAHIDDIN IN THE LAND OF HIND" and (iii) "EYE FOR AN EYE THE DUST WILL NEVER SETTLE DOWN. REALEASED BY INDIAN MUJAHIDDIN IN THE LAND OF HIND". This

laptop also contained photographs of persons killed in bomb blasts. The other laptop had presence of file erasing and disk wiping software.

Investigation further revealed that the laptops recovered from the accused Mobin Kadar Sheikh had been purchased by him alongwith the applicant/ accused Mansoor Peerbhoy. During investigation the accused / applicant Mansoor Peerbhoy had pointed out the place of hacking Wi-Fi network in Mumbai which he hacked to send the email on 13.9.2008.

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The submissions of the Counsel for the accused would necessarily call for rendering an inference on the evidence collected by the police. The evidence on record reveals a prima facie case against the applicant / accused.

Keeping in view that the the material on record discloses a prima facie case against the accused and nature and gravity of the charge and severity of the punishment in the event of conviction , no case is made out for grant of bail. The bail application of the accused Mansoor Asgar Peerbhoy is accordingly dismissed*."*

75. Further, the Appellant had challenged the order dated 8th April, 2022 in ***Case No. 8726/2016.*** The appeal preferred by the Appellant challenging the said order, was subsequently dismissed by this Court *vide* order dated 29th April, 2024 in ***CRL.A. 947/2023*** titled ***'Mansoor Asghar Peerbhoy v. State'***. The relevant portion of the order dated 29th April, 2024 is set out below:

"[...]
39. The allegation against the appellant are that in respect of serial bomb blasts occurred in Delhi on

13.09.2008, the terrorist group "Indian Mujahedeen" had sent an e-mail from email ID al_arbi delhi@yahoo.com, claiming intense, accurate and successive attacks exactly 5 minutes from now to various electronic and print media of Pakistan, India and other countries including Darul Uloob Deoband, Central Waqf Council, Al Jamia Tussalafiah (Markazi Darul-Uloom Varanasi) with the heading - ***MESSAGE OF DEATH****, which also contained pdf files of 13 pages claiming responsibility of present and previous serial blasts in Rajasthan, Gujarat blasts. Immediately pursuant to such email, serial blasts in Karol Bagh, M Block market Greater Kailash and Connaught Place (Central Park and Barakhamba Road) took place and three live bombs, from Central Park and Regal Cinema, Connaught Place and one at Children Park, Delhi, were detected.*

40. During investigation, alleged email al arbi delhi@yahoo.com was found sent from IP- 59, 184.129.2 of MTNL Mumbai, which was allotted to M/s Kamran Power Control Pvt Limited, 201-202, Eric House, 16 Road, Chembur Mumbai. On 19.09.2008 a raid was conducted at Flat No. 108 of L-18 Batla House, Delhi and the surrendered accused Mohd Saif disclosed that one "Media Group" is responsible for sending e-mails before blasts to electronic and print media.

41. ***The Mumbai Police Crime Branch arrested appellant on 28.09.2008 and a laptop, Wi-Fi hot spot finder, R.F (Radio Frequency) signal detector, one hard disc make SEAGATE, one spy hidden camera locator and a reliance net connector were recovered from his possession. Two laptops & other items were also recovered from the co-accused Mubin Kadar Sheikh, out of which one laptop was purchased by the appellant. It was revealed during investigation that appellant who was working in Yahoo India Pvt. Ltd. and his job was to develop proxy software. In May***

2007, he along with co-accused Mubin Kadar Sheikh had visited Hyderabad to attend course of ethical hacking including wireless hacking. On 13.09.2008 appellant along with other accused had gone to Mumbai and hacked Wi-fi network of Kamran Power Ltd. at Chembur and sent the alleged e-mail.

42. ***The laptop and hard disc recovered from the appellant was filled with Hex "00" which indicates use of a secure file erasing software to erase the contents. Even though the data could not be traced from the laptop or router by the FSL, however, three pdf files, including the pdf file, namely, 3.pdf and slide.containing photographs of the persons killed in the blasts sent in email on 13.09.2008 Delhi blast were retrieved by FSL, Mumbai from one of the laptop of co-accused Mubin Kadar Shaikh. Even from the second laptop of accused Mubin Kadar Shaikh, self generated log of secure file erasing and disk wiping software STELLER was recovered, which was self generated on 13.09.2008 and the 3.pdf message was sent through alleged mail.***

43. The said 3.pdf file had the video clip titled as "EYE FOR AN EYE THE DUST WILL NEVER BE SETTLED DOWN RELEASED BY INDIAN MUJAHIDEEN IN THE LAND OF HIND"

44. Attention of this Court was drawn to the evidence of ***PW- 231, namely, Deepak Vanigota, owner of computer shop Modem Technology, Mumbai correctly identified the appellant as the person who along with co-accused retrieved by FSL, Mumbai from one of the laptop of co-accused Mubin Kadar Sheikh had purchased the recovered laptop.***

> *45**. PW-207 FSL Expert has also deposed that the documents recovered from the laptops were the same files as sent by accused in threatening e-mail claiming responsibility of Delhi Serial Blasts. Even though the appellant in his present bail application raised the objection that PW-207 had not brought his handwritten notes before the Court at the time of his cross-examination despite opportunity given, however, on perusal of his cross-examination recorded on 21. 03.2015 this Court finds that this witness had stated that***
> ***these notes were with the FSL Mumbai and so, he could not produce them**. Moreover, at the time of grant or rejection of bail during the trial of the case, the Court is not required to evaluate the material placed on record as if final decision is being given but has to only form an opinion whether the accusations against the accused are "primafacie true".*
>
> *46. **After careful consideration of the material on record, we are unable to hold that the bar of Section 45 D(5) UAPA does not stand attracted.***
>
> ***XXX***
>
> *51**. In view of our afore-noted discussion, the present appeal is hereby dismissed**. We, however, add that the observations made hereinabove are tentative in nature and learned Trial Court shall not take the same as final expression on the merits of the case."*

76. Though the judgments passed in previous bail proceedings may not operate as res-judicata, the facts which are set out therein, as also the facts which are emanating from the record, *prima facie* demonstrate that the role of the Appellant is concerted, conspiratorial and active.

77. Additionally, the role of the Appellant cannot be equated with that of co-accused Mohd. Hakim, who was granted bail. Mohd. Hakim had merely supplied certain ball bearings and his role was completely different from that of the Appellant. The Appellant, therefore, cannot claim parity with the co-accused.

78. The complete analysis of the evidence is yet to be done by the trial Court. At this stage, the Court is not required to undertake a meticulous examination of the evidence or conduct a mini trial. However, upon a broader consideration of the material on record, it cannot be said that the Appellant is not guilty or that the prosecution has not been able to establish anything against the Appellant.

79. The material which has come on record, raises serious issues which require adjudication at trial and cannot be conclusively determined at the stage of consideration of bail. However, having regard to the nature and gravity of the offence, the role attributed to the Appellant, and the material placed on record, the Court is of the view that a *prima facie* case exists which establishes the guilt of the Appellant.

PROLONGED PERIOD OF INCARCERATION

80. It is also necessary to consider the issue of delay in conduct of trial and the consequent prolonged period of incarceration, as a ground for grant of bail in the present case. In this regard, this Court must examine the decision of the Supreme Court in ***K.A. Najeeb (supra)***.

81. In ***K.A. Najeeb (supra)***, a three-judge bench of the Supreme Court observed that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail under UAPA, and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long

period of time. The relevant portion of the said decision reads as under:

> *"17.* ***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."*

82. In ***K.A. Najeeb (supra),*** the N.I.A. had preferred an appeal against an order of the High Court of Kerala granting bail to the Respondent, K.A. Najeeb, who was alleged to be an active member of the Popular Front of India and one of the main conspirators in a premeditated attack on Professor T.J. Joseph of Newman College, Thodupuzha, in the course of which the victim's right palm was severed with choppers. The conspiracy arose over a question paper considered objectionable to a particular religion. At the outset, the Supreme Court had observed as under:

> ***"8.*** *It must be emphasised at the outset that there is a vivid distinction between the parameters to be applied while considering a bail application, vis-à-vis those applicable while deciding a petition for its cancellation."*

83. Accordingly, the Supreme Court had considered that the parameters for cancellation of bail are different and distinct from the parameters for grant of bail. It was in this context that the Supreme Court observed that the length of the trial would be a material consideration. In the said case, more than 276 witnesses remained to be examined, and 13 co-accused already convicted, had each received sentences of not more than 8 years. Therefore, there was a reasonable estimation that K.A. Najeeb, if convicted, would also be granted sentence within the same period. In fact, the Supreme Court observed as under:

> ***"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."*

84. Thus, the Supreme Court itself observed that had the matter arisen at the threshold stage of the proceedings, the Respondent's prayer for bail would not have merited acceptance. The grant of bail in that case was significantly influenced by the peculiar circumstances then prevailing, including the fact that the Respondent had already been enlarged on bail by the High Court of

Kerala on 23rd July, 2019 and had remained at liberty for a considerable period, by the time the appeal was decided on 1st February, 2021. The prospect of re-incarcerating the Respondent after such passage of time was, therefore, a relevant consideration that weighed in the said judgment.

85. Be that as it may, the decision of a two-judge bench of the Supreme Court in ***Gulfisha Fatima (supra)*** makes it clear that insofar as prolonged period of incarceration is concerned, contextual factors such as the role attributed to the accused, the nature of the allegation, the stage of proceedings, realistic trajectory of trial, causes contributing to delay and the risk upon release must also be considered. In this regard, the Court had observed as under:

> *"[...]*
>
> ***42.*** *The approach of addressing delay-related concerns through calibrated judicial supervision, rather than automatic enlargement on bail, stands reinforced by the decision of this Court in* ***Union of India v. Saleem Khan****. In that case, despite the accused having remained in custody for over five years and the trial not having commenced, this Court declined to interfere with the rejection of bail qua one accused, while upholding bail granted to another, thereby reiterating that delay-based pleas must necessarily be adjudicated on an accused-specific footing.* ***Significantly, even while acknowledging the constitutional imperative of a speedy trial, the Court did not eclipse the statutory rigour under Section 43D(5) of the UAPA but instead directed expeditious conclusion of the trial and cautioned against any conduct on the part of the accused that may further protract the proceedings. The decision thus affirms that prolonged custody, though a matter of concern, does not operate as an automatic***

ground for grant of bail where the statutory threshold continues to be attracted.

43. *Viewed cumulatively, the record does not support the absolute proposition that the appellants have remained "innocently incarcerated" without any contribution to delay, nor does it disclose a situation where the delay is so wholly unjustified as to override the statutory embargo contained in Section 43D(5).* ***The appropriate constitutional response, at this stage, lies in ensuring vigilant oversight of the trial and its expeditious progression, rather than in eclipsing the statutory mandate governing bail in offences of the present nature. The plea of delay in the facts of the particular case, therefore, does not warrant enlargement on bail, though it justifies continued judicial emphasis on the timely conduct of the proceedings.***

44. *It is in this sense that the plea of delay must first be examined to see whether it arises in a manner that warrants constitutional scrutiny of continued custody.* ***Broadly stated, the Court must consider whether the custody undergone is substantial, whether the proceedings have made meaningful progress, and whether there exists a realistic prospect of conclusion of trial within a reasonable period. The Court must also take note of the causes contributing to delay, including whether delay is attributable to the inherent complexity of the prosecution or to the conduct of parties, including the accused.***

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46. ***One such consideration is the gravity of the alleged offence in its statutory setting****. Under the UAPA, Parliament has legislatively characterised certain conduct as implicating the security of the State and the*

peace of society. That legislative characterisation does not conclude the judicial inquiry, but it is not constitutionally irrelevant. It forms part of the context in which the Article 21 claim is assessed.

***47. A closely allied consideration is the role attributed to the accused. Prosecutions under the UAPA may allege varying degrees of participation, ranging from peripheral acts to strategic, organisational, or ideological centrality. The constitutional significance of prolonged incarceration cannot be assessed uniformly for all accused regardless of role**. Where the attribution suggests a central or organising role in the alleged design, the need for circumspection before constitutional intervention displaces a statutory embargo is correspondingly greater. Conversely, where the role is peripheral or episodic, prolonged incarceration may more readily assume a punitive character.*

48. Another consideration is the prima facie strength of the accusation at the limited threshold contemplated by Section 43D(5).** At this stage, the Court does not weigh evidence, test defences, or conduct a mini trial. Yet, the constitutional inquiry cannot proceed as if all allegations are identically situated. **Whether the prosecution material, taken at its highest, discloses a prima facie nexus between the accused and the statutory ingredients is a circumstance that informs the assessment of continued detention.

***49. Consideration must also be given to the integrity of the trial process and the risks associated with release. Depending on the nature of the case, these may include the possibility of influencing witnesses, tampering with evidence, or undermining the fairness of the proceedings**. In prosecutions alleging organised activity, the assessment of such risks may differ from*

that in ordinary criminal cases. This is not to presume guilt, but to recognise that bail decisions are necessarily forward-looking in terms of ensuring an effective trial.

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51. *There is a further constitutional aspect that warrants articulation.* ***Article 21 protects individual liberty. It also, within the same guarantee of life, reflects the State's obligation to protect the life and security of the community. In prosecutions alleging threats to public order and national security, the Court cannot be unmindful that both dimensions are engaged. The constitutional order is not served by an approach that treats liberty as the sole value and societal security as peripheral. Both must be accommodated through reasoned adjudication.***

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.

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56. *It therefore becomes necessary to state, with clarity, the governing approach.* ***In prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint. Rather, delay serves as a trigger for heightened judicial scrutiny. The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including (i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration, viewed cumulatively in the facts of the case, has become demonstrably disproportionate so as to offend the guarantee of personal liberty under Article 21****."*

86. The aforesaid observations make it clear that while prolonged incarceration is a significant consideration, it cannot be viewed in isolation and must be assessed in conjunction with the other contextual factors discussed above.

87. Further, in ***Gulfisha Fatima (supra)***, the Supreme Court had interpreted the decision in ***K.A. Najeeb (supra)*** and had observed as under:

"[...]

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.”***

88. Recently, a two-judge bench of the Supreme Court in ***Syed Iftikhar Andrabi (Supra)*** has observed that prolonged period of incarceration and delay in the conclusion of trial remain major considerations, even in matters arising under the UAPA, and that the rigours of Section 43(D)(5) of the UAPA does not divest Constitutional Courts of their power to grant bail. In this regard, the Supreme Court has observed as under:

“[...]

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 43-D(5). The judgment explicitly held that Section 43-D(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 43-D(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 43-D(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.*

27.11. The holding in Najeeb was never that mere passage of time automatically entitles the accused to bail. ***Instead, the larger Bench recognised that where incarceration becomes unduly prolonged and the trial is unlikely to conclude within a reasonable time, the continued application of Section 43-D(5) becomes constitutionally suspect given the mandate of Article 21. In that sense, Najeeb articulated a constitutional limitation on the operation of the statutory embargo of Section 43-D(5)****.*

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33. The emphasis in Najeeb was constitutional in nature: it was directed towards preventing Section 43-D(5) from overpowering Article 21 considerations in cases of gross delay and prolonged incarceration. The constitutional force of Najeeb lies in its restoration of the hierarchy between a statute, namely, the UAP Act, and the Constitution. ***Section 43-D(5) remains subordinate to Article 21 at all times and a constitutional court need not hold back bail to the accused in the garb of Section 43-D(5).***

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35. ***The often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law****. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention.* ***The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, we have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case****.*

36. As we have noted above, ***several subsequent decisions of this Court, rendered after Gurwinder, have continued to apply the approach articulated in Najeeb in granting bail under the UAP Act on grounds of prolonged incarceration, gross delay in conclusion of trial, and the absence of any realistic possibility of the trial concluding in the near future.***

37. The logic underlying all these judgments traces back to Najeeb, which is now the law of the land governing the grant of bail under the UAP Act in a situation of prolonged detention. In that context, it is noteworthy that while Gulfisha Fatima relied on Gurwinder to adopt a narrower reading of Najeeb,

neither Gulfisha Fatima nor Gurwinder engage with this subsequent line of authority of case law.

38. ***Thus it is clear beyond doubt that the preference for bail, or the often invoked principle 'bail is the rule and jail is the exception' flows from the constitutional primacy of personal liberty under Article 21 and, therefore, cannot be displaced by legislation****.*

39. ***In that spirit, we make it clear that Najeeb is binding law entitled to the protection of stare decisis. It cannot be diluted, circumvented, or disregarded by trial courts, High Courts or even by Benches of lower strength of this Court****."*

89. Thus, the Supreme Court in ***Syed Iftikhar Andrabi (Supra)*** has held that the principles laid down ***K.A. Najeeb (supra)*** continue to hold the field and constitute binding law. The Court has further clarified that the ratio of ***K.A. Najeeb (supra)*** cannot be diluted, circumvented, or disregarded by Trial Courts, High Courts, or by Benches of lesser strength, and that the constitutional courts retain the power to grant bail, notwithstanding the restrictions contained in Section 43-D(5) of the UAPA, where continued incarceration becomes constitutionally unjustifiable.

90. Subsequent to the decision in ***Syed Iftikhar Andrabi (Supra)***, the Supreme Court in ***Tasleem Ahmed (Supra),*** while considering the interplay between prolonged incarceration, the constitutional guarantee under Article 21, and the statutory restrictions contained in Section 43-D(5) of the UAPA, referred the issue to a larger Bench and observed as under:

"[...]

21. The question, therefore, is not whether Article 21 survives Section 43D(5). It undoubtedly does. The true question is how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life.

22. We clarify that nothing in this order is intended to whittle down, dilute, read narrowly, or detract from the authority of K.A. Najeeb. ***On the contrary, the present reference is necessitated because K.A. Najeeb deserves application with the clarity, consistency and institutional fidelity which a binding three-Judge Bench decision commands. If a coordinate Bench has expressed reservations on the manner in which another coordinate Bench has applied K.A. Najeeb, the proper answer is not further reservation. The proper answer is authoritative resolution.***

23. ***We are, therefore, of the considered view that the issue requires consideration by Bench to be constituted by the Hon'ble Chief Justice of India. This is necessary not merely for the present batch of matters, but to settle the correct approach to bail under special statutes where Article 21, prolonged incarceration and statutory restrictions intersect****.*

24. Having regard to the importance of the issue, we are of the view that the questions requiring consideration need not be confined to the correctness of any one decision. ***The controversy raises a broader question concerning the manner in which constitutional courts are to approach bail where prolonged incarceration is asserted in prosecutions governed by special statutes***

imposing restrictive bail conditions. In this background it would be imperative or in other words necessary for the appropriate bench that may be constituted by the Hon'ble Chief Justice of India, to clarify or expound the position of law laid down in K.A. Najeeb's case, particularly in the backdrop of the rigour of 43D (5) which imposes restriction consciously and has received the assent of the Parliament, which obviously was brought in keeping in mind the valuable right enshrined in Article 21 of the Constitution of India."

91. The aforesaid observations make it clear that the broader question concerning the manner in which constitutional courts are to balance prolonged incarceration against the statutory restrictions contained in Section 43-D(5) of the UAPA is presently under consideration before a larger Bench of the Supreme Court. Nevertheless, the principles emerging from ***K.A. Najeeb (supra)***, provide sufficient guidance for determining the present appeal. The issue, therefore, is whether, in the facts of the present case, the prolonged period of incarceration undergone by the Appellant outweighs the other relevant considerations governing the grant of bail.

CONCLUSION

92. Applying the aforesaid principles to the facts of the present case, the Court is required to consider not merely the prolonged period of incarceration, but also the various other factors cumulatively. The Court is not to conduct a mini-trial at this stage, and has to only consider the broad probabilities.

93. The present case concerns synchronised terrorist attacks which were executed pursuant to a larger conspiracy. The serial bomb blasts of 13th September, 2008 left a trail of devastation in Delhi, resulting in the death of 26 persons, injuries to 135 persons and extensive destruction of property. The

blasts were preceded by the email transmitted minutes before the explosions, claiming responsibility in the name of the banned terrorist organisation, 'Indian Mujahideen'. The scale of the carnage, the nationwide panic that ensued, and the cold deliberateness with which the organisation publicly announced the attacks, even before they were carried out, together reflect an offence of grave nature.

94. The Appellant is an educated computer professional with specialised knowledge of cyber security and hacking techniques, and was fully aware of the impact of his conduct. He is alleged to have headed the media cell of the 'Indian Mujahideen' and, as is evident from the material brought on record, was *prima facie* centrally involved in the transmission of the email.

95. The *prima facie* material on record, comprising of the PDF document attached to the email; the sophisticated file-erasing software deployed to permanently destroy evidence on the recovered electronic devices; the identification of the Appellant and the co-accused, by the computer shop owner PW-231, as the purchasers of the laptops; the hacking of the Wi-Fi network of M/s Kamran Power Controls Pvt. Ltd., Mumbai to transmit the email, as confirmed by PW-156; and the recovery of electronic devices at the time of his arrest, collectively establishes, *prima facie*, that there is a case against the Appellant.

96. The scale of coordination that the execution of these serial blasts demanded, is itself a significant consideration. The 'Indian Mujahideen', unequivocally claimed responsibility for the attacks and did not hesitate in sending emails, five minutes prior to the blasts. Such level of coordination, planning, funding, logistics and real time communication, was possible only through deliberate and skilled deployment of technology. The Appellant, was

prima facie, at the centre of this incident.

97. Further, the material on record indicates that considerable efforts were undertaken to ensure that the origin of the transmission of the email remained untraceable. The Appellant's technical expertise combined with the leadership position attributed to him within the 'Indian Mujahideen', *prima facie* suggests that he is extremely well connected with the said organisation and its network, and the propensity of him getting involved in similar activities upon release, is extremely high. In the case of persons such as the Appellant, who are alleged to be part of banned terrorist organisations, there exists a continuing and real threat that they are likely to indulge in similar activities upon release. This consideration, along with the *prima facie* material on record, and the role attributed to the Appellant, is a factor that weighs heavily against the grant of bail.

98. Furthermore, the allegations against the Appellant are not confined to an isolated criminal act, however, to his *prima facie* conduct which formed part of a larger terrorist conspiracy, having serious implications for the security, integrity and sovereignty of the nation. In this context, it is apposite to refer to the recent decision of the Supreme Court in ***State of Punjab v. Balraj Singh @ Billa*, 2026 INSC 618** dated 2nd June, 2026, wherein, while considering the grant of bail in a matter involving organised criminal activity, having serious ramifications for national security, the Court observed as under:

> *"[...]*
>
> *22. However, we note that recently this Court in **Tasleem Ahmed v. State Govt. of NCT of Delhi** has referred the question concerning the approach of*

> *constitutional Courts in bail matters under special statutes, where "Article 21, prolonged incarceration and statutory restrictions intersect".* ***In view of the said reference, we do not wish to deliberate on this issue further, save and except that in our view paramount consideration is nothing but interest of justice for all. Should there be any conflict between the sovereignty of country and personal liberty, undoubtedly, the former shall prevail,*** *particularly, when a war is waged against the nation, be it in the form of supply of drugs, which vitally affects the national economy and health of the people."*

99. In terms of the above decision, the Court has observed that where considerations of personal liberty come into conflict with the sovereignty, integrity and security of the nation, the latter must necessarily prevail, particularly in cases involving offences of the present nature. Though the aforesaid observations were rendered in the context of offences relating to drug trafficking, the underlying principle enunciated therein is of broader significance, and would be applicable in the present case as well, which involves allegations of organised terrorist activity.

100. It is also relevant to note that the present case concerns a larger conspiracy involving several accused persons. Out of the accused facing trial in the present case, 14 co-accused continue to remain in judicial custody, only the co-accused Mohd. Hakim has been enlarged on bail. The scale of the alleged conspiracy, the number of accused involved, and the nature of the offences are factors which cannot be ignored while assessing the Appellant's prayer for bail.

101. In addition, the Court cannot lose sight of the fact that the Appellant is a qualified computer professional. The role attributed to him is not that of a

peripheral participant, but of a person who, according to the prosecution, occupied a position of significance within the media cell of the, 'Indian Mujahideen'. For such brazen and blatant of acts of terrorism, for which the Appellant has been charged, the allegations against the Appellant pertain to offences of the gravest nature, for which the law prescribes severe punishments, extending even to the death penalty in appropriate cases.

102. Bearing in mind the gravity of the offences involved, which are serial bomb blasts, the qualifications of the Appellant, the role of the Appellant as a media cell head of the 'Indian Mujahideen', and the actual death toll that occurred, the long period of incarceration, in the opinion of the Court, would not by itself be sufficient to grant bail to the Appellant.

103. There is no doubt that the Appellant has remained in custody for a considerable period as an undertrial prisoner. However, it is pertinent to note that the trial is presently at its fag end and has reached the concluding stage. Releasing the Appellant at this juncture, when the cross-examination of the remaining two witnesses is yet to be completed, could have an adverse impact on the ongoing trial proceedings.

104. Finally, while considering the prayer for bail, the Court has to bear in mind not merely the right to life of the Appellant, but also the adverse impact that Appellant's release may have on the right to life and safety of common citizens, having regard to the role attributed to him in the heinous crimes with which he has been charged.

105. In view of the foregoing discussion, the Court is of the considered opinion that the present case is not a fit one for grant of bail.

106. Needless to add, the observations made in this order shall not have a bearing on the final adjudication of the case before the Trial Court. The Trial

Court shall proceed and conclude the trial within a period of eight months, as directed by the Supreme Court *vide* order dated 30th April, 2026 in ***SLP (Crl.) 3527/2022***.

107. The appeal is accordingly dismissed. All pending applications, if any, also stand disposed of.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

JULY 07, 2026
MR/SM