Mallick vs The Union Of India on 13 November, 2026

Author: Arijit Banerjee

Bench: Arijit Banerjee

2026:CHC-AS:1917-DB

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE
CRA (DB) 324 of 2025

MD. SADDAM@ MOHAMMAD SADDAM@ SADDAM MALLIK @ ABDUL MALLICK

VS.

THE UNION OF INDIA

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Deep Chaim Kabir, Sr. Adv.
Mr. M.H. Chowdhury, Adv.

For the UOI : Mr. A. K. Maity (Mohanty), Spl. P.P.
Mr. Bhaskar Prasad Banerjee, Spl. P.P.
Mr. Debayan Sen, Adv.
Mr. DebasishTandon, Adv.

CAV on : 30.09.2026

Judgment on : 13.11.2026

Apurba Sinha Ray, J.

1. Mr. Kabir, learned Senior Counsel has submitted that the petitioner is in custody for more than 3 years 4 months and there are 52 Charge-sheet witnesses and only 3 of them have been examined. There is no chance of an early conclusion of the trial and accordingly, the petitioner is entitled to be favoured with an order of bail on any term and condition. Mr. Kabir has submitted that the requirement of ground of arrest being communicated to Page 1 of 15 2026:CHC-AS:1917-DB the arrestee, which emanates from the Indian Constitution was not communicated to the petitioner at the relevant point of time. In this regard, he has referred to the judgment of Najeeb reported in AIR 2021 SC 712-3JJ which according to Mr. Kabir holds the field as of now and should be considered in the matters of bail under the UAPA. The prosecution rely upon three judgments i.e. Gurwinder Singh reported in (2024) 5 SCC 403, Gulfisha Fatima reported in 2026 SCC OnLine SC 10 and Watali reported in 2019 SC 1734 which contain divergent views with Najeeb as aforesaid. It was further submitted that the entire allegation against the appellant is to the effect that he is an ISIS sympathizer and proceeded with indoctrination of Islamic Jehadi groups to several youth, and

further, several images, videos with incriminating materials were found in the mobile phones and laptops of the accused. Although the same materials were recovered from another person that is Farhan, the Investigating Authority did not make him an accused, rather cited him as a sterling witness in the Charge-sheet. Mere possession of some materials in the form of literature, photographs or videos does not constitute any offence whatsoever. The same principle of law in UAPA has been followed by the Hon'ble Supreme Court in several important cases. In Thwaha Fasal vs. Union of India reported in (2022) 14 SCC 766 at paragraph 39 and 40, the Hon'ble Apex Court observed as hereunder:

> "39. Now the question is whether on the basis of the materials forming part of the charge-sheet, there are reasonable grounds for believing that accusation of commission of offences under Sections 38 and 39 against Accused 1 and 2 is true. As held earlier, mere association with a terrorist organisation is not sufficient to attract Section 38 and mere support given to a terrorist organisation is not sufficient to attract Section 39. The Page 2 of 15 2026:CHC-AS:1917-DB association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organisation which are borne out from the materials forming a part of charge-sheet. At formative young age, Accused 1 and 2 might have been fascinated by what is propagated by CPI (Maoist). Therefore, they may be in possession of various documents/books concerning CPI (Maoist) in soft or hard form.
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> 40. Apart from the allegation that certain photographs showing that the accused participated in a protest/gathering organised by an organisation allegedly linked with CPI (Maoist), prima facie there is no material in the charge-sheet to project active participation of Accused 1 and 2 in the activities of CPI (Maoist) from which even an inference can be drawn that there was an intention on their part of furthering the activities or terrorist acts of the terrorist organisation. An allegation is made that they were found in the company of Accused 3 on 30-11-2019. That itself may not be sufficient to infer the presence of intention. But that is not sufficient at this stage to draw an inference of presence of intention on their part which is an ingredient of Sections 38 and 39 of the 1967 Act. Apart from the fact that overt acts on their part for showing the presence of the required intention or state of mind are not borne out from the charge- sheet, prima facie, their constant association or support of the organisation for a long period of time is not borne out from the charge-sheet."

2. It was also contended that in Vernon vs. State of Maharashtra reported in 2023 SCC OnLine SC 885at paragraph no. 39, the Hon'ble Apex Court came to the same conclusion. Paragraph no. 39 is quoted hereinbelow:

> "39.In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub- clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1)(b) thereof, some of the literature Page 3 of 15 2026:CHC-AS:1917-DB alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1)(b) of the 1967 Act can be held to be true."

3. Mr. Kabir further submitted that even assuming without admitting that such materials were recovered from the phone of the appellant, mere possession of such materials does not constitute any offence or indicate any ingredient of any offence, without specific material as to any overt act that would point towards a terrorist act in any form. The allegation of indoctrination does not demonstrate a single action of planning, foreign travel, taking any steps for anything that would come within the statutory definition of 'terrorist act'. The allegation is that the appellant was himself radicalized by Abdul Raqib Qureshi and thereafter, he has radicalized the key witness Farhan. What is absurd is that Farhan, whose phone allegedly contained the purported data of images, videos etc. has been made a witness. By virtue of the same reasoning without any admission of any sort, the present accused could at best, equally be said to be

a person radicalized Page 4 of 15 2026:CHC-AS:1917-DB by the co-accused. The distinction drawn by the agency is arbitrary and unsupported by objective material.

4. Apart from the possession of purported digital materials, there is no direct overt act or physical recovery linking the accused with the ISIS organization in any manner or any sort. The allegation of whatsapp and telegram chats are completely unjustified and unsupported by any evidence. There is no material from any of these communication platforms, or any customer subscriber details connecting the appellant with any of these accounts or numbers or so-called alleged codes.

5. Mr. Kabir categorically stated that electronic evidence demands a strict chain of custody including generation and preservation of hash value, certified extraction through authorized and validated tools, maintenance of mirror images or clones, and documentation of time, place, person and methods of conducting extraction of data. The prosecution case does not show whether hash values were generated and matched, whether the extraction was conducted before a Magistrate or any authorized Officer and whether the integrity of the device was preserved prior to analysis. In absence of compliance of the same, the alleged material cannot be relied upon to keep a person incarcerated.

6. Mr. Kabir has argued that the appellant was arrested on 06.01.2023 and has been in jail for more than 3 years and 10 months. The evidence of the Investigating Agency does not generate a prima facie case and the presumptions may only arise under Section 15 which the appellant is not charged with. Therefore, there is no question of the presumption of innocence having been diluted in any manner.

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7. Mr. Kabir has pointed out that so far as the appeal is concerned the language of Section 43D (5) of UAPA Act is very different from other stringent statutes. It says that the accused cannot be released on bail if on a perusal of the case diary or the report made under Section 173 of the Code, the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. The law in this statute does not say what Section 45 of the PMLA or Section 37 of NDPS Act say in a more stringent and absolute manner that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he will not commit further offence while on bail.

8. It was also submitted by Mr. Kabir that the petitioner being an accused has a legal right to pray for his discharge and it cannot be said as he filed the prayer for discharge, his fundamental right under Article 21 is diluted. As the investigation suffers from very serious anomalies, defects, the petitioner, a youth of 28 years, may be enlarged on bail on any condition.

9. Mr. Kabir relied on the following judgments in support of his contention.

i.Thwaha Fasal vs. Union of India reported in (2022) 14 SCC 766 ii.Vernon vs. State of Maharashtra reported in 2023 SCC OnLine SC 885 iii.Tasleem Ahmed vs. State, NCT of Delhi, SLP (Crl) 2867 of 2026, judgment of Hon'ble Supreme Court of India dated 22.05.2026 Page 6 of 15 2026:CHC-AS:1917-DB iv.Syed Iftikhar Andrabi vs. NIA, SLP (Crl) 1090 of 2026, judgment of Hon'ble Supreme Court of India dated 18.05.2026 v.Ahmed Mansoor vs. State, SLP (Crl) 198 of 2025, judgment of Hon'ble Supreme Court dated 14.10.2025 vi.Mansur Ali@MansurSiekh @Mansur Sk@ Machuur Ali vs. State, CRA (DB) 360 of 2025, judgment of Hon'ble Calcutta High Court dated 05.05.2026 vii.Md. Imadul Haque vs. NIA, CRA (DB) 137 of 2025, judgment of Hon'ble Calcutta High Court dated 26.08.2025.

viii.National Investigating Agency vs. Zahoor Ahmed Shah Watali reported in AIR 2019 SC 1734 ix.Union of India vs. K.A. Najeeb reported in AIR 2021 SC 712 x.Sudesh Kedia vs. Union Of India reported in AIR 2021 SC 1892 xi.Kekhriesatuo Tep v. National Investigating Agency reported in (2023) 6 SCC 58 xii.Pankaj Bansal vs. Union of India reported in 2023 INSC 866 xiii.Shoma Kanti Sen vs. State of Maharashtra reported in Air 2169 xiv.Prabir Purkayashtha vs. State (NCT of Delhi) reported in AIR 2024 SC 2967 xv.Javed Gulam Nabi Shaikh vs. State of Maharashtra reported in (2024)9 SCC 813 xvi.Arvind Kejriwal vs. Directorate of Enforcement reported in AIR 2024 SC 3373 xvii.Sheikh Javed Iqbal vs. State of Uttar Pradesh, Criminal Appeal No. 2790 of 2024 (SC) xviii. Jalaluddin Khan v. Union of India reported in AIR 2024 SC 4380 xix.Prem Prakash vs. Union of India reported in AIR 2024 SC 4286 Page 7 of 15 2026:CHC-AS:1917-DB xx. V.Senthil Balaji v. Deputy Director, Directorate of Enforcement reported in

AIR 2024 SC 4760 xxi. Athar Parwez vs. Union of India reported in 2024 INSC 995 xxii.Subires Bhattacharya v. Central Bureau of Investigation, CRM (DB) 173 of 2024 xxiii.Directorate of Enforcement v. Subhash Sharma reported in 2025 INSC 141 xxiv.Vihaan Kumar vs. State of Haryana reported in 2025 INSC 162 xxv.Udhaw Singh vs. Enforcement Directorate reported in 2025 INSC 247 xxvi.Somnath Banerjee vs. State of WB in CRM (DB) 62 of 2025 xxvii.Partha Chatterjee vs. Central Bureau of Investigation in Criminal Appeal Nos. 3618-2619 of 2025 (SC)

10. Mr. Maiti, learned Senior Counsel appearing for NIA has raised serious objection against the bail prayer. According to him the appellant is not a passive sympathiser but an active ISIS operator involved in recruitment and radicalisation of Muslim youths, dissemination of ISIS propaganda, administration and use of clandestine Telegram groups for sending recruits to Afghanistan/Khorasan for terrorist training in making discussion with regard to target killings and attacks against identified persons and institutions. The materials collected during investigation establishes a strong prima facie case attracting the statutory embargo contained in Section 43D (5) of UAPA. The extraction report from the electronic device shows that the appellant was in communication with entities operating from Pakistan, Saudi Arabia, Syria and other foreign jurisdictions. It was also submitted by Mr. Maiti that the extraction report Page 8 of 15 2026:CHC-AS:1917-DB further establishes that the appellant was not merely in possession of violent propaganda videos generated by the terrorist organisation ISIS but was actively circulating such videos amongst other Muslim youths. This conduct clearly indicates the dissemination of extremist and terrorist propaganda with the intent to influence and radicalise others. The said evidence is duly corroborated by the statement of the prosecution's witness, Farhan Javed, thereby lending substantial credibility to the prosecution case. It was also contended that the forensic extraction from the electronic devices clearly indicates that the instant appellant was using a virtual phone number through internet-based communication services.

11. If the petitioner is enlarged on bail, prosecution would suffer a lot. The forensic analysis of the electronic device establishes that the petitioner has ISIS Association. There is evidence of recruitment of youths. The telegram chats recovered from the appellant's phone contain the appellant's connection with an ISIS network. The petitioner has a connection with Abdul Rakib Qureshi for planning and coordination of extremist activities etc. Investigation identified one Amina Bint Munnavar, residing in Singapore, as a key radicaliser and administrator of ISIS-linked groups. It was further submitted by Mr. Maiti that it is not correct that the ground of arrest was not intimated to the petitioner. It was also denied that appellant's long incarceration is only due to the fault of the prosecution. The appellant's case is that the case against him, at the highest, would attract Sections 38 and 39 of the UAPA Act. From then, the statutory embargo under Section 43D (5) of the UAPA Act would squarely be attracted. Accordingly, Mr. Maiti concluded his argument by stating that materials collected during Page 9 of 15 2026:CHC-AS:1917-DB investigation clearly establishes that the accusation against the appellant is prima facie true. The case attracts the statutory embargo contained under Section 43D (5) of UAPA Act and hence prayer for bail should be rejected.

12. Mr. Maiti relied on the following judgments:

i. Ram Kishor Arora vs. Directorate of Enforcement reported in 2023 INSC 1082 ii. National Investigation Agency vs. Zahoor Ahmed Shah Watali reported in 2019(5) SCR 1060 iii.Union of India vs. K.A Najeeb 2021(1) SCR 443 iv.State of Uttar Pradesh v. Anurudh 2026 INSC 47 v.Vernon vs. The State of Maharashtra & another reported in 2023(10)SCR 867 vi.Gulfisha Fatema vs. state 2026 INSC 2 vii.Tasleem Ahmed vs. State Government of NCT of Delhi SLP(CRL) NO. 2867/2026 with SLP(CRL) NO. 3867/2026 of Supreme Court of India viii.Md. Heydaitullah vs. National Investigation Agency Crl. A. 871 of 2023 ix.Mohd. Shahid Khan Vs. Union of India 2025 MPHC-JBP:257 x.Abu Samad vs National Investigation Agency CRA (DB) 276 of 2024 of High Court at Calcutta Court's view:-

13. The present task of this court under section 43D(5) of UAPA is to find out whether the materials brought against the applicant by the investigating agency is sufficient to hold at this stage that the accusation against him is prima facie true or not.

14. The extraction reports from the mobile phones of the applicant show that messages were exchanged in the telegram app through virtual numbers Page 10 of 15 2026:CHC-AS:1917-DB with persons residing outside India, and there were talks of engagement/ recruitment of Indian youth in the foreign country for militant/extremism purposes. The chats were made from the said mobile phones showing that the sender of messages from the said phones was also eager to make serious militant activities by killing journalists etc in India, and he was encouraged to do so by the aforesaid persons of foreign origin. These materials clearly distinguish this case from Veron vs. State of Maharashtra (supra).

Therefore, the case at hand is not mere possession of literature. There are materials to show that the applicant took an active part in collecting or organizing or instigating youth who would take part in hijarat and jihad for Islamic extremism. He also collected youth isthihad (suicide squad). The above overt acts of the applicant also satisfies the condition of Thwaha Fasal (supra) case wherein it is laid down in which cases an accused can be said to be associated with terrorist act and organisation. Relevant excerpts of the said case law will be profitable for our present discussion :

> "The association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred from the overt acts or acts of active participation of the accused in the activities of a terrorist organisation which are borne out from the materials forming a part of charge-sheet".

15. Apart from the above chats there were a huge number of videos, pictures showing destructive, subversive activities, killing of helpless people, beheaded bodies, training of militants and so on. The videos also show planning to kill PM Modi and American President Donald Trump. Page 11 of 15

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16. However, para 17 of the judgment of Union of India v. K.A. Najeeb, (2021) 3 SCC 713 has very lucidly balanced the accused's fundamental right to get speedy justice with restrictions of legislative policy against bail in the following words:

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the 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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

17. Now, the question is when will the melting point start in a given case? In this case a chargesheet was filed on 04.07.2023 and charge was framed on 14.08.2025. Several witnesses were examined but cross-examination of such witnesses were deferred by the applicant under section 231 of Cr.P.C, presumably because that the accused did not want to disclose his defence. During the charge hearing, the accused had the opportunity to show that the allegations against him had no basis. After considering the materials, Page 12 of 15 2026:CHC-AS:1917-DB the learned trial Judge framed the charges against the accused. Even thereafter, the accused filed a discharge application which, being rejected by the trial judge, the present appeal was filed. Undoubtedly, the accused has the right to file an application for discharge but knowing fully well that disposal of such application will take some time in view of the workload of the Courts, he filed the discharge application and consequently, the examination of the prosecution witnesses was halted. We do not find any intentional laches from the side of the prosecution to prolong the trial. It is very aptly observed in the decision of Gulfisha Fatema (supra) and Tasleem Ahmed (supra) that the delay in trial cannot be automatically attributed to the prosecution. We have considered the entire materials on record and found that no delay was caused from the side of the prosecution. Furthermore, taking into account the gravity and seriousness of the offences, nature of technical and electronic evidence, the number of 52 Chargesheet witnesses cannot be said to be excessive.

18. It is further true that before the pronouncement of the Paban Bansal case (supra) (3/10/2023) and subsequent decisions , such as, Shoma Kanti Sen vs. State of Maharashtra (supra) (05/04/2024), Prabir Purkayastha vs State (NCT of Delhi)(supra) (15/05/2024) etc., the case at hand was started (06/01/2023) and therefore, mandatory compliance for information regarding grounds of arrest becomes a matter of academic research and interest, so far as this case is concerned.

19. It is true that incriminating videos were found from Javed Farhan and he has been cited as a prosecution witness. Claiming parity, Mr Kabir's argument was that in that situation the present petitioner who also received Page 13 of 15 2026:CHC-AS:1917-DB alleged videos from other sources should have been cited as Prosecution witness. The statement of Farhan recorded under section 164 Cr.P.C shows that he came to his aunt's house at Howrah for higher secondary education. During his stay at Howrah, he used to visit a nearby mosque where he got acquainted with the

applicant who appeared to be a very knowledgeable person. The statement further shows how the incriminating materials were sent to his phone by the applicant who told that the same were very confidential and he was further asked to maintain secrecy. The record reveals that Farhan was a student and came to Howrah for educational purposes. Taking advantage of proximity, he tried to indoctrinate the Islamic extremist ideologies and for that purpose he sent such materials to Farhan's phone. In our considered view, the applicant and Farhan do not stand on the same footing. Such action of the applicant lends support to the prosecution case that there was a continuous encouragement of the applicant from the persons of foreign origin to collect youth from India who will be interested in doing all these extremist operations in India and abroad.

20. Therefore, considering all materials on record we do not find that there was any intentional laches on the part of the prosecution to proceed with the trial. Further, the number of 52 charge witnesses, in view of the nature of the case, is not unreasonable. It is settled law as per decision of Watali (supra) as well as Najeeb (supra) that at this stage the court cannot evaluate the evidence of the parties threadbarely nor can hold a mini trial of the case. The issues raised by the applicant cannot be decided without a trial, at least without a mini-trial but we are not to do so. The prosecution is Page 14 of 15 2026:CHC-AS:1917-DB not responsible for the alleged delay. The discharge application, although legal, consumed much time and contributed to prolonging the trial, and for which we cannot blame the prosecution. However, we can say that the case has not reached the melting point as indicated in K.A. Najeeb's case (supra). The matter concerns security of the country. As there are sufficient materials on record indicating the overt acts on the part of the applicant in committing the offences that he has been charged with, we are constrained to say that the accusation against the applicant appear to be prima facie true at least at the present stage of the proceedings. Accordingly we are constrained to reject the prayer for bail.

21. Thus , CRA (DB) 324 of 2025 is dismissed.

22. All parties shall act on the server copy of this order downloaded from the official website of this Court.

23. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.) (APURBA SINHA RAY, J.)