Serial No. 48
Suppl Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CrlA(D) 116/2025

Reserved on: 13/11/2026.
Pronounced on: 18/11/2026.
Uploaded on: 18/11/2026.

Whether operative part or full judgment is pronounced: Full

Younis Mushtaq Bhat
S/o. Mushtaq Ahmad Bhat
R/o. Laribal Kakapora,
Pulwama
(Through his father) …Appellant

Through: Mr. Adil Pandit, Advocate

Vs.

Union Territory of Jammu and Kashmir through Police Station Kakapora, Pulwama ...Respondent

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

(Mohd Yousuf Wani-J)

1. Impugned in the instant appeal, having been filed in terms of the provisions of Section 21(3) of the National Investigation Agency Act, 2008 [hereinafter referred to as the "NIA Act" for short], is the order dated 17-11-2025 passed by the learned Special Court designated under the NIA Act [Court of Additional Sessions Judge, Pulwama and hereinafter referred to as the "Trial Court" for short], on the application of the appellant for grant of bail in his favour in case FIR No. 29/2022 under Sections 302 IPC, 7/25, 7/27 Arms Act

and Sections 16, 18, 20, 38 and 39 of the ULA(P) Act of Police Station Kakapora, Pulwama, while rejecting the same.

2. The impugned order has been assailed in this appeal on the grounds, *inter alia*, that the appellant is innocent and has been falsely and frivolously implicated in the case FIR. That the learned Trial Court has denied bail to the appellant without any justifiable reason by referring to the law, which does not hold good in the case alleged against him. That no evidence has been either collected during investigation of the case or even brought at the trial, so far, in support of the allegations against the appellant regarding his involvement in the commission of offences punishable under Sections 18 and 39 of the Unlawful Activities (Prevention) Act, 1967 ["ULA(P) Act" for short].

That the learned Trial Court has failed to appreciate the law laid down by the Hon'ble Supreme Court and some High Courts of the country, including this High Court, regarding the quality of the evidence needed for presuming the commission of offence of conspiracy as defined under Section 18 of the ULA(P) Act. That the learned Trial Court has committed a grave error and illegality by non-appreciation and underestimation of the fact to the effect that the bar created under the provisions of Section 43D of the ULA(P) Act is not attracted in the case of the appellant in the given facts and circumstances of the case. That the afore-referred bar created under the provisions of Section 43D(5) is applicable only in cases where

there appear reasonable grounds for believing that the accusation against the accused person is prima facie true.

That there was no material on record before the learned Trial Court to be convinced and satisfied that the commission of offences punishable under Sections 18 and 39 of the ULA(P) Act is prima facie made out against the appellant-accused. That there is not an iota of evidence on the record of the file to substantiate the allegation of hatching of conspiracy by the appellant, as no recovery of any kind came to be made from him or at his instance. That the learned Trial Court has been mainly influenced by the heinousness and seriousness of the offences alleged against the appellant without appreciating the fact that no reasonable ground appeared to be made out for presuming the commission of the said offences by the appellant. That the co-accused, namely, Tawheed Bashir Bhat, under similar allegations, was first discharged by the learned Trial Court in the offences under Sections 18 and 39 of the ULA[P] Act and subsequently enlarged on bail on 23-07-2024 in the offence under Section 13 of the ULA[P] Act, under which only he was charged.

That the appellant has been arrested in the case on 23-04-2022 and, as such, he has been facing detention in the case for about three years and eight months. That the material witnesses so far examined at the trial have not incriminated the appellant, when the unexamined witnesses happen to be formal witnesses who are attributed to have deposed nothing even in their 161 Cr.P.C statements recorded during investigation. That the impugned rejection order has been passed by

the learned Trial Court on mere surmises and conjectures while underestimating the legal principles governing the case. That there appear no reasonable grounds, in the light of the evidence collected during investigation and even adduced at the trial so far, for believing that the accusation against the appellant is prima facie true. That the continued detention of the accused in the case FIR tantamounts to his pre-trial conviction. That the continued incarceration of the appellant is also violative of his fundamental right to liberty guaranteed under Article 21 of the Constitution of India.

That the cardinal principle of criminal jurisprudence is that an accused is presumed to be innocent till proved guilty at the trial and the burden of proving his guilt lies on the prosecution. That the object of bail is mainly the securing of attendance of the accused at the trial, which can be taken care of by imposing reasonable conditions in respect of his release order. That the appellant, during his continued detention in the case, has developed multiple ailments in the jail, including cardiac problem, and there are not proper medical facilities available within the jail. That the appellant has not filed any other petition before the Hon'ble Supreme Court or even before this Court. That the appellant shall abide by any conditions that may be imposed by this Court.

3. We have heard the Learned counsel for the parties in respect of the matter.

4. We have perused the record of the instant appeal as also the scanned copy of the trial court record, especially the order impugned.

5. The case of the prosecution relevant for disposal of this appeal is that police station Kakapora Pulwama on 18-4-2022 received an information from reliable sources to the effect that some unknown terrorists have resorted to indiscriminate firing by their illegally obtained weapons at railway station Kakapora resulting into the on-spot death of Head Constable Surinder Singh and the sustaining of grievous injuries by other police personnel. That on the receipt of the said information, case FIR number 29 of 2022 dated 18-4-2022 came to be registered with the said police station with the initiation of the investigation proceedings by the PW 42. That during investigation, necessary site map came to be prepared with the seizure of four empty cartridges of pistol from the spot. That dead body of the deceased Head Constable Surinder Singh was taken to hospital Kakapora for fulfillment of the departmental formalities. When the SI-Dev Raj (injured) was referred to SMHS hospital for treatment. That the statements of the witnesses came to be recorded by the investigating officer.

That the injured SI-Dev Raj also succumbed to his injuries in the hospital on 23-4-2022. That during investigation, CCTV footage was obtained from the railway authorities which led to the identification of some suspects including the present appellant Younis Mushtaq alias Imtiaz S/o. Mushtaq Ahmad Bhat, R/o. Laribal Kakapora. That the appellant initially disowned his involvement in the case but when

he was confronted with the CCTV footage, he admitted his involvement in the case whereupon he was formally arrested. That the disclosure of the appellant was got recorded in presence of the Executive Magistrate. That the disclosure of the appellant led to the involvement of one-Mukhtar Ahmad Bhat, S/o. Mohd Maqbool Bhat R/o. Laribal, Kakapora also in the case, whose search was started. That the statement of PW 34 namely Irfan Ahmad Dar who happens to be the friend of accused Mukhtar Ahmad came to be recorded during investigation in terms of Section 164A CRPC before the Magistrate. That the site maps of some other places came to be prepared at the instance of the appellant accused. That the appellant during investigation also disclosed about the involvement of one more person namely Tawheed Bashir Bhat S/o. Bashir Ahmad Bhat R/o. Laribal, Kakapora in the case who was also brought for questioning purposes.

That the appellant/accused in his disclosure statement before the Executive Magistrate, inter alia, disclosed that on 18-4-2022, the accused Mukhtar Ahmad Bhat told him to meet him near the water tank at 5:20 p.m., whereupon he reached the fixed place in time, where the accused Mukhtar Ahmad Bhat was standing with his red-coloured Pulsar bike. That the number plate of the bike had been kept wrapped by the said Mukhtar Ahmad with a black tape, and he was wearing a yellow coloured upper, in the cap of which he had hidden his head. That he also provided him a similar yellow coloured

upper, which he wore on, and thereafter both of them proceeded towards the railway station Kakapora on the motorcycle.

That the accused Mukhtar Ahmad told him that he has to perform a terrorist activity at railway station Kakapora. That upon reaching the entry point of the railway station, the accused Mukhtar Ahmad directed him, that is, appellant Younis Mushtaq, to keep the motorcycle in running position ahead of entry point, and then he himself came down from the motorcycle, cocked the pistol and proceeded towards the railway station. That after a while the said Mukhtar Ahmad fired upon two Railway Police Force employees, who were having tea at a table, with intention to kill them, whereafter he came running towards him, i.e., the appellant, whereafter both of them boarded the motorcycle and proceeded towards Sangoo Narbal. That the accused Mukhtar Ahmad along the way told somebody that mission was successful. That the accused Mukhtar Ahmad thereafter dropped him, i.e., the appellant, when he himself went to some unknown place.

That the accused Tawheed Bashir also, during investigation, admitted his own involvement as well as the involvement of the accused Mukhtar Ahmad in the case. That during investigation, the search of Babar terrorist, whose name also surfaced in the process, was started, and it surfaced that, he is, in fact, a terrorist commander Reyaz Ahmad Dar @ Khalid @ Sheeraz @ Babar, R/o. Suthergund Kakapora, who had kept different code names to avoid his identification and arrest by the security forces. That during

investigation, the commission of the offences punishable under Section 18 and 39 ULA[P] Act were found established against the appellant and Tawheed Bashir, when against the accused Mukhtar Ahmad, the offences punishable under Sections 7/25, 7/27 Arms Act, 16, 18, 20, 38 ULA[P] Act were found established. That as against the accused Reyaz Ahmad Dar, the offences punishable under Sections 18, 20, 38 ULA[P] Act were found established.

That the investigation in the case was finally concluded in the form of challan/final report against four accused persons (1) Younis Mushtaq Bhat S/o. Mushtaq Ahmad Bhat R/o. Laribal Kakapora (appellant) (2) Tawheed Bashir Bhat S/o. Bashir Ahmad Bhat R/o. Laribal Kakapora (3) Mukhtar Maqbool Bhat S/o. Mohd Maqbool Bhat R/o. Laribal Kakapora and (4) Riyaz Ahmad Dar S/o. Aziz Ahmad Dar R/o. Sathergund Kakapora. That since the accused persons Mukhtar Maqbool Bhat and Riyaz Ahmad Dar were found to have joined terrorists and, as such, could not be arrested, therefore, prayer was made in the final report/challan regarding initiation of proceedings in terms of provisions of Section 299 of the Code against them, which was accordingly done by the ld. Trial Court upon presentation of the challan/final report pursuant to grant of sanction by the Govt. Home Department vide SO 507 dated: 12.10.2022.

6. The perusal of the scanned copy of the Trial Court record reveals that the appellant/accused came to be formally charged by the ld. Trial Court for the commission of the offences punishable under Sections

18 and 39 UAPA vide order dated 27.12.2022. As on the date of passing of the impugned bail order dated 17.11.2025, the prosecution had examined Seventeen (17) witnesses out of total list of 42 witnesses.

7. In the backdrop of the aforementioned perusal and the consideration of the rival arguments advanced on both the sides, we are of the opinion that the impugned order dated 17.11.2025 passed by the ld. Trial Court on the bail application of the appellant, while dismissing the same, does not suffer from any illegality due to any misappreciation of the facts and the law governing the case. The application of the appellant resulting in the passing of the impugned order appears to have been considered in accordance with the law, in the facts and circumstances of the case especially the evidence of the prosecution. As hereinbefore mentioned, Seventeen (17) witnesses have been examined by the prosecution at the trial out of the total list of Forty-Two (42) witnesses.

8. The appellant is facing trial on the charge under Sections 18 and 39 ULA(P) Act already framed against him vide order dated 27.12.2022 by the ld. Trial Court. The offences respectively fall under Chapters IV and VI of the ULA(P) Act and, thus, attract the bar in terms of provisions of Section 43D(5) of the ULA(P) Act.

9. The provisions of clause (5) of Section 43-D ULA (P) Act place an embargo on the grant of bail to an accused involved in the offence(s) falling under the Chapters IV and VI of ULA (P) Act when, the accusation against him appears to be ***prima facie true***. Such

restrictions imposed by the ULA (P) Act are an addition to the restrictions under the Code or any other law for the time being in force on granting bail.

10. It is apt to reproduce the provisions of clauses (5) and (6) of the Section 43D of ULA (P) Act for ready reference: -

> "43D. Modified application of certain provisions of the Code.
> (1)……..
> (2)…….
> (3)…….
> (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) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
> (7)……."

11. Thus, it is clear that an accused alleged to have committed the offences falling under the Chapters IV and VI of the ULA (P) Act, whether facing investigation or trial has to first come out of the embargo placed by the Section 43D (5) of the Act, whereafter his case for grant of bail can be considered under the provisions of Sections 437 & 439 of the "Code" respectively corresponding to the Sections 480 & 483 of "BNSS". If the court is of the opinion on the perusal of the Case Diary file or the record of the police

report/challan in case of pendency of the trial, that accusation against the accused appears to be *prima facie* true, bail cannot be granted. The inference regarding the **"*prima facie true***" or "otherwise" of the prosecution case during the investigation stage can be drawn from the perusal of the case diary and during trial from the record of the Police report/challan.

The words **"*prima facie true***" cannot be read and understood to mean "proved" as used in the Bharatiya Sakshya Adhiniyam, 2023. Such an interpretation would set at naught the power vested in a Court to grant bail pending trial. The expression "***prima facie true***" would obviously mean something more than mere suspicion/conjectures and something less than "proved". The inference regarding "***Prima facie true***" would vary from case to case and from one accused to another. What may be "***Prima facie true***" in one case may not be so in another and therefore, the said expression cannot on account of a discretion vested in the Court be put in a straightjacket. Each case would have to be dealt with and examined on its own facts and decided.

12. The consideration at the time of taking up a bail application for consideration, is different from the consideration to be adopted at the end of the trial for holding an accused, guilty or not guilty.

In considering an application for bail, the court is not required to conduct a preliminary trial of the case and consider the probabilities of the accused being found guilty or innocent.

The Courts while deciding the bail applications in respect of which the Code/BNSS or some Special Statute places embargo/limitations as in the instant case, will be traversing beyond their proper ambit and would be exceeding the limit of their functions, if they get engaged in discovering the guilt or innocence of the Applicant/accused, which can only be determined at the conclusion of the trial.

13. The restrictions on granting of bail specified sub section (5) of Section 43D ULA (P) Act are in addition to the restrictions under the Code or any other law for the time being in force for granting bail.

14. The offence under Section 18 ULA(P) Act also charged against the appellant carries a punishment of life imprisonment. The ld. Trial Court in its order dated 27.12.2022 regarding consideration of framing of charge has, inter alia, observed that there is sufficient material to charge the accused No. 1 namely Younis Mushtaq Bhat (appellant) for commission of offences under Sections 18 and 39 ULA(P) Act.

15. The contention of the learned counsel for the appellant made during arguments to the effect that no substantial evidence was collected during investigation of the case supporting the involvement of the appellant who, instead, has been robed in, in the case on the basis of surmises and conjectures, does not appear to be bearing any weight at this stage of the trial. He inter alia contended that appellant has been falsely and frivolously implicated in the case FIR on account of some extra-judicial confession attributed to have been made by him

which, even if supposed to be true for arguments sake, has no value in the eyes of law and cannot be accordingly relied upon for want of any subsequent recovery from him or at his instance or even for want of identification of a new fact.

16. The learned counsel for the appellant also contended during his arguments that the appellant has been facing detention in the case since his arrest in the case on 23.04.2022 and, as such, he has already spent more than four and a half years in jail when trial of the case is likely to take some more years to conclude as about 50% of the witnesses are yet to be examined at the trial. He submitted that the statutory restriction in terms of Section 43D(5) ULA(P) Act and the appellants fundamental right to his liberty needs to be harmonized/balanced. He submitted that it is well settled that when a constitutional court is approached upon violation of the Fundamental Right to Liberty of an accused due to his long incarceration without any immediate prospect of the conclusion of the trial, then the provisions regarding the statutory bar on his bail melt down.

17. The learned counsel for the appellant in support of his arguments placed reliance on the judgments of the Hon'ble Apex Court cited as:

    i. *Union of India vs. K A Najeeb (2021) 3 SCC 713*
    ii. *National Investigating Agency vs. Zahoor Ahmad Shah Watali (2019) 5 SCC 1.*
    iii. *Gurvinder Singh vs State of Punjab and Anr (2024) Livelaw (SC) 100*

18. He contended that in KA Najeeb's case (supra), the Hon'ble Supreme Court granted bail to an accused who was facing

prosecution for offences under Sections 16, 18, 18B, 19 and 20 of ULA(P) Act, when he had only spent Five (5) Years in jail.

19. The learned counsel for the appellant further contended during his arguments that the bar created in terms of provisions of Section 43D(5) of the ULA(P) Act operates only when there appear reasonable grounds for believing the accusation against the accused as "prima facie true". He submitted that the words "prima facie true" are to be distinguished from the words "reasonable grounds of Involvement" as the earlier phrase requires a higher degree of belief.

20. The learned counsel for the respondent-UT, however, during his arguments and while rebutting the contentions of the learned counsel for the appellant submitted that the case of the appellant attracts the bar in terms of provisions of Section 43D(5) of ULA(P) Act as the grounds of involvement of the appellant in the offences charged against him apparently look to be prima facie true in the light of the evidence collected by the investigating officer during the investigation of the case and as also adduced at the trial so far. He contended that it has come in the evidence in the case that the appellant was apprehended as a suspect on the basis of CCTV footage collected from the authorities of the Railway Police, Kakapora Station. That the appellant, who initially negated his involvement in the case, however, admitted the same upon being confronted with the CCTV footage of the occurrence.

21. The ld. Sr. AAG submitted that pursuant to his disclosure made before the Executive Magistrate, the Investigating Agency succeeded

in getting his disclosure corroborated through the evidence of PW's 5, 31 and 34. He submitted that PW 34 in his statement recorded during investigation before the Magistrate as well as made by him at the trial of the case supported the involvement of the present appellant as, according to the statement of the said PW 34, the appellant after commission of the occurrence revealed the fact to the said PW.

22. The Ld. Sr. AAG further contended that the appellant stands already charged in the case for the commission of the offences punishable under Sections 18 and 39 of the ULA(P) Act vide order dated 27.12.2022 of the ld. Trial Court which fact lends support to his prima facie involvement in the case. He further contended that the Investigating Agency has obtained the CCTV footage of the occurrence in a CD which has been seized in the case and is figuring against Item No. 20 in the enclosures to the final report/challan. That the prosecution will prove the contents of the CD at the trial of the case. The learned Senior AAG further contended that PW 38 Shri. Rajesh Kumar RPF 100566 stands listed as such in respect of the CCTV footage who has to depose at the trial.

23. Having regard to the evidence collected during investigation and as adduced at the trial so far, the Court is of the opinion that the bar in terms of provisions of Section 43D(5) of ULA(P) Act stands justifiably attracted in the case. In the light of the statements of the PWs 5, 31 and 34, the Court has reason to believe at this early stage

of the trail of the case that there are reasonable grounds for believing that the accusation against the appellant is prima facie true.

24. It is needful to mention that in view of Clause (6) of Section 43D of the ULA(P) Act, restrictions on granting of bail specified in sub-section 5 of that section are in addition to the restrictions under the Code or any other law for the time being in force on granting the bail. So, it is justified to say that had there been no bar imposed in terms of Section 43D(5) of the ULA(P) Act, the case is nevertheless meant to be considered by the ld. Trial Court as well as by this Court in the light of the guiding factors that are being laid down by the Hon'ble Apex Court in respect of the consideration of a bail application touching the non-bailable offences of heinous nature.

25. There is no single golden rule or any single litmus test for consideration of bail application even in respect or ordinary non-bailable offences. However, the following guidelines/governing principles, which are not exhaustive are to be kept in mind while considering a bail application.

i) The judicial discretion must be exercised with the utmost care and circumspection.
ii) That the Court must duly consider the nature and the circumstances of the case including:
    a) reasonable apprehension of the witnesses being tampered;
    b) investigation being hampered or
    c) the judicial process being impeded or subverted.
iii) The liberty of an individual must be balanced against the larger interests of the society and the State.
iv) The court must weigh in the judicial scales, pros and cons varying from case to case all along bearing in mind two paramount considerations viz:

i) grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the Rule;
ii) the court at this stage is not conducting a preliminary trial;
iii) the nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice;
iv) the facts and circumstances of the case play a predominant role.

26. The presumption of innocence of the accused till the proof of his guilt will not be affected even if bail is rejected and is for the prosecution to establish the guilt of an accused beyond any shadow of doubt.

27. It has been held in State of Rajasthan Jaipur vs. Balchand AIR 1977 SC 2447, that it is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with the court when considering the question of bail."

28. The learned Trial Court for the purpose of passing the impugned order was not required to conduct a mini trial and to scan and weigh the evidence as is being done at the conclusion of the trial. In the instant case he had to only see whether the involvement of the appellant appears to be **"Prima Facie True"** which aspect appears to have been rightly considered in the facto-legal scenario of the case.

29. We feel fortified in our opinion with the law laid down by the Hon'ble Supreme Court in case titled *"Jalaluddin Khan vs Union of India 2024 INSC 604 decided on 13th August, 2024"*.

While examining Section 43D(5) of the ULA(P) Act, the Hon'ble Apex Court considered its decisions in *"Shoma Kanti Sen vs. The State of Maharashtra", "Gurvinder Singh vs. State of Punjab", "National Investigation Agency vs Zahoor Ahmad Shah Watali", and "Thwaha Fasal vs Union of India",* and reiterated that a bail Court must consider whether the chargesheet and supporting material discloses requisite grounds for believing that the accusation is prima facie true. That the assessment does not require a mini trial or detailed examination of the merits and demerits of the evidence. That the prosecution material must be considered as a whole and ordinarily taken as presented but the statutory restriction cannot be invoked without material connecting the accused to the ingredients of the alleged offences.

30. It is felt profitable to reproduce the Paras 13, 14 and 15 of the judgment in Jalaluddin Khan vs Union of India (supra):

> "13. Learned ASG relied upon a decision of this Court in the case of Gurwinder Singh v. State of Punjab and Another[2]. This Court extensively considered its earlier decision in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali[3], which deals with interpretation of Section 43D(5). Paragraph 32 of the said decision reads thus:
>
> "32. In this regard, we need to look no further than Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1: (2019) 2 SCC (Cri) 383\] which has laid down elaborate guidelines on the approach that courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paras 23 to 24 and 26 to 27, the following 8-point propositions emerge and they are summarised as follows:

32.1. **Meaning of "prima facie true":**

> On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

32.2. **Degree of satisfaction at pre-charge-sheet, post charge-sheet and post-charges — compared:**

> "26. … once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 of CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case."

32.3. **Reasoning, necessary but no detailed evaluation of evidence:**

> "24. … 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 the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage."

32.4. **Record a finding on broad probabilities, not based on proof beyond doubt:**

> "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."

32.5. **Duration of the limitation under Section 43-D(5):**

> "26. … the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof."

32.6. **Material on record must be analysed as a "whole"; no piecemeal analysis**

> "27. … the totality of the material gathered by the investigating agency and presented along with the report and including the

case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance."

32.7. **Contents of documents to be presumed as true:**

"27. … The Court must look at the contents of the document and take such document into account as it is."

32.8. **Admissibility of documents relied upon by prosecution cannot be questioned:**

The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence…. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible." (emphasis added)

14. There is one more decision of this Court in the case of Thwaha Fasal v. Union of India[4], which again deals with the scope of Section 43D(5) of UAPA. After considering the decision in the case of Zahoor Ahmad Shah Watali[3], in fact, in paragraph 24, the case has been extensively reproduced.

Thereafter, in paragraph 26, this Court held thus:

"26. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI.

The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds.

However, the court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material

forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is." (emphasis added)

15. As held in the case of Thwaha Fasal[4], the Court has to examine the material forming part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are prima facie true. While doing so, the court must take the charge sheet as it is.

31. We have gone through the impugned order and do not find any fault therein in terms of law. The ld. Trial Court has justifiably distinguished the facts of the present case from the one that was before the Hon'ble Apex Court through "Union of India vs. K A Najeeb".

32. Admittedly, an accused person has got a fundamental right to speedy trial as guaranteed to him under Article 21 of the Constitution of India, but a balance needs to be struck in between the interests of the state including the society and that of an individual accused.

33. The offence under Section 18 of the ULA(P) Act also charged against the appellant carries a sentence upto the imprisonment for life. The appellant has been under detention in the case since last more than four and a half years so he is not supposed to have completed either one-half or even two-third of the maximum punishment even by invoking the provisions of Section 6 of the Bharatiya Nyaya Sanhita, 2023, to seek his entitlement for bail in

terms of provisions of Section 479 of the Bharatiya Nagarik Surkasha Sanhita, 2023.

34. For the foregoing discussion, there seems to be no merit in the instant appeal, which is accordingly dismissed.

35. However, it is needful to mention that the observations made in this order have been made for the limited purpose of the consideration of the instant appeal and nothing herein shall be construed as any pre-judging of or interference with the merits of the case which have to be decided at the conclusion of the trial.

36. The ld. Trial Court is, however, requested to expedite the trial in the main case.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
18.11.2026
Shahid Manzoor

Whether the judgment is speaking? Yes
Whether approved for reporting? Yes