$~J-1 & J-2

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

Reserved on: 1st September, 2026
Pronounced on: 25th November, 2026
Uploaded on: 25th November, 2026

\# **CNR No. DLHC010164092025**

\+ **CRL.A. 375/2025, CRL.M.A. 18840/2026 & CRL.M.A. 18841/2026**

MOHD. WAQAR LONE .....Appellant

Through: Mr. Aarif Ali, Mr. Pankaj Tiwari, Mr. Mujahid Ahmad, Mr. Mohd. Tauheed, Mr. Mohd. Faiz Ahmed, Mr. M.S. Alam, Ms. Nuzhat Nabi and Ms. Ifrah Farooq, Advs.

versus

NATIONAL INVESTIGATION AGENCY & ANR. ...Respondents

Through: Mr. Rahul Tyagi, SPP (NIA) with Mr. Jatin, Ms. Priya Rai, Mr. Avinash Kumar Singh, Mr. Shubham Goyal, Mr. Amit Rohila and Mr. Priyansh Raj Singh, Advs. along with Insp. Hariom Yadav, CIO (NIA)..

AND

\# **CNR No. DLHC010479292025**

\+ **CRL.A. 1025/2025**

DEEPTHI MARLA @MARYAM .....Appellant

Through: Ms. Nitya Ramakrishnan, Sr. Adv. with Mr. Rajat Kumar, Mr. Ashwath Sitaraman, Ms. Stuti Rai and Ms. Priya Vats, Advs.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. Rahul Tyagi, SPP (NIA) with Mr. Jatin, Ms. Priya Rai, Mr. Avinash Kumar Singh, Mr. Shubham Goyal,

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Mr. Amit Rohila and Mr. Priyansh Raj Singh, Advs. along with Insp. Hariom Yadav, CIO (NIA).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGEMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. These appeals have been filed by the Appellants – Mohd. Waqar Lone in ***Crl. A. 375/2025*** (hereinafter "*Appellant-1*") and Deepthi Marla @ Maryam in ***Crl. A. 1025/2025*** (hereinafter "*Appellant-2*") under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter "*NIA Act*") read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "*BNSS*") challenging the order(s) dated 28th January, 2025 and 05th May, 2025 respectively, passed by the learned Principal District and Sessions Judge, New Delhi District, Patiala House Courts, New Delhi (hereinafter "*trial court*"). The said orders were passed in ***NIA SC No. 3/2021***, titled "*NIA v. Mohammed Ammen Kathodi @ Abu Yahya & Ors.*" arising out of ***FIR No. RC/05/2021/NIA/DLI*** dated 05th March, 2021 registered at P.S. NIA, New Delhi, where the learned trial court dismissed the respective bail applications.

3. These appeals are being taken up for disposal together as many of the submissions of the learned counsels for the parties were common. They arise from the same FIR and Charge sheet and the legal issues raised are also overlapping.

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FACTUAL BACKGROUND

4. The brief background of the case is that on 05th March, 2021, FIR No. RC/05/2021/NIA/DLI under Section 17, 18, 18B, 20, 38 & 40 of Unlawful Activities (Prevention) Act, 1967 (hereinafter "*UAPA*") and Section 120B, 121, 121A of Indian Penal Code (hereinafter "*IPC*") was registered at PS NIA, New Delhi against seven known accused and further unknown persons.

5. According to the FIR, a module of radicalised individuals was formed under the leadership of *Accused-1*, Mohd. Ameen @ Aabu Yaha, which had allegiance to the proscribed terrorist organization Islamic State of Iraq and Syria (hereinafter "*ISIS*"). The said accused was running various ISIS propaganda channels on distinct social media platforms such as Telegram, Instagram, etc., for propagating violent *jihadi* ideology of ISIS as also radicalising and recruiting the new members for the ISIS modules. It is alleged that plans were also made under the leadership of the said *Accused-1* for undertaking *hijrah* (religious migration) to Jammu and Kashmir for engaging them in terrorist acts. Investigation in terms of the NIA Act was directed, pursuant to which chargesheets were filed.

6. The Main Chargesheet was filed on 8th September, 2021 wherein Appellant-1 was initially investigated as persons accused but not charge sheeted. Subsequently the Supplementary Chargesheet was filed on 28th January, 2022 by the National Investigation Agency (hereinafter "*NIA*") wherein the Appellant-1 and Appellant-2 were arrayed as Accused-5 and Accused-4 respectively. For ease of reference, the names of accused persons in the present case along with their respective dates of arrest is as under:

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S.No.	Name of Accused	Date of Arrest
Accused-1	Mohammed Ameen Kathodi @ Abu Yahya	15th March 2021
Accused-2	Mus'Hab Anwar @ Ibnanwar	15th March 2021
Accused-3	Rahees Rasheed @ Sachu	15th March 2021
Accused-4	***Mundadiguttu Sadananda Marla Deepthi @ Deepthi Marla @ Maryam***	***03rd January 2022***
Accused-5	***Mohd. Waqar Lone @ Wilson Kashmiri***	***14th August 2021***
Accused-6	Mizha Siddeeque	17th August 2021
Accused-7	Shifa Haris	17th August 2021
Accused-8	Obaid Hamid Matta	04th August 2021
Accused-9	Madesh Shankar	04th August 2021
Accused-10	Ammar Abdul Rahiman	04th August 2021
Accused-11	Muzamil Hassan Bhat	04th August 2021

Allegations against the Appellants

7. The Appellant(s) were alleged to have committed offences punishable under Section 120B, 121A IPC and Sections 17, 18, 18B, 20, 38, 39, 40 of the UAPA. As per the Supplementary Chargesheet the specific allegations against the Appellant-1 and Appellant-2 are as under:

a. Appellant-1 and Appellant-2 along with co-accused had entered into a criminal conspiracy with various ISIS members for undertaking *hijrah* to Jammu & Kashmir and other ISIS territories to join ISS for establishment of caliphate and also further the activities of ISIS in India.

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They had procured fake SIM Cards and fraudulent numbers for creating several IDs for interacting with like-minded persons as also to circulate ISIS material and propagate the ideology of ISS. Further, they had indulged in raising and transferring funds for propagating the activities of ISIS in Jammu & Kashmir. Appellant-1 had shown inclination and affiliation towards the *jihadi* ideology of ISIS.

b. Appellant-2 along with Accused-1 had visited Jammu & Kashmir in January and March 2020 to meet Appellant-1 and Accused-8. Appellant-2 had also raised funds for the purpose of procurement of weapons. The funds were transferred to appellant-1 through banking channels and digital payment mode with the help of Accused-11 on the directions of Accused-1.

c. Appellant-2 had completed her schooling in Koduku, Karnataka and she had studied in a missionary school where she had been exposed to Christianity. She had also completed her MBBS in Mangalore. She had converted to Islam in 2011 and had thereafter in 2014-15 sought to obtain a degree in Syria Law in Macca but could not obtain admission. However, she was admitted at the University of Sharjah for the same course and was accompanied by her daughter and her husband. While she was studying in Sharjah along with Accused-6 and another Kerala native, she was radicalized towards ISIS ideology and made plans to undertake *hijrah* to support ISIS. Appellant-2 along with Accused-1 were radicalising gullible Muslim youth and encouraging them to join ISIS.

d. Appellant-2 came in contact with Shihas, the spouse of her husband's niece Ajmala who was a follower of ISIS ideology. Shihas and Ajmala

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had gone in 2016 to Khorasan and joined ISIS. When appellant-2 maintained contact with the niece of her husband through social media platforms including Telegram, she also was introduced to other ISIS operatives and made plans to join them. One year later, both Shihas and Ajmala along with their child had died in Khorasan. Around 2016-17 Appellant-2 also started radicalising her brother-in-law Accused-10 and shared ISIS material with him.

e. Thereafter, Appellant-2 went to Dubai and continued to radicalise her brother-in-law Accused-10 for undertaking *hijrah*. Appellant-2 had also given shelter to her brother-in-law along with his family members in Dubai.

f. Appellant-2 had also directed the Accused-6 and Accused-10 to watch videos of Muslim hardline preachers.

g. Appellant-2 was associated with various other social media platforms and used to communicate with various co-accused through secret and encrypted applications to radicalise them for joining ISIS.

h. An attempt was made by Accused-1 and Accused-2 to obtain fake passports for appellant-2 for sending her to ISIS controlled country via Nepal. Appellant-2 is closely linked with several of the co-accused and also referred as the revert sister `revered sister'.

i. The social media data of Appellant-1 revealed that Appellant-2's email address was shared with various other co-accused. Appellant-2 had developed contacts with co-accused in Jammu & Kashmir on the pretext of getting married with them. She was using pseudo-Instagram profile such as 'Maryam', 'alice', etc. and used these platforms to radicalise them for performing *hijrah*. That the Appellant-2 had travelled to

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Srinagar via Delhi in January 2020 to meet Accused-8 and other ISIS operators in Srinagar.

j. When family members of Appellant-2 got to know about her trip to Srinagar and had expressed resentment, she started using the number of her mother-in-law to contact other co-accused. It was concluded on the basis of various evidence that Appellant-2 is an active member of ISIS.

k. Appellant-2 used to caution other co-accused to use Telegram as it is safer than WhatsApp. She used to use the names/IDs 'Alice Bucher' and 'Alice Bucher 2' on Telegram to communicate with other Telegram accounts. Various audio files consisting of lectures and other incriminating material were found on her mobile phone. She used the email bucheralliace@gmail.com for creating her Facebook ID. Various Instagram accounts used by her were also retrieved. A specific gmail account deepthim204@gmail.com was created for obtaining the Iranian visa. Another email 135.deepthi@gmail.com was also used for corresponding with Iranian Embassy.

l. Appellant-1 had come into contact with Accused-1 through Instagram and he had been sent images and videos from Srinagar raising pro-ISIS slogans, hosting and marching with flags of ISIS, stone pelting on CRPF and J&K police personnel. Appellant-1 had been introduced to Appellant-2 through Accused-1 and was told that Appellant-2 wanted to undertake *hijrah*.

m. Accused-1 also sent Appellant-1 various provocative songs for motivating him towards ISIS, which led Appellant-1 to get radicalised towards ISS. Accused-1 contacted Appellant-1 and instigated him to make efforts for establishment of Islamic state in India.

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n. Appellant-1 is alleged to have facilitated a meeting between Accused-1 and the Imam of Noor Masjid, Srinagar with whom discussions were held for raising *jihad* in Jammu & Kashmir and for furthering the cause of ISIS. An Instagram handle 'Strangersonhaqq' believing in the ideology of ISIS was found on the digital devices of Appellant-2 and Appellant-1.

o. Appellant-1 was also instigated by Accused-1 and Accused-2 to procure weapons for doing *hijrah* and *jihad* in Jammu & Kashmir. He was introduced to one Tosif Sofi, resident of Brar, Bandipora, who further shared the Facebook ID of one Rais Mir who was the launching commander of Inter-Services Intelligence. Thereafter, Appellant-1 contacted Rais Mir and finalized a deal for an amount of Rs.70,000/-. The said sum of Rs.70,000/- was received by Appellant-1 in his bank account through certain other co-accused. The details of the same are contained in paragraph 17.32 of the supplementary chargesheet.

p. Appellant-1 was a habitual criminal, who had earlier been arrested in two other FIRs being ***FIR No.74/2020*** and ***FIR No.30/2020*** for supporting ISIS and for hatching conspiracy. At the time of his arrest in ***FIR No.30/2020***, an ISIS flag and one UBGI grenade was recovered from his possession. Two mobile phones were also recovered. He was thereafter arrested in the present case on 14th August 2021. After his arrest in the present case, his digital devices were examined and various incriminating materials were found including audios, videos, images and screen shots. It was also revealed that he had created several IDs on various social media platforms. The data, which was recovered, also revealed that he was supporting another terrorist organization AGH.

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Data relating to other co-accused in another NIA case bearing FIR No. RC 11/2020/NIA/DLI was also found. Images of terrorists, videos of terrorists and various other incriminating material including Pakistani flags, photographs of Afi Sahid and anti-national material was found on his device. Slogans against India were also found including against the top leadership in India. The bank account of Appellant-1 was being used by other co-accused to transfer funds.

q. Accused-6 had be-friended Appellant-2. Accused-6 was motivated by Appellant-2 and was radicalised. Appellant-2 was conversing with an Afghanistan based ISIS operative on Telegram. Appellant-2 was instigated to take *hijrah* to Khorasan, Afghanistan for which she left on 7th April 2019 from Dubai to Tehran. However, after reaching Tehran since they could not get in touch with their contact in Afghanistan and decided to come back to India on 9th April 2019 from Tehran to Bangalore via Doha. Passport of Accused-6 was then handed over to Appellant-2 for future use. The evidence of this is stated to be available on her digital device, which was seized from Appellant-2.

r. Appellant-1 was also in touch with Accused-6 for encouraging her to perform *hijrah*. Accused-6 and Appellant-2 were in touch with each other on Proton mail through fake IDs. Accused-6 had also raised some funds, which were transferred to the bank account of Appellant-1.

s. After Appellant-2 had returned from Tehran in April 2019, she continued to radicalise like-minded persons and established contacts with co-accused through secret social media platforms. The contact numbers of Appellant-2 were also found in the mobile phone of sister of Accused-8, who described her as ‘Doctor Z’.

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t. The summary of the allegations against Appellant-1 and Appellant-2 are as under:

> *"**I. Deepthi Marla @ Maryam (A-4)**: Accused Deepthi Marla @ Maryam (A-4) had been using secured and encrypted social media platforms viz. Telegram, Instagram, Whatsapp etc. for searching, radicalizing and recruiting like-minded persons to carry forward the ideology & activities of the banned terrorist organization Islamic State of Iraq and Syria (ISIS) and thus affiliated herself with ISIS. In furtherance to this, she entered into criminal conspiracy with co-accused person Mizha Siddeeque (A-6) and travelled from Dubai to Tehran for onward travel to Khorasan to join ISIS with the assistance of ISIS operatives Abuesa @ Abdul Rashid Abdulla & Ashfaq who had already joined ISIS in the year 2016. After returning from Tehran, she continued her endeavor to further the cause of ISIS and radicalized co-accused persons Mohammed Ameen (A-1), Obaid Hamid Matta (A-8), Madesh Shankar @ Abdullah (A-9) and Ammar Abdul Rahiman (A-10) to undertake Hijrah to ISIS controlled territory for joining and supporting ISIS. This reflects her desperation to support the proscribed terrorist organization ISIS and further its cause. In the month of January 2020, she had also travelled to Srinagar to meet co-accused Obaid Hamid Matta (A-8) to plan the strategy for undertaking Hijrah to ISIS controlled territory. By supporting the cause of ISIS and by radicalizing gullible Muslim youth to join ISIS and hatching conspiracy to establish Islamic State in India, it is established that accused Deepthi Marla @ Maryam (A-4) is a member of proscribed terrorist organization ISIS and thus, she in association with co-accused persons & associates planned to wage war against Govt. of India.*
>
> *II. **Mohd. Waqar Lone @ Wilson Kashmiri (A-5)**: Accused Mohd. Waqar Lone@ Wilson Kashmiri (A-5)*

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had been a habitual offender and has already been arrested in two separate cases registered by Jammu & Kashmir for the offences of unlawful activities, before his arrest in the instant case. He had been using secured and encrypted social media platforms viz. Instagram, Facebook messenger, Gmail etc. for searching, radicalizing and recruiting like-minded persons to carry forward the ideology & activities of the banned terrorist organization ISIS by way of carrying out terrorist attacks in J&K for the establishment of law of Caliphate and thus affiliated himself with ISIS. He is an anti-National & Pakistan supporter and does not believe in Secularism and Indian Constitution. In the month of March, 2020, accused Mohd. Waqar Lone @ Wilson Kashmiri (A-5) met co-accused Mohammed Ameen Kathodi @ Abu Yahya (A-1) during later's visit to Srinagar and discussed plans related to Hijrah and procurement of weapons for the establishment of Islamic State in J&K. In furtherance of this, he entered into conspiracy with co-accused persons Mohammed Ameen Kathodi @ Abu Yahya (A-1), Mus'Hab Anwar (A-2), Rahees Rasheed (A-3), Shifa Haris (A-7) and Muzamil Hassan Bhat (A-11) for devising ways and means for raising funds and collected Rs. 70,000/- to procure weapons for waging violent Jihad to further the terror activities of ISIS in India which establish that accused Mohd. Waqar Lone @ Wilson Kashmiri (A-5) is a member of proscribed terrorist organization ISIS and thus was waging war against Govt. of India. Mizha Siddeeque (A-6)- Accused Mizha Siddeeque"

8. The facts as also the submissions relating to each of the Appeals are now discussed separately.

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9. Appellant-1 prior to his arrest in the present FIR had two FIRs registered against him –

S.No.	Details of the FIR	Offences Punishable
(i)	***FIR No. 74/2020*** registered at PS Bandipora, J&K	Sections 302 and 452 IPC; Sections 16, 18, 20, 23, and 39 of UAPA
(ii)	***FIR No. 30/2020*** registered at PS Aragam, Bandipora, J&K	Sections 18, 23 and 39 of UAPA

10. During the arrest in the aforesaid cases, two mobile sets were also seized from the Appellant-1 which were deposited at the Baramulla jail, hence the NIA had obtained permission from the Baramulla court and thereafter he was arrested on 14th August 2021 in the present FIR when he was around 21 years of age. As per his nominal roll dated 28th April 2025, he has spent 3 years and 8 months in prison.

Order on Charge

11. *Vide* order on charge dated 31st October 2022, the trial court framed charges against the accused persons in the following terms:

> *"81....(a) I find that no prima facie case is made out to frame charge against the accused persons under Section 121-A of the IPC as well as Sections 18, 18B and 20 of the UA(P) Act or for that matter under section 17 read with section 40 of the UA (P)Act against A-1(since deceased), A-3, A-5 and A-11;*

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*(b) However, there is prima facie case to frame charge against A-2, A-3, **A-4, A-5**, A-6, A-7, A-9 and A-10 under Section 120 of the IPC read with Section 38 as well as 39 of the UA(P) Act read with Section 2 (o) and 13 of the UA(P) Act and individually against each accused under the substantive provisions of UA(P) Act read with Section 120B of the IPC since the said accused persons apart from accessing highly provocative Jihadi material and subscribing to ideology of the ISIS, were also deliberately, purposely and actively disseminating such material, seeking support from likeminded persons and enticing gullible Muslim youths to follow the path of the ISIS policies. They were professing to be self-styled module of Indian soldiers or operatives of the ISIS, and thus, making all efforts to further the cause of the banned organization;…"*

"*82. In the said view of the matter, A-11 is discharged of all the offences slapped against him. Let the charges be framed against A-2, A-3, A-4, A-5, A-6, A-7, A-9 and A-10 under Section 120B of the IPC read with Section 2 (o) read with Section 13 alongwith Section 38 & 39 of the UA(P) Act whereas charges under Section 2 (o) read with Section 13 of the UA(P) Act be framed against A8."*

Impugned Order in CRL.A. 375/2025

12. The impugned order dated 28th January, 2025 was passed in respect of the second bail application filed on behalf of the Appellant-1, seeking bail on the ground of parity with Accused -10 *i.e.,* Ammar Abdul Rahiman who had been granted bail by a co-ordinate bench of this Court in ***CRL.A. 79/2024.***

13. The first bail application moved by the Appellant-1 had been rejected by the Ld. Special Judge on 31st October, 2022 on the ground that there are reasonable grounds to believe that the accusations against him are *prima facie* true and regard was kept of his criminal antecedents.

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14. The Appellant-1 challenged the said order before this Court. *Vide* order dated 16th May 2024 the court had granted him the liberty to file a fresh bail application before the trial court in view of the judgement passed by this court in ***Crl. A. 79/2024*** titled ***Ammar Abdul Rahman vs. NIA 2024:DHC:3637-DB*** dated 06th May 2024. Therefore, the said appeal was dismissed as withdrawn.

15. Thereafter Appellant-1 preferred a second bail application before the trial court on 20th May, 2024. The same was rejected by the Ld. Special Judge *vide* the impugned order dated 28th January 2025.

16. The learned trial court, while dismissing the second bail application, observed that there is a *prima facie* case of the Appellant-1 being complicit in the alleged offence. Further the trial court rejected the ground of parity with Accused No.10 and observed that the said accused was not found to be disseminating objectionable material whereas the Appellant-1 has not only displayed questionable material on his status but was actively involved in persuading individuals as was seen from the statement of a protected witness code named *'Delta'*. It is also observed by the trial court that statements of other witnesses indicated that he was not a mere spectator or a sympathizer but was actively involved in the activities challenging the integrity and sovereignty of India. Thus, in the opinion of the trial court the Appellant-1 was unable to break through the barrier in terms of Section 43D(5) of the UAPA.

17. Hence, the present appeal.

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SUBMISSIONS ON BEHALF OF THE APPELLANT-1

18. Mr. Mujahid Ahmed, ld. Counsel for the Appellant-1 made the following submissions:

(a) That in the arrest memo of the Appellant-1 nothing was seized from his possession. Allegations are based on the phones which were at Baramulla PS, seized by J&K police in the prior FIRs. In view of the fact that the phones were in the possession of the police, the possibility that material was added in the phone of the Appellant-1 after the seizure on 23rd July, 2020 by the Baramulla PS in J&K cannot be ruled out. Thus, merely on the basis of information gathered from a device, the Appellant-1 cannot be kept incarcerated.

(b) That though various videos and content are alleged to have been recovered from the phone of the Appellant-1, there is no evidence to show as to the persons to whom such material was disseminated. Furthermore, most of the material alleged to be found on the device of the Appellant-1 is openly available and accessible on the Internet.

(c) That NIA has not challenged the order on charge dated 31st October 2022 where the only charge framed against the Appellant-1 is under Sections 13, 38 & 39 of UAPA. Reliance by the NIA is on the protected witness's testimony called '*Delta*' - however, the phone of the said protected witness has not been seized, and the protected witness '*Delta*' did not show any electronic evidence to establish that any objectionable material was received from the Appellant-1.

(d) That a reading of paragraph 68 of the order on charge shows that the trial court has discharged the Appellant-1 on all other counts and has clearly held that no terrorist act has been committed by the

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Appellant-1 and even the desire for *hijrah* could not materialize. The trial court has categorically held that the Appellant is not a perpetrator of any terrorist act.

(e) That the Appellant-1 was arrayed as ***A-5*** in the said case and on the basis of the digital evidence from the mobile of the Appellant-1, the trial court considers the Appellant-1 as a radicalised individual who was using social media to disseminate the objectionable material. The trial court holds against the Appellant-1 *prima facie* only to the extent of sharing of highly inflammatory and anti-national as also secessionist propaganda on social media.

(f) That qua the criminal antecedents of the Appellant-1, it is clarified that in ***FIR No. 74/2020***, the Appellant has already been acquitted and in ***FIR No. 30/2020***, the bail application is pending for orders.

(g) That the Appellant-1 is absolutely incapable of having influenced any witnesses in ***FIR No.74/2020***. The submission is that the Appellant was arrested in ***FIR No.74/2020*** on 23rd July 2020. He was also thereafter, taken into custody in ***FIR No.30/2020***. In ***FIR No.74/2020***, since all the witnesses are police officers and the Appellant could not be influencing the said police officers. Moreover, at the time when the evidence was led in ***FIR No.74/2020***, the Appellant had already been arrested on 14th August, 2021 in present case.

(h) That the Appellant-1 used to join only virtually before the J&K Court in ***FIR No.74/2020*** and in ***FIR No.30/2020*** after being arrested in 2020 when he was only 18½ year old. The Appellant has now turned

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24 and since he has been in custody, he is incapable of controlling any of the witnesses. The examination of witnesses in ***FIR No.74/2020*** commenced on 23rd August, 2021 and thus, at the relevant point in time, the Appellant being in custody, no allegations can be raised against him.

(i) That he is unable to undertake proper steps for defending himself in the other cases as he is in custody in Tihar Jail.

(j) That the case of ***Mohd. Heydaitullah v. National Investigation Agency, (Supra)*** is distinguishable as, in the said case, the offences under which the Appellant was charged, are punishable with maximum punishment of life imprisonment whereas in the present case the maximum sentence can be for ten years or even with fine.

(k) After reading Sections 38 and 39, it is argued that the offences for which the Appellant has been charged could be punished only with fine and there is no need of imprisonment as per the scheme of the section itself. Thus, a liberal view ought to be taken.

(l) It is disputed that there are only 35 witnesses left. In fact there are more than 90 witnesses who are yet to be examined. Reference is made to page 68 and 69 of the compilation handed over by Mr. Tyagi, the ld. SPP to argue that the arrest memo and the personal search memo would show that nothing was found in the possession of the Appellant No.1.

(m) Bail is prayed on the ground that the Appellant has undergone more than five years. Reliance was placed upon letter of Ministry of Home Affairs ***No.17013/20/2024-PR*** dated 16th October 2024 to argue that if the person has undergone detention of a period extended to half

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of the maximum period of imprisonment, then such person can be released by the Court on bail and that Section 479 of the BNSS would apply to all under trials even if the case was registered prior to 1st July 2024.

(n) That the Appellant-1 has only been charged under Sections 17, 38 and 39 of the UAPA in terms of Section 436-A of the Cr.P.C. and one half of the maximum period of imprisonment has already been undergone by the Appellant-1, and he is entitled to bail under Section 436-A. Further if the scheme of Section 479 of the BNSS is applied then there is one case which is pending against the Appellant-1 i.e., ***FIR 30/2020*** at PS Aragam, Bandipora, J&K. However, the application of Section 436-A of Cr.P.C., which does not set out a bar such as the one in Section 479(2) of the BNSS, cannot be stifled by applying Section 479 of the BNSS against the Appellant.

SUBMISSIONS ON BEHALF OF THE STATE

19. Mr. Rahul Tyagi, ld. SPP appearing for the NIA made the following submissions *qua* Appellant-1–

(a) Reliance is placed upon the decision of the Supreme Court in ***National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1***, to argue that once the charge sheet has been filed and the charges have already been framed, the Appellant-1 would have to disprove that there is no *prima facie* case of guilt against him.

(b) Ld. Counsel has taken the Court through the supplementary charge sheet and pointed out that in Para 17.34 there are two other FIRs being FIR No. 74/2020, PS. Bandipora, J & K and FIR No. 30/2020,

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PS. Aragam, Bandipora, J&K wherein the Appellant was charged for offences of hatching conspiracy and supporting the terrorist organization ISIS.

(c) Ld. SPP then relied upon the testimony of a protected witness '*Delta*', where he had made a statement before a Magistrate that the Appellant-1 had disseminated to them videos of ISIS continuously and also tried to brain wash them. Further, the Appellant-1 had convinced the said witness to download apps, such as WhatsApp, Telegram and asked them to follow the ISIS channel on these platforms.

(d) It was highlighted that despite the protected witness giving a statement under Section 164 of CrPC, when he was called in before the trial court on 23rd September 2025, he maintained complete silence and refused to confirm or deny the statement which he had given. The witness also did not wish to say anything and his demeanour was noted by the trial court. On the basis of this, it was argued by Mr. Tyagi, ld. Counsel that the Appellant-1 can also have a threatening effect on the witness.

(e) He placed reliance upon ***Vijaya Singh & Anr. v. State of Uttarakhand 2024 INSC 905*** to argue that in the said case, the Supreme Court clearly holds that even if a person seeks to retract from a statement under Section 164 CrPC, the same can be read in evidence, inasmuch as such a statement can be proved by any independent police official, who may have been present as also by the Magistrate, who can be called in evidence.

(f) That the Appellant-1 is guilty of disseminating various incriminating videos which promote ISIS in India and also promote

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various messages against India. Several pages in the compilation have been referred to, to establish this position. Relying upon examples from the documents it was also argued that the Appellant-1 is also in continuous touch with other co-accused, Appellant-2 and Accused-1 had also come to visit him. Ms. Hina Bashir Beigh an accused in another FIR, was also in touch with the Appellant-1.

(g) The ld. SPP relied on allegations set out against the Appellant-1 from Page 144 to Page 168 in the supplementary chargesheet.

(h) Paragraphs 68 and 81 of the order on charge were relied upon by the Ld. SPP to argue that the trial court has actually found sufficient material to frame the charge against the Appellant and under such circumstances, he ought not to be released on bail.

(i) It was argued that in the judgement of the Delhi High Court in ***Mohd. Heydaitullah v. National Investigation Agency, 2025 SCC OnLine Del 64*** given by the Coordinate Bench, reliance was placed on the social media posts of the Appellant therein and bail was rejected for supporting ISIS. The said judgement was upheld by the Supreme Court in ***Mohd. Heydaitullah v. National Investigation Agency SLP (Crl.) 8799/2025*** *vide* order dated 11th August, 2026 and the directions by the Supreme Court were for speedy conclusion of trial within one year but the non-grant of bail was not interfered with.

(j) Mr. Tyagi, the ld. SPP further submitted that presently, owing to various orders of the Supreme Court, further special courts have been established to adjudicate upon NIA cases in an expedited manner.

(k) Further it was also submitted that the Court where the Appellant-1's case is presently pending has only 06 pending trials and an order

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similar to the one passed by the Supreme Court in ***Mohd. Heydaitullah v. National Investigation Agency SLP (Crl.) 8799/2025*** can be passed by this Court for completion of the trial within a period of six odd months as there are only about 35 witnesses who are remaining for examination. It was submitted that in September 2026, 07 dates have been given by the Trial Court for leading the evidence in this matter and therefore substantial number of witnesses would be examined during this period.

(l) Mr. Tyagi, ld. SPP also placed before the Court the judgment in ***FIR No.74/2020*** where the Appellant-1 was acquitted. According to him, in most of these cases, the accused are acquitted as the witnesses either do not appear or they turn hostile or retract from their statements and support the accused. Even in this case, according to him, as per the judgment, PW-9 and PW-12 disowned their own 161 statements. PW-16 self-contradicted himself upon physically appearing. PW-14 was found to have a conflict of interest. These factors had actually led to the acquittal of the Appellant-1. Thus the acquittal was not on merits.

(m) The ld. SPP had then argued that there is a difference in the scheme of Section 436-A of Cr.P.C. and Section 479 of BNSS. It was submitted that the first proviso of Section 479 BNSS is not an absolute rule which can be prescribed inasmuch as it is also subjected to further, proviso 2 and sub section (2) of Section 479 of the BNSS.

(n) It was submitted that the first Proviso of Section 479(1) of BNSS provides that if a person had undergone detention for a period extending upto one-third of the maximum period of imprisonment, if the said person is a first time offender, he can be released on bond by the Court.

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The second proviso clearly stipulates that the continuing detention for a longer period than one-half is also within the discretion of the Court. Such an order can be passed only after hearing the ld. Public Prosecutor.

(o) It was argued that the only condition that is absolute in Section 479 of BNSS is that the person cannot at any cost be detained for a period which is more than the maximum period of imprisonment provided for the said offence under law. Thus, the person cannot be detained as an under-trial or during investigation or enquiry for a period longer than the maximum period under which the person has been charged.

(p) It was further emphasized by Mr. Tyagi, ld. SPP that under Section 479 (2) of BNSS, when there are more than one offences or there are multiple cases pending against the person, bail ought not to be granted by the Court.

(q) Mr. Tyagi, ld. SPP submits that Section 479(2) opens with a non-obstante clause and directs that where "*an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the court*". He submits that the bar expressed herein is a prohibition on the court and not a factor for its consideration. It is submitted that the Appellant-1, in addition to the present case, was accused in two other cases as enumerated above. Thus the benefit cannot be extended to him.

(r) Mr. Tyagi then relied upon four judgements of other High Courts, in which Section 479(2) of the BNSS has been interpreted. Reliance was placed upon the following judgements - ***K Ramakrishna***

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v. Directorate of Enforcement , 2024 SCC OnLine Kar 1879; ***Muninder Singh @ Sonu v. UT of J&K 2025 SCC OnLine J&K 1187***; ***Panna Lal Mahto @ Ganjhu v. Union of India Bail App. No. 9384/2022, decided on 6-12-2024***.

(s) A contrary view of a Coordinate Bench was also placed by Mr. Tyagi, in ***Leena Paulose v Directorate of Enforcement 2026 SCC OnLine Del 2620*** where the Court had preferred a harmonious reading of Section 479(1) and Section 479(2) of the BNSS and held that multiplicity of offences is "*a significant factor*" but does not altogether displace the Court's discretion. It was submitted that this view does not assist the Appellant-1 herein as it requires the Court to weigh in multiplicity of offences as a significant factor and then exercise discretion. In the present case, the discretion ought to be exercised against the Appellant-1 owing to the multiplicity of the offences arising from a single, continuing conspiracy.

(t) It was submitted on the basis of the discipline laid down in decision of the Constitution Bench in ***Muthuramalingam v. State, (2016) 8 SCC 313*** that whenever a person is charged or convicted for multiple offences, the rule would be that the same shall run consecutively, unless the court directs that the same would run concurrently. Reliance was also placed on the Section 25 of the BNSS (earlier Section 31 Cr.P.C.) in support of this submission.

(u) The Appellant-1 has been charged under multiple offences such as Sections 13, 38 and 39 of UAPA and which has a maximum sentence of 10 years, 10 years and 7 years respectively. According to Mr. Tyagi, ld. Counsel therefore, the maximum period of sentence in this case

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would be 25 years due to the three offences under which the appellant has been charged and they will be read as consecutive and not concurrent. Thus, even the half period served is not yet completed.

(v) In support of this interpretation, Mr. Tyagi, ld. Counsel relied upon two judgments –***K Ramakrishnan v. Directorate of Enforcement (Supra)*** and ***Muninder Singh v. UT of J & K. (Supra).***

CRL.A. 1025/2025 - Deepthi Marla @Maryam vs. National Investigation Agency

20. Appellant-2 was arrested on 03rd January, 2022, when she was around 37 years. As per the nominal roll dated 1st September, 2025, she has spent almost 3 years and 7 months in prison. She was arrayed as ***Accused-4*** in the supplementary chargesheet dated 28th January, 2022 filed by the respondent.

21. *Vide* order on charge dated 31st October 2022, the trial court framed charges against the accused persons. The same have been extracted above.

22. The Appellant-2 had filed an interim bail application on 25th June 2024 seeking bail for 3 months on the ground of her daughter passing away. However, the said application was withdrawn by her on 02nd July 2024.

Impugned Order in CRL.A. 1025/2025

23. The Appellant-2 had filed a regular bail application seeking bail on technical grounds on 26th September, 2024. The same was rejected by the Ld. Special Judge *vide* the impugned order dated 05th June, 2025.

24. The learned trial court, while dismissing the regular bail application, observed that Section 479 of BNSS is applicable in the case of the Appellant-

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2 herein. Further there are no other criminal antecedents of her therefore she falls under the category of first time offender. However, despite falling under proviso to Section 479(1) of BNSS and having completed more than 1/3rd of the period of the maximum punishment which can be awarded to her – the records shows that she is influenced by the ideology of ISIS. She has also radicalized the other co-accused persons as per the evidence and influenced them to do *Hijrah*. Therefore, the trial court held that there is a *prima facie* case of her being complicit in the offence. Further it was observed that the trial in the case has also not been delayed as 45 witnesses had already been examined at the stage when the application was considered by the trial court.

SUBMISSIONS ON BEHALF OF APPELLANT-2

25. Ms. Nitya Ramakrishnan, ld. Senior Counsel appearing for Appellant-2 made the following submissions:

(a) That the only evidence which has been relied upon by the NIA against the Appellant-2 is the material which has been taken out from the electronic devices of the Appellant-2 between the period of October 2019 to January 2020. Some of the conversation is completely private conversation which cannot be held to be culpable in any manner. There has been no evidence shown to establish that Appellant-2 had tried to radicalize anyone. The worst case that has been put against her is that she had travelled with another lady, gone to Tehran and had returned back. The NIA has also tried to colour the Appellant-2's persona as being someone who had abandoned her children. The said factor ought not to be taken into consideration by the Court for the purposes of bail in as much as that is part of her private life and in any event one of her

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children has also passed away in an accident.

(b) That insofar as the period post January 2020 is concerned, there is only sporadic evidence against A4 which is relied upon by the NIA. The case of another co-accused, Accused-9, who is already on bail, is relied upon to argue that his case would be similar. Section 18B of the UAPA, under which no charges have been framed, cannot be sought to be brought into this case through a backdoor inasmuch as no recruitment has even been established on the record and the only charges presently against the Appellant are under Sections 13, 38 and 39 of the UAPA.

(c) That the Appellant was arrested on 3rd January 2022 and has served more than four years. Charges were framed against her on 31st October 2022. No terrorist act has actually been carried out by her. The main conclusion against her is that she accessed incriminating material, there was deliberate exchange on various platforms with other co-accused and that she expressed disaffection to the country.

(d) That under Sections 38 & 39 of the UAPA the maximum imprisonment that can be awarded is ten years and under Section 13 of the UAPA, the maximum imprisonment is seven years. Under Section 479 of BNSS (Section 436-A of IPC), the philosophical under-pinning is that of speedy trial.

(e) That Section 479 of the BNSS has retrospective effect in respect of even pending cases and it ought to be applied liberally, especially in the case of woman. Further, Section 479 of the BNSS applies to UAPA cases.

(f) Reliance is placed on ***Satender Kumar Antil v. Central Board***

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of Investigation and Anr. (2022) 10 SCC 51 to argue that even in the case of special laws, Section 436-A of Cr.P.C. applies. Independently of Section 479 of the BNSS, even in cases where arms are recovered, bail is granted. Considering the number of witnesses that are still left for being examined, the trial may take five more years.

(g) That the rule in any sentencing is of non-consecutive sentence i.e., concurrent sentences. If consecutive sentencing was made the rule, then there would be overcrowding in jails which would be contrary to Article 21 itself. Thus, consecutive sentence is usually the exception and concurrent sentences being awarded is the norm. The reliance placed by the NIA upon Section 43D(5) of UAPA would not be sufficient to argue that the sentence in this case could be consecutive and could be maximum sentence. The following judgments were relied upon in this regard - ***O. M Cherian v. State of Kerala***, ***(2015) 2 SCC 501, Mohammad Akhtar Hussain v. Assistant Collector of Customs (Prevention) (1988) 4 SCC 183***.

(h) That in terms of ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** a major part of the sentence has already been undergone and to retain the Appellant-2 in custody would be breach of Article 21 of the Constitution of India. If she is given a lesser sentence later or even if fine is imposed, the time she has spent in custody cannot be compensated. However, if she is released today on bail and a higher sentence is imposed, she can always be sent back into custody. The balance of convenience is therefore in favour of the Appellant-2. Reliance is placed upon ***Mohd. Hakeem v. Sate (NCT of Delhi), 2021 SCC OnLine Del 4623.***

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(i) The allegations made against Accused-10 cannot be compared with the allegations against Appellant-2 inasmuch against Accused-10 there were other provisions under which he was charged.

(j) The language of Section 38 of the UAPA is relied upon to argue that the intention to further the activities of the terrorist organization has been interpreted in many directions. The Section and the terminology used therein cannot merely be meaning mere interest in a terrorist organization or even fidelity to a terrorist organization which should not be enough. Furthering activities of a terrorist organization is therefore needed and mere ideological commitment is not sufficient. The furthering of activities has to be a factor which has to be established by the prosecution. Reliance is placed upon the following judgments - ***Vernon v. State of Maharashtra and Anr. (2023) 15 SCC 556***, ***Thwaha Fasal v. Union of India (2022) 14 SCC 766***.

(k) That insofar as the judgment in ***Md. Heydaitullah V. National Investigation Agency (Supra)*** is concerned, the test laid down in ***Vernon (supra)*** is found to have been satisfied in the said judgement. The Appellant therein had only spent two years in custody and there was no discharge under any of the offences. He had been charged under Sections 18 and 19 and had intended to conduct blasts all over India. Under such circumstances, the case of ***Md. Heydaitullah (Supra)*** and ***Vernon (supra)*** cannot be considered as being similar to Appellant-2's case.

(l) That the audio spectrographs in regard to the voice recording of the Appellant-2, is of inadequate testing and at best it is a probability but the same cannot be said to be the proof of the fact that the

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Appellant-2's voice is established in the said recordings.

(m) That under Section 479(2) of the BNSS, even if the FIR has more offences than one, generally bail is granted relating to the specific FIR and the issue of bail is not adjudged on the basis of the number of offences the accused is charged under. In this regard, reliance is also placed upon ***Leena Paulose v Directorate of Enforcement (Supra)***

(n) Reliance is finally placed upon the judgment in ***Re: Inhuman Conditions in 1382 Prisons, WP(C) No. 406/2013*** to an order of the Supreme Court where the Supreme Court clearly uses the terminology `Charges' and not per charge basis while discussing speedy trials. Whenever release of under trials and prisoners is done, the overall FIR and various charges under the said FIR are considered and not specific offences under specific sections.

SUBMISSIONS ON BEHALF OF THE STATE

26. Mr. Rahul Tyagi, ld. SPP appearing for the NIA made the following submissions *qua* Appellant-2–

(a) That the Appellant-2 is a qualified doctor and owing to her education qualifications, she was fully aware of the consequences of her acts. She had converted to Islam, and her new name was Mariyam.

(b) That the Appellant is the linchpin of the entire conspiracy, and she was involved in radicalising all the other co-accused. At the time of framing of charges, there was proper judicial scrutiny, and she has been charged under Sections 38 & 39, hence, there is a *prima facie* case. Her attempt to travel to Khorasan is proof of her support to ISIS. When her husband refused to participate in *Hijrah*, she enticed her brother-in-

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law to go to Iran with her and she landed in Iran. However, she could not proceed further and, therefore, had to come back. Even though her parents had kept her confined to home, even during her confinement, she was active on social media and started indulging in honey trapping in an to attempt to marry and to migrate.

(c) The ld. SPP had further highlighted various chats as part of D-151 to argue that the role of the Appellant is that of recruiter, who is enticing various persons to join ISIS and encourage them to get their *hijrah* partners and go to a place where caliphate is to be established. He had shown several extracts from D-151 and D-152 to argue that the Appellant has repeatedly attempted to convince various persons to pursue *hijrah.* Since for doing *hijrah*, the female as a main partner would be required, she is enticing and making partnership between persons to go to Khorasan as the first option and then to Syria.

(d) It had been argued that the entire operation of recruitment is being run by her and she is the fulcrum of the said operation. In fact, insofar as the voice samples are concerned, reliance is placed upon D-85/A where the FSL has given clearly a report that the voice Ex.Q1(1D) and Q1(30D) are the voice of Mrs. Deepthi Marla. Therefore, her voice was compared to the voice samples, which were taken and once the FSL gives a report, it means that the person's voice in those calls cannot be disputed.

(e) The Ld. SPP placed reliance upon ***Ammar Abdul Rahiman v. National Investigation Agency, (Supra)*** to argue that this was a case where the brother in law of the Appellant-2, who was charged in the same FIR, had been given bail. However, the fact situation was

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different, inasmuch as even in that judgment, the Coordinate Bench has referred to the role of Appellant-2 herein as being crucial. Reliance was then further placed upon the decision in ***Mohd. Heydaitullah v. National Investigation Agency, (Supra)*** to argue that persons, who have taken the *oath/bayath* to the leader of ISIS could prove extremely dangerous to society as the ISIS is a known and declared terrorist organization.

(f) He further submits that the concept of *caliphate*, *jihad* and *bayath* all point to only one direction i.e., that the intention of Appellant-2 is to recruit for ISIS as many persons as she can.

(g) That there is more than enough evidence to implicate the Appellant-2 and she does not satisfy the test under Section 43D(5) of the UAPA for grant of bail.

(h) Finally, Mr. Tyagi submits that there are total of 154 witnesses which were put up by the prosecution, out of which 61 have been examined, 45 witnesses are going to be dropped and only 35 witnesses are left to be examined. Within 6 to 8 months, according to Mr. Tyagi, the trial would be concluded, considering that new Special Courts have been established for NIA.

ANALYSIS AND FINDINGS

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

28. In the present appeals the question to be considered is whether the Appellants are liable to be released on bail or not. However, ld. Senior Counsel for the Appellants and ld. Counsel for NIA have raised various issues.

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The following questions thus for consideration of this Court while deciding grant of bail to the Appellants are–

A. Whether there is a *prima facie* case in terms of Section 43D(5) of the UAPA and whether the issue of delay in conduct of trial and the consequent prolonged period of incarceration is a ground for grant of bail in the present case?

B. If a *prima facie* case is proved then whether benefit under Section 479 of BNSS and Section 436-A of the Cr.P.C. can be given to the Appellants?

C. If the benefit under Section 479 of BNSS and Section 436-A of the Cr.P.C. is available to the Appellants then are they entitled to be released bail?

29. However, prior to considering these legal issues, the Court deems it appropriate to consider the order on charge in order to put the facts in perspective.

Order on Charge

30. The order on charge in the present case was passed on 31st October 2022. In respect of Appellant-1 and Appellant-2 the findings of the Trial Court are summarised as under:

(a) That there is no material to hold that the accused persons committed any terrorist act within the meaning of Section 15 of the UAPA;

(b) That there is no physical act attributed to them leading to commission of any terrorist act or any preparatory act for doing of terrorist activity;

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(c) The accused persons were at best ISIS sympathisers and were accessing highly radicalised *jihadi* material from web world. Hence, no case under Section 18 and 18B of the UAPA was made out;

(d) The accused are more or less young persons and they have a religious ideological bent of mind which is certainly disdainful, despicable and contrary to the ideals of the Constitution of India;

(e) They have not indulged in acts of violence or committed any terrorist act;

(f) All the accused except Accused-8 and Accused-11 are sympathisers, subscribers and have been radicalised by the divisive and secessionist ideology of ISIS, which is a banned organization as per the first schedule of UAPA;

(g) Section 20 of the UAPA is not attracted as the accused are not members of a terrorist gang or terrorist organization as defined in Section 15 of UAPA;

(h) The accused had not been conferred any rank, position by the ISIS. The accused were not acknowledged by anyone in the command hierarchy of ISIS or any of its subsidiary or affiliated unit;

(i) They were not members of any sleeper cells, though they were in possession of *jihadi* literature;

(j) Following ***Thwaha Fasal v. Union of India (Supra)*** the Trial Court holds that the defence of the accused against Sections 38 & 39 of UAPA cannot be upheld;

(k) The Accused Appellant-2 and Appellant-1 were not mere passive members, they were deliberately, purposely and actively using secured and unsecured as well encrypted social media accounts to openly

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profess themselves as sympathisers, activists and members of the banned organisation ISIS. Getting access of such material on the internet was not a mere case of affirmation of the violent philosophy of the ISIS but also active dissemination of such ideology;

(l) Thus, there were *prima facie* grounds to frame charges against the Appellant-2 and Appellant-1 under Section 39(1)(a) of the UAPA;

(m) There was overwhelming material to establish a strong nexus of Appellant-2 and Appellant-1 with known and unknown operatives of ISIS;

(n) They were *prima facie* sharing highly anti-national and secessionist materials on social media platforms to various persons resulting in promotion of the cause of the terrorist organization ISIS;

(o) There was no material to frame charges against Appellant-1 under Section 17 read with Section 40 of the UAPA;

(p) There was no material against Appellant-2 for any conduct, which would amount to waging war against the Government of India;

(q) In conclusion, insofar as the Appellant-1 and Appellant-2 are concerned, charges have been framed under Section 120 IPC read with Sections 38 & 39 of UAPA read with Section 2(o) and 13 of UAPA individually read with Section 120B;

(r) The charges framed against the Appellant-1 and Appellant-2 read as under:

> *"81.....*
>
> *(a) I find that **no prima facie case** is made out to frame charge against the accused persons **under Section 121-A of the IPC as well as Sections 18, 18B and 20 of the***

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UA(P) Act or for that matter under section 17 read with section 40 of the UA (P)Act against A-1(since deceased), *A-3,* ***A-5*** *and A-11;*

(b) However, there ***is prima facie case to frame charge*** *against A-2, A-3,* ***A-4, A-5****, A-6, A-7, A-9 and A-10 under* ***Section 120 of the IPC read with Section 38 as well as 39 of the UA(P) Act read with Section 2 (o) and 13 of the UA(P) Act*** *and individually against each accused under the substantive provisions of UA(P) Act read with Section 120B of the IPC since the said accused persons apart from accessing highly provocative Jihadi material and subscribing to ideology of the ISIS, were also deliberately, purposely and actively disseminating such material, seeking support from likeminded persons and enticing gullible Muslim youths to follow the path of the ISIS policies. They were professing to be self-styled module of Indian soldiers or operatives of the ISIS, and thus, making all efforts to further the cause of the banned organization;"*

(s) No material was found for charges under Section 121A of IPC or under Sections 18, 18B, 20 of UAPA or under Section 17 read with Section 40 of UAPA against Appellant-1. Final order on charge reads as under:

"*82. In the said view of the matter, A-11 is discharged of all the offences slapped against him. Let the charges be framed against A-2, A-3, A-4, A-5, A-6, A-7, A-9 and A-10 under Section 120B of the IPC read with Section 2 (o) read with Section 13 alongwith Section 38 & 39 of the UA(P) Act whereas charges under Section 2 (o) read with Section 13 of the UA(P) Act be framed against A8."*

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(t) There has been no challenge by the NIA for non-framing of charges under Sections 18, 18B, 17 of the UAPA against either of the Appellants.

31. Thus, this Court is only concerned with the Sections under which the said Appellants have been charged.

A) WHETHER THERE IS A PRIMA FACIE CASE AGAINST THE APPELLANTS IN TERMS OF SECTION 43D(5) OF THE UAPA AND WHETHER THE ISSUE OF DELAY IN CONDUCT OF TRIAL AND THE CONSEQUENT PROLONGED PERIOD OF INCARCERATION IS A GROUND FOR GRANT OF BAIL IN THE PRESENT CASE?

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

> *"**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.*
>
> ***xxx***
>
> ***(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***

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> ***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****"*

33. The contours of the threshold under Section 43D(5) of the UAPA have been repeatedly discussed in several judgments by the Supreme Court.

34. 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. Several 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 NIA, the Supreme Court made the following observations. 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;***

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(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*

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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

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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*."*

35. Thus, in ***Zahoor Ahmad Shah Watali (Supra)***, the Supreme Court laid down the various aspects that deserve consideration while considering a bail application under the UAPA.

36. 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***.

37. 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.

38. While undertaking the assessment of whether the accusations are *prima facie* true or not the Court has analysed the charge sheet, the order on charge, statement of protected witness, '*Delta*' and the content on the digital devices

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of the Appellants. Some of the images and chats on the social media would clearly show that the Appellant-1 and Appellant-2 had sufficient content on their digital devices to show support given to the terrorist organization *i.e.* ISIS.

39. Insofar as both the Appellants are concerned, there are several emails, which would show support to ISIS. They had created fake IDs on messaging platforms to communicate and propagate the cause of ISIS. The content also shows extremely damaging images against India such as the coffin of India and showing a known terrorist as Prime Minister of India. Extensive literature of ISIS was found on their digital devices. They clearly showed their disaffection for India and extreme sympathy to the cause of ISIS.

40. The Appellant-1 was also found in possession of a grenade launcher for which he was also arrested in Jammu & Kashmir under a separate ***FIR No.30/2020***. The ideology of ISIS was being propagated by them. Certain funds were received by the Appellant-1, which would have to be explained by him at trial.

41. A perusal of the order on charge would also show that these two Appellants may have sworn their allegiance to ISIS, but it is unclear at this stage as to whether they were given any actual membership by the ISIS. Some of the findings in the order on charge show that the Trial Court came to the conclusion that none of the hierarchy in command of ISIS had actually been in touch of the Appellants. They were also not part of the ISIS hierarchy. Their membership or the lack of it would be a question to be determined in trial. However, their allegiance to ISIS exists *prima facie.*

42. Thus, the allegations are serious in nature and *prima facie* it cannot be said that the accusations are false. In fact, the materials on record reveal

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that the allegations are *prima facie* true. Both the Appellants herein appear to be extremely radicalised persons.

43. On the basis of the material on record, this court holds that the allegations against the Appellants are *prima facie* true, however we now need to consider whether the delay in conduct of trial and the consequent prolonged period of incarceration allows melting down of the conditions stipulated in Section 43D(5) of the UAPA.

Prolonged period of incarceration

44. At this stage, the Court considers the issue of delay in conduct of trial and the consequent prolonged period of incarceration as raised by the Appellants as a ground for grant of bail in the present case. In this regard, this Court examines the decision of the Supreme Court in ***K.A. Najeeb (supra)***.

45. In ***K.A. Najeeb (supra),*** the NIA. 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."*

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46. 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."*

47. The Supreme Court had thus observed 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, on the seriousness of the allegations,

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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."*

48. The decision of ***K.A. Najeeb (supra)*** was considered in the case of ***Gulfisha Fatima vs. State 2026 SCC OnLine SC 10*** where the Supreme Court observed as under:

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

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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.

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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."*

49. Recently, a two-judge bench of the Supreme Court in ***Syed Iftikhar Andrabi v. National Investigation Agency, 2026 SCC OnLine SC 881*** 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 43D(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***

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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***

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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****."*

50. Thus, the Supreme Court in ***Syed Iftikhar Andrabi (Supra)*** has held that the principles laid down in ***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 or High Courts, and notwithstanding the restrictions contained in Section 43D(5) of the UAPA, the Constitutional courts retain the power to grant bail, where continued incarceration becomes constitutionally unjustifiable.

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51. In the present case, the period of incarceration for Appellant-1 as of November 2026 is almost 5 years and 3 months. For Appellant-2 as well, as of November 2026 the period of incarceration is almost 4 years and 10 months. Merely by the period of incarceration, it cannot be said that it is prolonged.

52. As noted in ***K.A. Najeeb (supra)***, consideration needs to be paid to the stage of the trial at which the application of bail is raised. The Court is conscious of the delay in the trial, however, the NIA has tried to explain the same. It has been submitted by the ld. SPP there are a total of 154 witnesses which were put up by the prosecution, out of which 61 have been examined, 45 witnesses are going to be dropped and only 35 witnesses are left to be examined. It was further submitted that within 6 to 8 months, the trial would be concluded. This submission seems reasonable and probable considering that special NIA courts have now been notified *vide* notification dated 7th July, 2026 of the Department of Law, Justice and Legislative Affairs and trials appear to be moving at a faster pace.

53. The Court thus holds that the allegations against the Appellants are *prima facie* true. However, since the trial is likely to conclude soon, the ground of prolonged incarceration *per se* is not made out for grant of bail. However, owing to the incarceration period of the Appellants under the charged sections, the Court shall now consider whether the Appellants are entitled to bail under Section 479 of BNSS and Section 436-A of the Cr.P.C.

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B) IF A PRIMA FACIE CASE IS PROVED - WHETHER BENEFIT UNDER SECTION 479 OF BNSS AND SECTION 436-A OF THE CR.P.C. CAN BE GIVEN TO THE APPELLANTS?

Section 436-A Of Cr.P.C. And Section 479 Of BNSS

54. The Appellants have relied upon Section 436-A of Cr.P.C. and Section 479 of BNSS to argue that considering the maximum period that can be awarded, the Appellants are entitled to be granted bail as they have served 1/2 or 1/3rd of the maximum sentence. Section 436-A of Cr.P.C. and Section 479 of BNSS read as under:

> *"**436-A. Maximum period for which an undertrial prisoner can be detained. –***
> *Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*
> *Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*
> *Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

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Explanation.-In computing the period of detention under this Section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

Section 479 in Bharatiya Nagarik Suraksha Sanhita, 2023

479. Maximum period for which undertrial prisoner can be detained.-

(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) ***undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:***

Provided that where such person is ***a first-time offender*** *(who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for* ***the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:***

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by

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the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."

55. Under Section 436-A of the Cr.P.C. if an undertrial has undergone detention for half of the maximum period of imprisonment specified for an offence, such undertrial shall be released on personal bond with or without sureties. Before the said release, the public prosecutor is to be heard and the Court can also increase the period of detention. In any event, the person cannot be detained beyond the maximum period of imprisonment during investigation, inquiry or trial. The Explanation, however, excludes the period of delay in the proceedings caused by the accused, which is to be deleted or excluded for calculating the period of detention.

56. This provision under Cr.P.C. has been made more liberal under Section 479 of the BNSS. Under Section 479 of BNSS, for a first time offender, bail can be granted even if one third of the maximum period of imprisonment has been undergone. In case of the other undertrials, if half of the period of imprisonment is undergone, bail is to be granted. Under Section 479(2) of the BNSS, if a person is involved in more than one cases or is under investigation, inquiry or trial, for more than one offence or in multiple cases, such undertrial shall not be released on bail.

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57. The first aspect that arises is whether these two provisions i.e. 436-A of the Cr.P.C. and 479 of BNSS, which form part of general procedural law, would be applicable in the case of special laws such as NDPS, PMLA and UAPA.

58. In ***Satender Kumar Antil v. CBI (Supra)*** the Supreme Court highlighted the objective of Section 436-A and observed as under:

> *"**63**. **Section 436-A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained.** This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word "trial" will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436-A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.*
>
> ***64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word "shall" clearly denotes the mandatory compliance of this provision.** We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However,*

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such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that "bail is the rule and jail is an exception" coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be exclused."

59. In ***Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1***, in the context of PMLA, the Supreme Court considered Section 436-A and its objectives including in the context of serious offences such as terrorist offences as under:

"322. Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of Section 167 of the 1973 Code consequent to failure of the investigating agency to file the charge-sheet within the statutory period and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the charge-sheet/complaint within the statutory period. ***The provision in the form of Section 436-A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution.*** *For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously so as to uphold the tenets of speedy justice****. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his***

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prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.

323. The learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of superimposition of Section 436-A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.

324. ***Section 436-A of the 1973 Code, is at wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436-A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the court****, unlike the default bail under Section 167 of the 1973 Code.* ***Under Section 436-A of the 1973 Code, however, the court is required to consider the relief on case-to-case basis.*** *As the proviso therein itself recognises that, in a given case, the detention can be continued by the court even longer than one-half of the period, for which, reasons are to be*

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recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial."

60. This observation in ***Vijay Madanlal Choudhary (supra)*** has been applied in the context of Section 479 of BNSS in ***Badshah Majid Malik v. Directorate of Enforcement & Ors., [SLP (Crl.) No. 10846/2024, decided on 18th October 2024]*** where the Supreme Court observed as under:

"2. It has been observed that in the case of Vijay Madanlal Chaudhary vs. Union of India, (2022) SCC Online SC 926 that the beneficial provision of Section 436-A of the Code of Criminal Procedure, 1973, (for short, 'the Cr.P.C.') may apply to prosecution under the Prevention of Money-Laundering Act, 2002 (for short, 'the PMLA') as Section 436-A has come on statute book subsequent to enactment of the PMLA. Therefore, a corresponding provision of Section 479(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') will apply to prosecution under the PMLA. Section 479(1) reads thus:

"479. Maximum period for which under trial prisoner can be detained.

(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum

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period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

In the facts of the case, it is not disputed that the appellant has not been convicted for any offence in the past. Therefore, the first proviso to sub-section (1) of Section 479 of the BNSS will apply to this case as admittedly, the appellant has undergone detention for a period of more than 1/3rd of the maximum period of imprisonment provided for the offence alleged against him.

Learned counsel appearing for the respondent no.1 prays that second proviso to sub-section (1) of Section 479 of the BNSS must be invoked and the first proviso should not be applied. He pointed out that the allegation against the appellant in the scheduled offence is of indulging in smuggling of Red Sanders.

However, it is not in dispute that the maximum sentence for the scheduled offence under Sections 132, 135(1)(a)(ii) and 135(1)(b)(ii) read with Section 140 of the Customs Act, 1862 is three years.

On facts, this is not a case where this Court should exercise powers under second proviso to sub-section

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(1) of Section 479 of the BNSS and deny the benefit of the first proviso.

Hence, the appeal is allowed. The appellant is ordered to enlarged on bail in terms of the first proviso of sub- Section 1 of Section 479 of the BNSS. For that purpose, we direct that the appellant shall be produced before the Special Court within a maximum period of one week from today. The Special Court shall enlarge the appellant on bail on appropriate terms and conditions till the disposal of the case. One of the conditions shall be that the appellant will remain present before the Courts hearing the case of the scheduled offence as well as the offence under the PMLA and 149 4 shall cooperate with the Courts for early disposal of the case."

61. In ***Partha Chatterjee v. Directorate of Enforcement, [2024] 12 S.C.R. 627*** again the Supreme Court observed as under:

"*17. We, however, cannot be oblivious to the settled principles that a suspect cannot be held in custody indefinitely and that* ***undertrial incarceration should not amount to punitive detention****. The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial."*

The Court fixed a specific time schedule for recording of statements of the prosecution witnesses and thereafter, directions were given for release of the accused on bail, subject to furnishing the bail bond.

62. In ***Leena Paulose v Directorate of Enforcement, (supra)*** a ld. Single Judge of this Court considered various decisions including the above stated decisions in a PMLA case and granted bail in a case where the accused had undergone four years and six months in custody and maximum prescribed

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period of sentence was seven years by applying Section 479 of BNSS. The relevant portion of the said decision is extracted herein below:-

> "*25. As far as the interpretation of the section is concerned, I am of the view that a holistic interpretation, informed both by the statutory objective and constitutional context, must be favoured. As noted by the Supreme Court, in Satinder Kumar Antil and V. Senthil Balaji [in the context of Section 436-A CrPC], the statute provides a safeguard against prolonged incarceration pending trial. While an exception can be made under the first proviso to Section 436-A CrPC [now the second proviso to Section 479(1) of the BNSS], that exception must be sparingly invoked to further the constitutional guarantee of liberty. In BNSS, a further provision was made, which entitles a first-time offender to the benefit of Section 479(1), upon completion of a lesser proportion of the maximum sentence [1/3rd]. It would, in my view, be inconsistent in this approach to hold that Section 479(2) entirely eclipses Section 479(1), even if the accused is facing trial in more than one offence in the same FIR, or more than one criminal case. Instead, a harmonious reading of the various provisions contained in Section 479 of the BNSS requires the Court to take into account multiplicity of offences or pending proceedings as a significant factor, but does not altogether deprive the Court of its discretion to grant bail once the accused has crossed the custody threshold of Section 479(1) of the BNSS.*
>
> *26. Adopting this approach, in the present case, the petitioner has already undergone custody for more than four years and six months against a maximum prescribed sentence of seven years, i.e., approximately two-thirds of the maximum sentence. This period of incarceration is significantly beyond the threshold contemplated under Section 479 of the BNSS. The case is still at the stage of framing of charges, and given the*

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number of witnesses [311] and the volume of documents, it is unlikely that the trial will conclude in the near future. In fact, it is not implausible that the petitioner will even serve the maximum period of imprisonment, before the trial is concluded. Further, although the petitioner is involved in three other cases, except the predicate offence, she is on bail in all of them. In view of these factors, and upon a holistic consideration of Section 479 of the BNSS, the petitioner, in my view, is entitled to the benefit of the said provision.

27. Once it is held that the petitioner is entitled to the benefit of the statute, an exception can be made under the second proviso, but that power is to be exercised sparingly, as held by the Supreme Court in Satinder Kumar Antil. I have not been shown any compelling reason to apply that exception in the present case."

63. Similarly, in ***Kapil Wadhawan v. Central Bureau of Investigation, 2025 SCC OnLine SC 3038***, the Supreme Court has observed as under:

"20. This brings us to the argument of Learned Additional Solicitor General, who drew our attention to Section 479 of BNSS (formerly Section 436-A of CrPC). He has contended that Section 479 of BNSS have to be interpreted in a manner wherein delay in investigation and trial does not inure to the benefit of the accused in granting bail if the accused is charged with grave charges having punishment of life imprisonment or death penalty. He further contends that the present accused have been foisted with grave charges, which involves possibility of life imprisonment, thereby disentitling the Appellants herein from seeking bail as per Section 479 of BNSS.

21. Above argument needs further elaboration, in this regard. Section 479 of BNSS has come into force to de-clog the prisons in India, which is generally plagued by

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the issue of over-crowding. If the Section is applied in a manner which the Additional Solicitor General has suggested, then the purpose of the provision will be rendered otiose. ***It is trite law that any provision involving liberty have to be construed as per the touchstone of personal liberty of a citizen, who cannot be put behind bars for a long time without following the procedure established by law.*** *The Article 21 enshrines the liberty of a citizen and mischief if any ought to be avoided having paramount consideration over the statutory provision.* ***The interpretation provided by the Additional Solicitor General would mean that once an accused is charged with charges having punishment of life imprisonment or death penalty, then such accused cannot be granted bail in all cases, in spite of the fact that he has completed substantial period of incarceration as under-trial.***

22. ***This interpretation has to be refuted as being restrictive and anti -liberty****. There is no gainsaying that the provision is to be read in addition to the provisions relating to the grant of bail under Section 481, 480 of BNSS etc.* ***This Section essentially carves out additional ground for an accused seeking bail, who is incarcerated for substantial period of time as undertrial. Those who have served one-half of the maximum sentence or one-third if he/she is a first-time offender, can apply to the Court for bail under this provision.*** *This provision also mandates a positive obligation on the Superintendent of Jail to seek bail, on behalf of the under-trial, if they satisfy condition under subsection (1) of 479 of BNSS. Such provision cannot be interpreted to suggest that it's a mandate under law to not release under-trail prisoners unless they complete one-half or one-third of sentence as the case may be. Such interpretation would create havoc in the jails and create great burden on the prison system in India.*

23. Therefore, from the above discussion, it is clear that the accused, having been charged with offences having

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> *maximum punishment of life imprisonment, cannot claim benefit under Section 479 of BNSS, however on the other hand it cannot be construed as a positive mandate to keep them incarcerated till the completion of trial.* ***Hence, granting them, bail has to be tested on the well devised standards of granting bail as provided under the Code, coupled with personal liberty of the citizens."***

64. The Supreme Court in the above case rejected the submission that once an accused is charged with an offence that attracts life imprisonment or death penalty, such person cannot be granted bail, on the ground of prolonged period of incarceration. The Supreme Court thus made it clear that even in cases of life imprisonment or death penalty, the pleas of bail can be considered on the established standards under CrPC.

65. Section 43D(5) of the UAPA is similar to provisions under other Special Laws such as Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter '*NDPS Act*'). In ***Satender Kumar Antil v. CBI (Supra)*** the Supreme Court had considered provisions of the NDPS Act *qua* bail, and it was held that Section 436-A of the Cr.P.C. would apply even in case of Special Laws. Relevant paragraph of ***Satender Kumar Antil v. CBI (Supra)*** is extracted below:

> ***"86.*** *Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also.* ***To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision.*** *For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with*

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> *the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."*

66. Section 37 of the NDPS Act prescribes similar conditions for bail as are contained in Section 43D(5) of the UAPA. The same would be the position under Section 45 of the PMLA which prescribes stringent conditions for bail. In fact, the test under Section 43D(5) of UAPA is whether the accusations are '*prima facie true'*. Under NDPS and PMLA, the test is whether the person is *'not guilty and that he is not likely to commit any offence while on bail'*. The Supreme Court having held that even in case of Special Laws such as NDPS and PMLA, Section 436-A of Cr.P.C. would be applicable, there is no reason as to why the same should not be applied in a case under Section 43D(5) of the UAPA.

67. Thus, in the opinion of the Court even where allegations against an accused are found to be *prima facie* true and the bar for granting bail under Section 43D(5) of UAPA is applicable, the said accused would still be entitled to seek benefit of Section 479 of BNSS / 436-A of CrPC subject to fulfilling the requirements prescribed under the said sections.

68. The further stand of the NIA is that the bar under Section 479(2) of the BNSS would apply in both these cases in view of the fact that the enquiry or trial qua both the Appellants, is in respect of more than one offence and in case of Appellant no.1, there are multiple cases against the said Appellant. Thus, as per the NIA, both Appellants cannot be released on bail. The validity

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of this argument deserves to be considered as both Appellants are charged with multiple offences in these appeals. In fact, the case of Appellant-1, there is more than one FIR against him.

69. The legal issue as to how these provisions are to be applied in cases involving more than one offence or more than one FIR/case was considered in some decisions. In the case of ***K. Ramakrishna v. Assistant Director, Directorate of Enforcement (supra)***, a ld. Single Judge of Karnataka High Court considered the legal position under Section 479 of BNSS in case of multiple offences and has observed as under:

> *"10. Having heard the learned counsel for the petitioner and the learned CGSC for the respondent, this Court taken note of the material on record earlier while rejecting the two petitions and this is the third successive petition. The main ground urged before this Court is that the petitioner is entitled for bail under Section 479(1) of BNSS, since he is in custody from last two years seven months and also relied upon the judgments referred supra. The Court has to take note of the fact that case is filed against the petitioner under Section 3 of PML Act and punishable under Section 4 of PML Act and also Court has to take note of Section 45 of PML Act. The said provision casts bar on granting bail to an accused from offence under PML Act, unless he complies with the requirement thereunder, notwithstanding anything contained in the Code of Criminal Procedure which is not replaced by BNSS.* ***It is important to note that Section 479 of BNSS makes it clear that the benefit of first proviso to Section 479 is subject to Section 479(2) of BNSS and the Court has to take note of the third proviso, thereof, wherein investigation, inquiry or trial in more than one offence are in multiple cases are pending against a person, he shall not be released on bail by the Court.*** *It is important to note that the second proviso to Section*

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479(1) of BNSS empowers the Court to order the continued detention of a person for a period longer than one-half of the period. ***All the provisions have to be read conjointly, including Sections 479(1) and 479(2).*** *The Trial Court also taken note of the said fact into consideration since there are more than one offence against the petitioner and IPC offences are invoked and separate case is also invoked by invoking PML offence.*

11. It is important to note that the Court has to take note of the fact that the petitioner is the founder of the said Bank and the allegation against him is that Rs. 1,544 Crores are misused by creating bogus and fake deposits. Particularly taken note of out of that Rs. 882.85 Crores has been sanctioned only to 24 major beneficiaries and specific allegation is made that this petitioner is the architect of the fraud and this fact has been considered by this Court twice and the Apex Court also dismissed SLP (Crl.) No. 8032/2022 vide order dated 16.09.2022. It is important to note that other case is registered against him in Crime No. 69/2020 for the offences punishable under Sections 406, 420, 409, 120B read with 34 of IPC and Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishment Act. ***When the offences are different as well as when more number of cases are registered against the petitioner, he cannot invoke the proviso under Section 479 of BNSS seeking the relief on the ground of one third punishment even if it is considered, maximum punishment he has already underwent and the said proviso is not applicable to the facts of the case on hand, since the Court has to take note of the gravity of the offence and multiple cases against the petitioner and more than Rs. 1,544 Crores fraud has been committed that too this petitioner being a founder Chairman of the said bank****."*

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70. Reliance is also placed upon the judgment in ***Muninder Singh v. Union Territory of J&K (Supra)*** where the ld. Single Judge of the High Court of J&K and Ladakh held that if the inquiry or trial is in respect of more than one offences, under which the offence and charges is, Section 479 would not apply. The relevant paragraph is extracted as under:

> *"14. Heard learned counsel for the sides and also gone through the relevant provisions of law on the subject.*
> *15. The main contention advanced by the learned counsel for the petitioners is that the petitioners are entitled to be admitted to bail having undergone 1/3rd of the punishment provided for the offences in terms of Section 479 of BNSS. The other grounds, which have been urged by the learned counsel for the petitioners, such as, antecedents of the petitioners being an auto rickshaw driver and a policeman, the health condition of the petitioner-Rajinder Singh, examination of just four witnesses during the trial out of 29 prosecution witnesses cited in the charge-sheet.*
> *16. Both the petitioners have been charged of the commission of offences punishable under Sections 370, 363-A and 120-B IPC. The relevant parts of these Sections are extracted and reproduced as follows:*
>
> > *"370. Trafficking of person.—*
> > *(1) to (3) xxxxxxxxxxxxxx*
> > *(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.*
> > *(5) to (7) xxxxxxxxxxxx"*
> > *"363-A. Kidnapping or maiming a minor*

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for purposes of begging.—

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) to (4) xxxxxxxxxxxxx"

"120-B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) xxxxxxxxx."

17. It will be profitable to reproduce Section 479 of BNSS as under:

—

"479. Maximum period for which under-trial prisoner can be detained.- (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be

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released by the Court on bail:
Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:
Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said
offence under that law.
Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.
(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.
(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one third of the period

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mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under subsection (1) for the release of such person on bail."

18. Section 479 of BNSS, 2023 provides for maximum period for which under-trial prisoner can be detained. It provides that in case any person, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period exceeding upto one third of the maximum period of imprisonment specified for such offence under that law, being first time offender, is entitled to be released by the court on bail. Even if it is accepted that the petitioners are first time offenders, however, they have been charged of more than one offences punishable under Sections 370, 363 -A and 120-B IPC.

19. The offence with regard to trafficking of a minor person is punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine under Section 370 IPC. The offence under Section 363-A with regard to the kidnapping is, however, punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The offence under Section 120-B with regard to criminal conspiracy shall be punishable in the same manner as the main offence. Petitioners have been charged under Sections 370 and 120-B IPC, the imprisonment provided for the aforesaid offences is not to be less than ten years, but which may extend

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to imprisonment for life.

20. The provisions of Section 479 of BNSS is not applicable to those offences, which are punishable with imprisonment of life or death as contained in sub section (1) of Section 479 BNSS and also to all those cases wherein accused has been facing charge in the trial for more than one offence in terms of sub-section (2) of this Section, which provides, where an investigation, inquiry or trial in more than one offence or in multiple cases pending against a person, he shall not be released on bail by the Court, therefore, on both the grounds, the plea with regard to release the petitioners having undergone 1/3rd of the punishment is misconceived and is liable to be rejected. The star submission made by learned counsel on behalf of the petitioners is, thus, misconceived and is not maintainable.

21. The other grounds with regard to the difficulties faced by the petitioners, either on health or in view of their jobs, are not such, which may be taken into account for grant of bail at this stage of the trial. The contention made on behalf of the petitioners that just four witnesses have been examined out of 29 prosecution witnesses during the period of trial, but this ground also seems to be shaky in view of the fact that the delay is mainly attributable to the absence, absconding or seeking adjournments on behalf of the defence, as such, this ground is not available to the petitioners. The petitioners in view of their health conditions or due to some social obligations were granted short/interim bail by the trial court on earlier occasions and they can again approach the trial court for those reliefs in case such exigency occurs.

22. For the aforesaid reasons and observations made hereinabove, no case is made out for

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indulgence of this Court to grant bail in favour of the petitioners. Before parting with this order, it is impressed upon the trial Court to expedite the trial of the accused, having regard to their right of speedy trial."

71. NIA also relies upon paragraph 324 in ***Vijay Madanlal Choudhary (supra)***, where the Supreme Court observed as under:-

> ***"324.*** *Section 436-A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436-A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the court, unlike the default bail under Section 167 of the 1973 Code.* ***Under Section 436-A of the 1973 Code, however, the court is required to consider the relief on case-to-case basis****. As the proviso therein itself recognises that, in a given case, the detention can be continued by the court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial."*

72. In ***Leena Paulose v Directorate of Enforcement (Supra)*** a ld. Single Judge of this Court observed as under:

> ***"25.*** *As far as the interpretation of the section is concerned, I am of the view that a holistic interpretation, informed both by the statutory objective and constitutional context, must be favoured. As noted by the Supreme Court, in Satinder Kumar Antil and V. Senthil Balaji [in the context of Section 436-A CrPC],*

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> *the statute provides a safeguard against prolonged incarceration pending trial. While an exception can be made under the first proviso to Section 436-A CrPC [now the second proviso to Section 479(1) of the BNSS], that exception must be sparingly invoked to further the constitutional guarantee of liberty. In BNSS, a further provision was made, which entitles a first-time offender to the benefit of Section 479(1), upon completion of a lesser proportion of the maximum sentence [1/3rd]. It would, in my view, be inconsistent in this approach to hold that Section 479(2) entirely eclipses Section 479(1), even if the accused is facing trial in more than one offence in the same FIR, or more than one criminal case.* ***Instead, a harmonious reading of the various provisions contained in Section 479 of the BNSS requires the Court to take into account multiplicity of offences or pending proceedings as a significant factor, but does not altogether deprive the Court of its discretion to grant bail once the accused has crossed the custody threshold of Section 479(1) of the BNSS.***

73. The ld. Single Judge in the above decision proceeded on a harmonious interpretation of Section 479 and held that multiplicity of offences/FIRs would be a *significant factor* while considering the custody threshold but the same cannot be held to be a bar against the grant of bail – which would be purely in the discretion of the Court.

74. The decisions discussed above in the context of multiple offences and multiple FIRs/multiple cases show that there is a difference of opinion between different High Courts. The ld. Single Judge of the Karnataka High Court has held that if the offences are different or if there are more number of cases registered against the accused, Section 479 of the BNSS cannot be invoked. A similar view has also been taken in ***Muninder Singh @ Sonu v. UT of J&K (Supra)*** as the Karnataka High Court. However, a ld. Single Judge

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of this Court in ***Leena Paulose v Directorate of Enforcement (supra)*** has observed that a harmonious reading of the provisions would be required even in cases where the accused are charged with multiple offences or multiple cases.

75. Section 479 of BNSS, like Section 436-A of the CrPC is a beneficial provision. In fact, Section 479 of the BNSS is more liberal then Section 436-A of the CrPC and the purpose of the BNSS itself has set out in the preamble is for relaxing the provisions for bail for undertrials. The spirit of Section 479 has been captured in the BNSS as under:

> *"84. In Section 479 provision for bail to undertrials prisoners has been relaxed and liberalized. A sympathetic view has been taken towards first-time offenders, who are now eligible to be released on bond by the Court if they have undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for that offence. The provision has also entrusted the jail superintendent to make an application for bail to the Court where an under trial completes one-half or one-third of the maximum period. The release of an undertrial prisoner who is involved in more than one offence or in multiple cases is made stringent under the provision. Further, the sentence of the imprisonment or death has been excluded from the purview of this provision."*

76. It is usual for FIRs/chargesheet and charges to be framed against accused under more than one provision. An interpretation that when an accused is charged with more than one offence or is involved in multiple cases, the benefit of 479 of the BNSS cannot be given, would go against the basic spirit of the Act itself. As held in ***Vijay Madanlal Choudhary (supra)***,

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the Court cannot be deprived of the discretion to consider the grant of relief on a case to case basis. The discretion has to be left with the Court and there cannot be a mandatory bar. The provision has to be read as a whole and harmoniously in line with the other provisions and the purpose behind the provision and the circumstances would have to be considered on case to case basis. Thus, we confirm the view taken by the ld. Single Judge of this Court in ***Leena Paulose v Directorate of Enforcement (Supra).***

77. The respondent, NIA has then raised an issue with regards to computation of the period of sentence for the purposes of calculating maximum sentence under Section 479 of the BNSS and Section 436-A of the Cr.P.C. bearing in mind the sections under which the Appellants have been charged. The NIA's submission is that the sentences, at this stage, should be considered as having to run *consecutively*, as opposed to *concurrently*, in the absence of an express mandate within Section 25 of the BNSS.

78. Therefore, the Court will now deal with the question whether the sentences are to be considered as consecutive or concurrent in the present cases.

Whether running of Sentences to be Consecutive or Concurrent for the purposes of calculation of maximum period of imprisonment??

79. Section 2(o) of UAPA defines unlawful activity and reads as under:

> "*2. Definitions. -*
>
> *(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—*"

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80. Section 120B of the Indian Penal Code, 1860 deals with punishment for criminal conspiracy and reads as under:

> ***"120B. Punishment of criminal conspiracy.—***
>
> *(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*
>
> *(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]"*

Thus, the maximum punishment for criminal conspiracy under Section 120B IPC would be six months.

81. Section 13 of UAPA deals with unlawful activities and punishment thereof, which reads as under:

> "***13. Punishment for unlawful activities.—*** *(1) Whoever—*
> *(a) takes part in or commits, or*
> *(b) advocates, abets, advises or incites the commission of, any unlawful activity,* ***shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine****.*
> *(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with*

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both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

As can be seen from the above provisions, the maximum punishment for unlawful activities under Section 13 of UAPA is seven years along with fine.

82. Insofar as Sections 38 & 39 of UAPA are concerned, the provisions relating to sentencing read as under:

"38. Offence relating to membership of a terrorist organisation.—*(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:*

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the 1 [First Schedule] as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with ***imprisonment for a term not exceeding ten years, or with fine, or with both.***

39. Offence relating to support given to a terrorist organisation.—*(1) A person commits the offence relating*

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to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—
(i) invites support for the terrorist organization; and
(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40;or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—
(i) to support the terrorist organization; or
(ii) to further the activity of the terrorist organization; or
(iii) to bead dressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under subsection (1) ***shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.****"*

In terms of the above provisions, the maximum punishment under Section 38 and Section 39, is ten years, and the expression used for sentencing for maximum punishment is '***shall be punishable with imprisonment for terms not extending ten years or with fine or with both'***. Thus, depending upon the nature of the involvement of the accused, the Trial Court has the discretion to award –

(i) Maximum imprisonment of ten years;

(ii) Only fine;

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(iii) Imprisonment of any period up to ten years and fine.

83. Under Section 31 of the Cr.P.C. the Court awarding the sentences has been vested with the discretion to order the sentences to run consecutively as also concurrently. If consecutive sentences are awarded, then Section 31(2) stipulates further conditions as to the manner in which the said consecutive sentences are to be awarded. The equivalent provision under the BNSS is Section 25 where the language has been modified. Section 31 of the Cr.P.C. and Section 25 of the BNSS are extracted herein below:-

"Section 31 of Cr.P.C.

31. Sentence in cases of conviction of several offences at one trial.-

(1) When a person is convicted at one trial of two or more offences, the Court may subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which ***such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.***

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided that –

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is

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competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

X X X

Section 25 of the BNSS

25. Sentence in cases of conviction of several offences at one trial.-

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 9 of the Bharatiya Nyaya Sanhita, 2023, sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict ***and the Court shall, considering the gravity of offences, order such punishments to run concurrently or consecutively.***

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than twenty years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

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84. In the opinion of this Court, for consideration of bail, the question as to whether sentences are likely to be awarded consecutively or concurrently need not been gone into and the maximum sentence under any of the offences charged can be considered. However, since the issue has been raised by NIA, it is being discussed below.

85. In ***Mohd. Akhtar Hussain (Supra)***, the Supreme Court was considering a case involving a Pakistani national from whom 7,000 tolas of gold was seized and he was arrested. He had pleaded guilty and he was convicted under Section 85(1)(ii) of the Gold (Control) Act, 1968. He was awarded sentence of seven years with fine of Rs.50 lakhs. The Bombay High Court had upheld the sentence but had reduced the fine to Rs.5 lakhs. The SLP was dismissed. While he was in custody, he was charged in another FIR where the allegations against him were that he had imported a substantial amount of gold worth Rs.11.5 crores and also smuggled the same out of India in 1981-82. He again pleaded guilty to the charge, and he was convicted and sentenced for four years rigorous imprisonment with fine of Rs.2 lakhs and upon non-payment of fine, further rigorous imprisonment for six months. The Trial Court directed that these sentences would be undergone after expiration of the first sentence. The Magistrate had specifically reasoned as to why he had not directed concurrent running of the sentences under both the FIRs. The case of the accused was that the sentences should be made concurrent, but the State had argued that the maximum sentence should be awarded. The High Court had enhanced the sentences from four years to seven years. Thus, the total period of sentence was fourteen years imprisonment together in both the cases. The Supreme Court then considered Section 427 of Cr.P.C. and observed as under:

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> *"10. The basic rule of thumb over the years has been the **so-called single transaction rule for concurrent sentences**. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."*

86. The Supreme Court upheld the order of the High Court directing four years of rigorous imprisonment in the second case and that both the sentences would run consecutively. Increased sentence of seven years as imposed by the High Court was set aside by the Supreme Court.

87. In ***O.M. Cherian (Supra)***, the Supreme Court was considering a case where the accused had been convicted under Section 498A and Section 306 of IPC. The sentence awarded was as under:

Section 498A of IPC	Two years rigorous imprisonment with fine of Rs.5,000/-, in default of payment of fine, further imprisonment of one year.
Section 306 A of IPC	Seven years rigorous imprisonment with fine of Rs.50,000/- and in default of payment of fine, further imprisonment of three years.

Both the sentences of the Appellant were ordered to run consecutively. Certain further sentences were also awarded against the co-accused. Before the Supreme Court, the only question on which notice was issued in the SLP was as to whether sentences ought to run concurrently instead of running consecutively. The matter had been referred to a larger bench on the ground that in ***Mohd. Akhtar Hussain (Supra)***, Section 31 had not been considered.

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The Supreme Court observed in ***O.M. Cherian (supra)*** as under:

> *"10. Section 31 CrPC relates to the quantum of punishment which may be legally passed when there is (a) one trial, and (b) the accused is convicted of "two or more offences". Section 31 CrPC says that subject to the provisions of Section 71 IPC, the court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in provisos (a) and (b) of sub-section (2) of Section 31 CrPC. In Section 31(1) CrPC, since the word "may" is used, in our considered view, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the a provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in provisos (a) and (b) of sub-section (2) of Section 31 CrPC, that is; (i) it should not exceed 14 years; and (ii) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.*
>
> *11. The words "unless the court directs that such punishments shall run concurrently" occurring in sub-section (1) of Section 31, make it clear that b Section 31 CrPC vests a discretion in the court to direct that the punishment shall run concurrently when the accused is convicted at one trial for two or more offences. It is manifest from Section 31 CrPC that the court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 CrPC authorises the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.*"

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88. As observed above, the Court has the discretion to direct that the sentences would run consecutively or concurrently. Thereafter, the Court clarified that in ***Mohd. Akhtar Hussain (supra)*** and ***Manoj Alias Panu v. State of Haryana, (2014) 2 SCC 153*** the Court had considered the cases where the imposition of sentences was for two more offences arising out of single transaction. In that context the Court directed that the sentences would run concurrently. Finally, the Supreme Court observed as under:

> *"20.* ***Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences.*** *It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused.* ***Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case.*** *The discretion has to be exercised along the judicial lines and not mechanically.*
>
> *21. Accordingly,* ***we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent****. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also*

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do not find any a conflict in the earlier judgment in Mohd. Akhtar Hussain and Section 31 CrPC."

89. As can be seen from the above, the Supreme Court held that there is no normal rule that the sentences ought to run consecutively and the exception is that sentences to run concurrently. Further, the Supreme Court held that there was no conflict in the earlier judgment of ***Mohd. Akhtar Hussain (supra)*** insofar as interpretation of Section 31 is concerned.

90. In ***Manoj Alias Panu (supra)***, the accused was convicted under Section 307 of IPC and Sections 25 & 27 of the Arms Act. The sentences awarded were as under:

Under Section 307 IPC	*Rigorous imprisonment for a period of ten years and to pay a fine of Rs.5000. In default of payment of fine, to further undergo rigorous imprisonment for a period of six months.*
Under Section 25 of the Arms Act	*Rigorous imprisonment for a period of three years and to pay a fine of Rs.2000. In default of payment of fine, to further undergo rigorous imprisonment for a period of two months.*
Under Section 27 of the Arms Act	*Rigorous imprisonment for a period of three years and to pay a fine of Rs.2000. In default of payment of fine, to further undergo rigorous imprisonment for a period of two months.*

The sentences were ordered to run consecutively in terms of Section 31 CrPC."

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91. The Sessions Court had observed that the crime was of shooting in the Court premises and the same was heinous. Thus, it had, directed that the sentences imposed would run consecutively and not concurrently. Before the Supreme Court, the age of the accused was relied upon to argue that the offences being under single transaction, the sentences should have run concurrently. The Supreme Court observed as under:

> *"14. We have heard the learned counsel for both the parties. The ground on which the appellant was awarded the sentence which was to run consecutively was due to the previous criminal record of the appellant for a similar type of offence of shooting in the court premises, which charge was proved as per Ext. P-1. This is the basis on which the trial court took the extenuating circumstances into consideration to impose punishment for offences committed by the appellant, sentencing him to different periods for each one of the offences committed by him. The sentences were ordered to run consecutively, and the same was upheld by the High Court in exercise of its appellate jurisdiction. In view of the aforesaid legal position laid down by this Court regarding concurrent and consecutive sentences, the sentences imposed upon the appellant for different offences to run consecutively under IPC and the Arms Act, is erroneous in law, as the same is contrary to law laid down by this Court as per the cases referred to supra upon which reliance has been rightly placed by the learned Senior Counsel on behalf of the appellant.*
> *15. Further, having regard to the age of the appellant at the time of committing the offences, we feel it would not be just and proper to allow the sentences to run consecutively.* ***As the offences committed by the appellant have been committed under a single transaction, it is well-settled position of law that the sentences must run concurrently and not consecutively****.*

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> *16. Hence, the appellant is entitled to the relief as prayed for in this case and the sentences are modified to run concurrently and not consecutively and for this reason, we hold that the sentence must be reduced to 10 years in total a with regard to the aforesaid settled position of law, as also keeping in view the tender age of the appellant on the date of the offence.*"

92. In terms of the above judgment, the Supreme Court followed the decision laid down in ***Mohd. Akhtar Hussain (supra)***, and ***State of Punjab v. Madan Lal (2009) 5 SCC 238*** and observed that the direction for the sentences to run consecutively is an erroneous one and held that they would run concurrently, considering that the offences related to a single transaction.

93. In ***Muthuramalingam and Ors. v. State (supra)***, again while considering the interpretation of Section 31, the Supreme Court observed as under:

> *"**23.** Parliament, it manifests from the provisions of Section 427(2) CrPC, was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. The provisions of Section 427(2) CrPC apart, in Ranjit Singh case, this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to Section 31 CrPC also no matter Section 31 does not in terms make a provision analogous to Section 427(2) of the Code. The provision must, in our opinion, be so interpreted as to prevent any anomaly or irrationality. So interpreted*

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Section 31(1) CrPC must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently. We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other.

xxx

28. *While we have no doubt about the correctness of the proposition that two life sentences cannot be directed to run consecutively, we do not think that the reason for saying so lies in the proviso to Section 31(2). Section 31(2) CrPC deals with situations where the court awarding consecutive sentences is not competent to award the aggregate of the punishment for the several offences for which the prisoner is being sentenced upon conviction. A careful reading of sub-section (2) would show that the same is concerned only with situations where the courts awarding the sentence and directing the same to run consecutively is not competent to award the aggregate of the punishment upon conviction for a single offence. The proviso further stipulates that in cases falling under sub-section (2), the sentence shall in no case go beyond 14 years and the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to award. Now in cases tried by the Sessions Court, there is no limitation as to the court's power to award any punishment sanctioned by law including the capital punishment. Sub-section (2) will, therefore, have no application to a case tried by the Sessions Court nor*

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would sub-section (2) step in to forbid a direction for consecutive running of sentences awardable by the Court of Session."

94. Recently, the Supreme Court in ***S.S. Production & Anr., v. Tr. Pavithran Prasanth, 2024 SCC OnLine SC 4935,*** also considered the above discussed judgments and observed as under:

"14. However, before parting, the Court would clarify that though there are separate judgments and orders of the Trial Court, in each case, six months' simple imprisonment and direction to pay the cheque amount as the compensation has been awarded; the orders being of the same date between the same parties and in connection with the same transaction of the same nature, albeit in different tranches, the sentences of imprisonment awarded shall run concurrently....."

95. Thus, the question whether sentence is to be awarded consecutively or concurrently depends on whether the offences arise out of the same transaction or not as also whether the incidents are connected or inter-related.

96. The above decisions would further show that the clear legal position that emerges is that the Court has to first examine as to whether the charges or conviction arise from the same transaction. Secondly, under Section 31 of Cr.P.C. as held in ***O.M. Cherian (supra)*** there is no normal rule to award consecutive sentences, and the Court has the discretion to order concurrent sentences in case of conviction for two or more offences.

97. An important distinction is required to be highlighted between the language in Section 31 of Cr.P.C. and Section 25 of BNSS respectively. The change in the language would show that under Section 31, earlier concurrent running of sentences was prefixed with the expression *'unless the Court directs'*. However, under the BNSS, the only question that the Court has to

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consider is the gravity of offence while directing the sentences to run concurrently or consecutively. There is, thus, greater discretion under Section 25 of the BNSS. One of the statements of objects and reasons of the BNSS is as under:

> *"2. Fast and efficient justice system is an essential component of good governance. However, delay in delivery of justice due to complex legal procedures, large pendency of cases in the Courts, low conviction rates, low level of uses of technology in legal system, delays in investigation system, complex procedures, inadequate use of forensics are the biggest hurdles in speedy delivery of justice, which impacts poor man adversely. In order to address these issues a citizens centric criminal procedures are need of hour."*

98. Thus, the BNSS's stated purpose is to make the criminal procedure more citizen-centric. The legal test, therefore, would be to see whether the charges and the offences under which the accused has been charged, arise out of the same transaction or not.

99. In ***O.M. Cherian (supra)***, the sentence was awarded in a case which involved the death of the wife of the accused. It was one single transaction. In ***Mohd. Akhtar Hussain (supra)***, there were two separate FIRs and separate charges. In such a case, the Supreme Court held that the sentences would run concurrently but if it is a single transaction, the Supreme Court held that the concurrent running of sentences would be the basic rule of thumb. In ***Manoj Alias Panu (supra)***, again the conviction was in respect of one incident involving the incident of shooting of the deceased. The Supreme Court awarded concurrent sentencing.. In ***S.S. Production (supra)***, again the Supreme Court observed that the orders for the goods were of the same date,

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and they were in connection with the same transaction i.e. borrowing a total sum of approximately Rs.41,28,000/-. Two separate promissory notes were executed and in spite thereof, the Supreme Court directed concurrent running of the sentences.

100. In the present case, however, this issue is not to be gone into at this stage, inasmuch as depending on the facts and the final judgment that may be passed by the Trial Court, as held in ***O. M. Cherian (supra)***, the Trial Court has full discretion to award concurrent sentence.

101. A perusal of the above decisions along with the provisions i.e. Section 436-A of Cr.P.C. and Section 479 of BNSS would show that, the following factors would be relevant for grant of bail under Section 436-A of Cr.P.C./479 of BNSS:

(i) Whether the offence arises out of a single transaction;

(ii) Whether the offence arises out of different FIRs and whether incidents/transactions are not connected with each other;

(iii) The gravity of the offence;

(iv) Whether in all likelihood of pronouncement of sentence, if awarded, would the same be to run consecutively or currently;

(v) Whether the discretion is likely to be exercised in favour of the concurrent running of sentences;

(vi) Whether the sentence awarded is life imprisonment or not or capital punishment;

102. In the present appeals, at this stage, this Court is merely considering the manner in which the sentences under Section 120B of the IPC and Sections 13, 38 & 39 of the UAPA are to be interpreted to calculate the maximum

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period of imprisonment that may be awarded for the said offences.

103. All the incidents, which have been narrated against the Appellants are part of one FIR. There may be a series of events relied upon by the NIA supporting its case under Section 120B of the IPC and Sections 38 & 39 of the UAPA against the Appellants. However, they cannot be said to be different incidents. There are various acts committed by the Appellants, which the NIA seeks to overall rely upon to establish the offences under Sections 38 & 39 of the UAPA. Thus, the time span from 2015 onwards till 2020-21 when they were arrested have formed part of the same chain of events, which show repeated support to ISIS and repeated attempts to join the ISIS. As held in ***Manoj Alias Panu (supra)***, even when there was more than one offence *i.e.*, under Section 307 of IPC as also Sections 25 & 27 of the Arms Act, the Court considered the same to be one incident.

104. In the judgements relied upon by the Appellant(s) in ***S.S. Production (supra)***, where there were separate promissory notes, the total sum was considered to be one incident. In ***O.M. Cherian (supra)***, there were two FIRs and the Supreme Court held that the normal rule is not to order that the sentences would be consecutive. Similarly, in ***Mohd. Akhtar Hussain (supra)***, the single transaction rule for award of concurrent sentence was upheld.

105. Going by the settled precedents, even if the Appellants are convicted under Section 120B of the IPC and Sections 13, 38 & 39 of the UAPA, the maximum sentence is most likely to be not more than ten years to run concurrently. This observation is being made by this Court only for the purpose of considering the present bail applications and not in order to pre-judge the Trial Court's judgement after trial.

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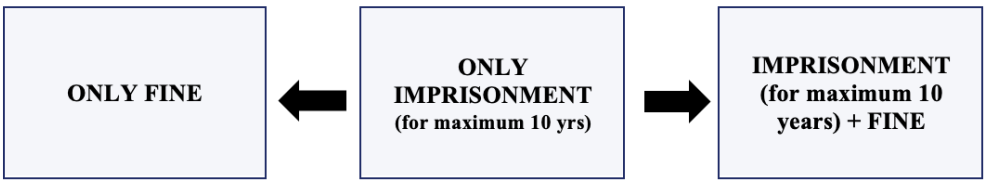
106. Both under Sections 38 & 39 of UAPA, membership of a terrorist organization or support to terrorist organization is even punishable merely with fine as a whole depending on facts. Thus, the spectrum of sentencing under Sections 38 & 39 begins with mere fine on the one hand and goes on to be a maximum of ten years with fine on the other hand.

Spectrum of Sentencing
u/s 38/39 UAPA



107. Sections 38 and 39 of the UAPA stipulate a maximum punishment of 10 years from which the intent of the legislature is clearly to not allow for incarceration longer than such a period. The legislature has therefore by way of beneficial provisions such as Section 479 of the BNSS and Section 436-A of the Cr.P.C. placed safeguards in place to ensure that liberty under Article 21 is not undermined when incarceration period during the trial exceeds the imprisonment directed under the offences charged.

108. In ***Gulfisha Fatima vs. State (supra)*** it was observed as follows-

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

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considerations. What is required is disciplined judicial scrutiny that gives due regard to both.”

109. Thus, while considering the prayer for bail, which also impinges upon liberty of the accused under Article 21 of the Constitution of India, this Court has to exercise its discretion at this stage after taking into consideration the overall facts.

110. For the purposes of considering grant of bail to the Appellants under Section 120B of the IPC and Sections 13, 38 & 39 of the UAPA, the maximum sentence is considered as a concurrent sentence under these provisions *i.e.,* 10 years.

C) IF THE BENEFIT UNDER SECTION 479 OF BNSS AND SECTION 436-A OF THE CR.P.C. IS AVAILABLE TO THE APPELLANTS THEN, ON FACTS, ARE THEY ENTITLED TO BE RELEASED BAIL?

111. Section 120B of IPC stipulates a maximum punishment of 6 months and Sections 38 and 39 of the UAPA stipulate a maximum punishment of 10 years. The intent of the Legislature is thus clearly to not allow for incarceration longer than such a period. The Legislature has therefore by way of beneficial provisions such as Section 479 of the BNSS and the Section 436-A of the Cr.P.C. placed safeguards in place to ensure that liberty under Article 21 is not undermined when incarceration period during the trial exceeds the imprisonment directed under the offences charged.

112. In the case of Appellant-2, she was arrested on 3rd January 2022, and she has already undergone more than four years and ten months in incarceration. She is a first-time offender in terms of Section 479 of the BNSS, and therefore she is entitled to benefit under the first proviso to Section 479

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of the BNSS as she has undergone more than one third of the maximum period of imprisonment, under Section 120B of the IPC and Sections 13, 38 & 39 of the UAPA. Accordingly, this Court holds that she is entitled to the benefit under Section 479 of the BNSS.

113. However, in the case of Appellant-1, he was arrested on 14th August 2021 as on date he has already undergone more than five years in custody. The NIA is correct in arguing that he was not a first-time offender and, therefore, he can only be extended protection under Section 479(1) i.e., he can be given benefit only if he has undergone detention for more than half of the said period. Since the period of detention in case of Appellant-1 is more than five years and maximum sentence under Section 120B of the IPC and Sections 13 of UAPA is seven years and under Sections 38 & 39 of UAPA it is ten years, this Court holds that he is also entitled to the benefit under Section 479 of the BNSS.

114. In Appellant-1's case, an additional aspect needs to be considered, as there are two more cases against him. The question is whether the Appellant-1 is to be deprived of the benefit of the statute in view of Section 479(2) of the BNSS. The said sub-section makes an exception in the case of individuals, who are subjected to investigation, inquiry or trial, in more than one offence or in multiple pending cases.

115. It was submitted by the ld. SPP that Section 479(2) opens with a non-obstante clause and the bar expressed therein is a prohibition on the court and not a factor for its consideration. The ld. SPP had then relied on the decision of the Karnataka High Court in ***K Ramakrishna v. Directorate of Enforcement (Supra)*** which favoured a conjoint reading and held that Section 479(2) of the BNSS would also apply to a case of a `first offender'.

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The High Court of Jammu and Kashmir & Ladakh in ***Muninder Singh @ Sonu v. UT of J&K (Supra)*** came to a similar conclusion with regard to a "first time offender", if the charge was under more than one offence. In ***Panna Lal Mahto @ Ganjhu v. Union of India (Supra)*** the Jharkhand High Court distinguished ***Badshah Majid Malik (Supra),*** on the ground that the accused therein was facing prosecution in several predicate and scheduled offence cases.

116. It was submitted that the Appellant-1 was accused in two other cases as enumerated above. In one case, he has been acquitted and in the second case, a bail application as per the submission of the ld. Counsel of Appellant-1 is pending before the ld. Court.

117. The ld. SPP had quite fairly placed on record a contrary view of a Coordinate Bench in ***Leena Paulose v. Directorate of Enforcement (Supra)*** where the Court had preferred a harmonious reading of Section 479(1) and Section 479(2) of the BNSS and held that multiplicity of offences is "*a significant factor*" but does not altogether displace the Court's discretion.

118. It was submitted by the ld. SPP that this view does not assist the Appellant-1 herein as it requires the Court to weigh in multiplicity as a significant factor and then exercise discretion.

119. Ld. Counsel for the Appellant on the other hand submitted that the Appellant-1 would be finishing five years in custody and since he has only been charged under Sections 38 and 39 of the UAPA in terms of Section 436-A of the Cr.P.C., one half of the maximum period of imprisonment has already been undergone by the Appellant-1, he is entitled to bail under Section 436-A.

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120. Further, it was submitted that if the scheme of Section 479 of the BNSS is applied then there is one case which is pending against the Appellant-1 i.e., ***FIR 30/2020*** at PS Aragam, Bandipora, J&K. However, the application of Section 436-A of Cr.P.C., which does not set out a bar such as the one contained in Section 479(2) of the BNSS, the prayer for bail cannot be stifled by applying Section 479 of the BNSS against the Appellant.

121. Adopting the harmonious construction approach, in the present case, the Appellant-1 has already undergone custody for around five years against a maximum sentence prescribed sentence of ten years i.e. approximately half of the maximum sentence. This period of incarceration is within the threshold of Section 479(1).

122. Further, the Appellant-1 been acquitted in ***FIR No.74/2020*** and has sought bail in ***FIR No.30/2020.***

123. In view of these factors, a holistic interpretation of the Section 479 of BNSS entitles the Appellant-1 to the benefit of the said provision to further the guarantee of liberty under Article 21 of the Constitution of India against incarceration exceeding the prescribed limits of sentencing and the consequent safeguards.

124. Another aspect that deserves consideration is the letter of the Ministry of Home Affairs ***No.17013/20/2024-PR*** dated 16th October 2024 which had relied upon the order of Supreme Court dated 23rd August 2024 in ***In Re-Human Conditions in 1382 Prisons (Supra)***. Therein it was observed as under –

> *"3. Today, Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that pursuant to the aforesaid order, instructions have been obtained from the Department to the effect that the aforesaid provision*

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under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01st July, 2024, the date when the newly minted legislation has come into effect.

4. In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition."

125. The Supreme Court *vide* an order dated 22nd October 2024 in ***In Re-Human Conditions in 1382 Prisons (Supra)*** had further observed as under:

"13. An undertrial, who is entitled to be released, under Section 479 of the BNSS deserves effective consideration under the beneficial provision of the law. An incarcerated person must be thinking constantly of the day when he can be out of the jail walls."

126. Upon a reading of the said orders of the Supreme Court it becomes clear that Section 479 of the BNSS is a beneficial provision of law and therefore needs to be applied to those incarcerated prior to 1st July 2024.

127. In view of the above considerations, the Appellant-1 is entitled to bail by grant of benefit as per Section 479 of the BNSS upon a holistic consideration of the said section. He is also entitled to bail squarely even if Section 436-A is applied *qua* Appellant-1.

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CONCLUSION

128. The conclusions on various legal and factual issues raised by the parties are as under:

a) The allegations against Appellants are *prima facie* true in terms of Section 43D(5) of the UAPA.

b) The Trial Court in this case is likely to conclude within the next six to eight months and, therefore, the argument or prolonged incarceration would not be applicable.

c) Section 436-A and Section 479 of the BNSS would be applicable even in case of a Special Act such as UAPA.

d) The bar under Section 479(2) of the BNSS in case of multiple offences or multiple cases has to be construed harmoniously on a case to case basis and the said bar cannot be held to be a mandatory bar, if the Court is satisfied that it is a case for bail considering the period of detention undergone in the overall facts and circumstances, if the threshold under Section 479(1) of the BNSS has been met.

e) The question as to whether a sentence has to be run concurrently or consecutively would depend on whether the incident falls within one transaction. On this issue only a *prima facie* view needs to be taken at the stage of considering bail.

129. In the present FIR, there were a total of eleven accused. The status of each of them is set out below:

Name of accused with No.	***Under Sections charges framed***	***Status of Bail***	***Date of Order***
Mohammed Ameen Kathodi @ Abu Yahya,	*Died*	*Nil*	*Nil*

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A-1			
Mus'Hab Anwar @ Ibnanwar, ***A-2***	*Section 120-B IPC read with 2(o) read with Section 13 and Sections 38 & 39 of UAPA*	*Default bail*	*24th February, 2023*
Rahees Rasheed @ Sachu, ***A-3***	*Section 120-B IPC read with Section 2(o) read with Section 13 and Sections 38 & 39 of UAPA*	*Default bail*	*24th February, 2023*
Shifa Haris, ***A-7***	*Section 120-B IPC read with Section 2(o) read with Section 13 and Sections 38 & 39 of UAPA*	*Regular bail*	*01st June, 2026*
Obaid Hamid Mtta, ***A-8***	*Section 2(o) read with Section 13 of UAPA*	*Regular bail*	*05th December, 2022*
Shankar Madesh, ***A-9***	*Section 120-B IPC read with Section 2(o) read with Section 13 and Sections 38 & 39 of UAPA*	*Regular bail*	*1st June, 2026*
Ammar Abdul Rahiman, A-10	*Section 120-B IPC read with Section 2(o) read with Section 13 and Sections 38 & 39 of UAPA*	*Regular bail*	*06th May, 2023*
Muzamil Hassan Bhat, ***A-11***	*Discharged*		

Apart from the above, A-6 has also been granted bail on 26th September 2026. Thus, the majority of the persons under this FIR, have already been granted

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bail.

130. In the present case the period of incarceration has exceeded the threshold of maximum period for which an undertrial prisoner can be detained in terms of Section 436-A of Cr.P.C. for the Appellant-1 and Section 479 of the BNSS for both the Appellant(s) - therefore it is held that both the Appellants are entitled to bail.

131. Accordingly, the Appellant(s), **Mohd. Waqar Lone** and **Deepthi Marla @ Maryam**, are granted bail in RC/05/2021/NIA/DLI, Police Station NIA, New Delhi, in SC No. 3/2021, titled "*NIA v. Mohammed Ammen Kathodi @ Abu Yahya & Ors.*" and considering the role that has been attributed to them, the same shall be subject to the following conditions:

(i) The Appellant(s) shall furnish personal bond/surety bond in the following terms –

- the Appellant-1 for a sum of Rs.2 lakhs with two sureties each in the like amount to the satisfaction of the learned trial court/link court;
- Appellant-2 for a sum of Rs.5 lakhs with two sureties each in the like amount to the satisfaction of the learned trial court/court;

(ii) The Appellant(s) shall furnish their current residential addresses, contact numbers, mobile numbers, and e-mail addresses to the Investigating Officer as well as to the Trial Court. The Appellant(s) shall not change their place of residence or contact particulars without giving at least seven days' prior written intimation to the Investigating Officer and the Trial Court. The Appellant(s) shall ensure that their contact numbers shall be active at all times. The

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IO would be free to conduct surprise checks telephonically or physically to confirm the presence of the Appellant(s);

(iii) The Appellant(s) shall report to the SHO of the concerned area where they would be living, every Monday at 11 am and shall be released by noon after completion of formalities. The concerned SHO shall submit a written report in this regard, to the NIA in New Delhi every month.

(iv) The Appellant(s) shall not leave the decided territorial limits without prior permission of the Trial Court. Any request for travel shall disclose reasons and such prayer/request shall be considered by the Trial Court strictly on its merits.

(v) The Appellant(s) shall surrender their passports, if any, before the Trial Court. Where no passport exists, an affidavit to that effect shall be filed. The respondent shall intimate all the immigration authorities in the country not to permit their exit from the country in any manner whatsoever, without express permission from the Trial Court.

(vi) The Appellant(s) shall not directly or indirectly contact, influence, intimidate or attempt to contact any witness or any person connected with the proceedings, nor shall they associate with or participate in the activities of any group or organization linked to the subject matter of the present FIR/final report.

(vii) The Appellant(s) shall not make or publish or disseminate any information, statement, article or post whether in print, electronic or social media concerning the present case or its participants till conclusion of the trial.

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(viii) The Appellant(s) shall not participate in any programme or address or attend any gathering, rally or meeting, whether physically or virtually till conclusion of the trial.

(ix) The Appellant(s) shall not circulate any post either in electronic form or physical form or circulate any hand bills, posters, banners, etc in any form whatsoever, especially if they relate to ISIS or any other terrorist organisation.

(x) The Appellant(s) shall not indulge in any anti national activities or communicate with or post online in their own names or through any other identities, shall not support any terrorist organization including the ISIS.

(xi) The Appellant(s) shall fully cooperate with the trial and shall appear on every date of hearing unless exempted for reasons to be recorded by the Trial Court to its satisfaction and they shall not delay the proceedings. If any unnecessary adjournments are taken by the Appellants, the NIA is free to seek cancellation of bail;

(xii) The Appellant(s) shall maintain peace and good behaviour throughout and in the event of any offence committed during the pendency of the trial, the prosecution would be at liberty to seek for revocation of the bail granted by filing such application before the Trial Court and in the event of such application being filed the Trial Court shall consider it on its own merits.

132. In case of breach of any of the afore-stated conditions imposed or in the event of Appellant(s) having misused the liberty granted, it shall be open to the Trial Court to cancel the bail after affording an opportunity of hearing to the Appellant(s).

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133. The impugned orders rejecting the Appellant(s) respective bail applications are, accordingly, set aside. The appeals are allowed and disposed of in the above terms.

134. It is clarified that any observations made in the present judgment are solely for the purpose of deciding the present bail application, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.

135. A copy of this judgment be sent to the learned trial court as also to the concerned Jail Superintendent for information and necessary compliance.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

NOVEMBER 25, 2026/*dk*/*as*

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