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

% ***Judgment reserved on: 18.08.2025***
Judgment delivered on: 07.11.2025

\+ CRL. M.A. 9483/2025 in CRL.A. 299/2025 & CRL.A. 1045/2025

ABDUL RASHID SHEIKH .....Appellant

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Vikhyat Oberoi, Ms. Nishita Gupta, Mr. Shivam Prakash, Mr. Ravi Sharma, Ms. Punya Rekha Angara, Mr. Aman Akhtar, Ms. Vasundhara & Ms. Sana Singh, Ms. Vasundhara Raj Tyagi, Mr. Arjun Singh Mandla & Mr. Hashain Khawaja, Advs.

versus

NIA .....Respondent

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Akshai Malik, SPP, NIA, Mr. Khawar Saleem and Mr. Ayush Agarwal, Advs.
Mr. Ritesh Bahri, learned APP for State of NCT of Delhi (Prison Department)
Mr. B. B. Pathak, Addl. SP/NIA with Mr. Abhishek Kumar, Dy. SP, NIA.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

VIVEK CHAUDHARY, J

1. We have heard the learned counsel for the parties in CRL. M.A. 9483/2025 (for modification of Order passed in CRL.A. 299/2025) & CRL.A. 1045/2025.

2. I had the privilege of reading judgment proposed by my brother Judge. I humbly differ with the same for the reasons given herein.

3. The bare facts, at the cost of repetition, are, that, the appellant was arrested on 09.08.2019 in ***NIA Case no. 2/2018 titled- "NIA vs Hafiz Muhammad Saeed and Ors."***, arising out of an FIR dated 30.05.2017 under Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 ("UAPA") and Sections 120-B, 121, 121-A of the Indian Penal Code, 1860 ("IPC"), for his alleged involvement in terror funding network linked to various banned organizations in Jammu & Kashmir.

4. Appellant was elected as Member of Parliament and moved an application for *interim* bail for attending second part of fourth Parliamentary Session of 18th Lok Sabha, which was from 10.03.2025 till 04.04.2025. The said application was rejected by the learned Additional Sessions Judge on 10.03.2025; against which a Criminal Appeal No. 299/2025 was filed before this Court. During course of arguments in the said appeal, the learned counsel for the appellant prayed, that, to enable him to discharge and perform his duties and obligations as a Member of Parliament, he may be permitted Parliament sittings 'in custody' with appropriate conditions imposed. This Court, by its Order dated 25.03.2025, permitted appellant to attend 'in custody' the remaining ten days of the said session from 26.03.2025 to 04.04.2025, subject to the conditions imposed in the said Order, including condition that *'The expenses of the aforesaid travel and other arrangements shall be borne by the appellant'*. On 26.03.2025, appellant moved a Criminal Misc. Application No. 9483/2025 for modification of the said Order by removing the said condition of expenses upon him. Later, for the next session, i.e., fifth Parliamentary Session of 18th Lok Sabha, appellant filed another application before the learned Additional

Sessions Judge and *vide* Order dated 22.07.2025, granted permission to attend the said Parliamentary Session, running from 24.07.2025 to 04.08.2025, on the similar terms and conditions as earlier were imposed by the High Court, including that *'The expenses of the aforesaid travel and other arrangements shall be borne by the appellant/accused'*. Against the said Order dated 22.07.2025, Criminal Appeal No. 1045/2025 is filed by the appellant praying for an *interim bail* or permission to attend the Parliament session 'in custody' without imposition of any travel or other expenses upon him. Since one of the Judges of the earlier Division Bench is not available; hence, both the matters are nominated to this Bench and they both have been heard together.

5. Though, both the Parliament Sessions are over and thus at this stage there is no need either to modify the earlier Order dated 25.03.2025 or to pass any order in the Appeal, but, such applications may again be filed in the future by the appellant, hence, it necessary to understand the true legal import of Order dated 25.03.2025, which is now followed for the next Parliament Session by the learned Additional Sessions Judge.

6. Learned counsel for the appellant has argued for removal of condition of expenses imposed upon the appellant. He strongly relies upon the Order dated 25.03.2025 for permission to attend the Parliament Session, but submits that no expenses upon him for the said purposes can be imposed, and, in custodial parole it is for the State to bear any expenses. It is claimed that imposing such heavy expenses upon the appellant is an unreasonable condition, which restrains him from getting the benefits of the permission itself. Opposing the same, learned counsel for the respondents submits that the Division Bench earlier also found that the appellant has no right to attend

the Parliament, and, the earlier Bench exercised its discretion, on the 'conditions be imposed' request made by the appellant, permitting him to attend the Parliament 'in custody' at his expenses only for remaining ten days of the said session and permission was never granted for all future sessions of Parliament. Since the period of 18th session expired way back, the application for modification of Order dated 25.03.2025 has become infructuous for all practical purposes. The learned Additional Sessions Judge, while passing Order dated 22.07.2025, without referring to any law, has only followed the discretionary Order dated 25.03.2025 of this Court, and has extended the benefit, which was granted by this Court only for ten days, for the entire next session of parliament.

7. Coming to the legal position, right to contest election, to take oath as an elected member of any house and to sit and participate in the house proceedings are totally separate and distinguished rights, arising out of and covered by separate statutory provisions. The same cannot be intermingled. It cannot be said that, if a person in judicial custody is permitted to contest an election or after being successful in the same is permitted to take oath as a member of any house, he is also thus entitled to sit and participate in its regular sittings. These issues are duly considered by the courts repeatedly and settled finally. Suffice would be to refer to the leading judgments of the Supreme Court in ***Manoj Narula vs. Union of India (2014) 9 SCC 1*** *(Para 123)*, wherein, it held that an accused person is equally entitled to contest and be elected to the legislature as a person who is not facing any criminal accusation. The Supreme Court in case of ***Rajesh Ranjan vs. State of Bihar & Anr. (2000) 9 SCC 222***, recognized the constitutional entitlement of an elected representative to take oath as envisaged under Article 99 of the

Constitution. The Supreme Court facilitated attendance for oath-taking by directing the custodial production of the elected Member of Parliament, thereby according primacy to this constitutional right. The decision underscores that mere accusation or pendency of a criminal trial does not operate as a disqualification to an elected person's right to be sworn in and assume his seat as a Member of Parliament. Appellant had passed the above two stages and came before this Court with regard to his entitlement to regularly participate in Parliament sittings as an elected Member of Parliament. The said entitlement was considered by the Supreme Court way back in case of ***K. Ananda Nambiar and another vs. Chief Secretary to the Govt. of Madras and others AIR 1966 SC 657***. To fully understand the law settled by the Supreme Court liberty is taken to quote at length all the arguments made and findings given by the apex court. The same read:

> *"13. The position about the privileges of the Members of the House of Commons in regard to preventive detention is well settled. In this connection, Erskine May observes:"The privilege of freedom from arrest is limited to civil causes, and has not been allowed to interfere with the administration of criminal justice or emergency legislation."*
> *"In early times the distinction between 'civil' and 'criminal' was not clearly expressed. It was only to cases of treason, felony and breach (or surety) of the peace that privilege was explicitly held not to apply. Originally the classification may have been regarded as sufficiently comprehensive. But in the case of misdemeanours, in the growing list of statutory offences, and, particularly, in the case of preventive detention under emergency legislation in times of crisis, there was a debatable region about which neither House had until recently expressed a definite view.* ***The development of privilege has shown a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal cases, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the***

principle laid down by the Commons in a conference with the Lords in 1641 : Privilege of Parliament is granted in regard of the service of the Commonwealth and is not to be used to the danger of the Commonwealth."

14. The last statement of May is based on the report of the Committee of Privileges of the House of Commons which dealt with the case of the detention of Captain Ramsay under Regulation 18B of the Defence (General) Regulations, 1939. Cap. Ramsay who had been detained under the said Regulation, urged before the Committee of Privileges that by reason of the said detention, a breach of the privileges of the House had been committed. This plea was rejected by the Committee of Privileges. The Committee found that Regulation 18-B under which Cap. Ramsay had been detained, had been made under Section 1(2)(a) of the Emergency Powers (Defence) Act, 1939. It examined the question as to whether the arrest and detention of Cap. Ramsay were within the powers of the Regulation and in accordance with its provisions; and it was satisfied that they were within the powers of the Regulation and in accordance with its provisions. ***The Committee then examined several precedents on which Cap. Ramsay relied, and it found that whereas arrest in civil proceedings is a breach of privilege, arrest on a criminal charge for an indictable offence is not. The Committee then examined the basis of the privilege and the reason for the distinction between arrest in a civil suit and arrest on a criminal charge. It appeared to the Committee that the privilege of freedom from arrest originated at a time when English Law made free use of imprisonment in civil proceedings as a method of coercing debtors to pay their debts; and in Order to enable the Members of Parliament to discharge their functions effectively, it was thought necessary to grant them immunity from such arrest, because they were doing King's business and should not be hindered in carrying out their business by arrest at the suit of another subject of the King. Criminal acts, however, were offences against the King, and the privilege did not apply to arrest for such acts. In this connection, the Committee emphasised the fact that consideration of the general history of the privilege showed that the tendency had been a narrow its scope. The Committee recognised that there was a substantial difference between arrest and subsequent imprisonment on a criminal charge and detention without trial by executive***

Order under the Regulation or under analogous provisions in the past. It, however, observed that they have this in common that the purpose of both was the protection of the community as a whole, and in that sense, arrest in the course of civil proceedings, on principle, was wholly different from arrest on a criminal charge or arrest for the purpose of detention. It is on these grounds that the Committee came to the conclusion that the detention of Cap. Ramsay did not amount to any infringement of his privilege of freedom of speech.

15. A similar question had arisen in India in 1952. It appears that in the early hours of the morning of 27th May, 1952, Mr V.G. Deshpande, who was then a Member of Parliament, was arrested and detained under the Preventive Detention Act, 1950; the House was then in session; and a question was raised that the said arrest and detention of Mr Deshpande, when the House was in session, amounted to a breach of the privilege of the House. The question thus raised was referred to the Committee of Privileges for its report. On the 9thJuly, 1952, the report made by the said Committee was submitted to the House. ***The majority view of the Committee was that the arrest of Mr Deshpande under the Preventive Detention Act did not constitute a breach of the privilege of the House. In coming to this conclusion, the majority view rested itself primarily on the decision of the Committee of Privileges of the House of Commons in the case of Cap. Ramsay. It is thus plain that the validity of the arrest of the petitioners in the present proceedings cannot be effectively challenged by taking recourse to any of the provisions of Article 105. That is why Mr Setalvad naturally did not and could not press his case under the said Article.***

16. What then is the true legal character of the rights on which Mr Setalvad has founded his argument? They are not rights which can be properly described as constitutional rights of the Members of Parliament at all. The Articles on which Mr Setalvad has rested his case clearly bring out this position. Article 79 deals with the constitution of Parliament and it has nothing to do with the individual rights of the Members of Parliament after they are elected. Articles 85 and 86 confer on the President the power to issue summons for the ensuing session of Parliament and to address either House of Parliament or both Houses as therein specified. ***These Articles cannot be construed to confer any right as***

such on individual Members or impose any obligation on them. It is not as if a Member of Parliament is bound to attend the session, or is under an obligation to be present in the House when the President addresses it. The context in which these Articles appear shows that the subject-matter of these articles is not the individual rights of the Members of Parliament, but they refer to the right of the President to issue a summon for the ensuing session of Parliament or to address the House or Houses.

17. Then as to Article 100(1); what it provides is the manner in which questions will be determined; and it is not easy to see how the provision that all questions shall be determined by a majority of votes of Members present and voting, can give rise to a constitutional right as such. The freedom of speech on which Mr Setalvad lays considerable emphasis by reference to Article 105(1) and (2), is a part of the privileges of the Members of the House. It is no doubt a privilege of very great importance and significance, because the basis of democratic form of Government is that Members of legislatures must be given absolute freedom of expression when matters brought before the legislatures are debated. ***Undoubtedly, the Members of Parliament have the privilege of freedom of speech, but that is only when they attend the session of the House and deliver their speech within the chamber itself. It will be recalled that in Cap. Ramsay case, what had been urged before the Committee of Privileges was that the detention of Cap. Ramsay had caused a breach of privilege of his freedom of speech, and this plea was rejected by the Committee. We are, therefore, satisfied that on a close examination of the articles on which Mr Setalvad has relied, the whole basis of his argument breaks down, because the rights which he calls constitutional rights are rights accruing to the Members of Parliament after they are elected, but they are not constitutional rights in the strict sense, and quite clearly, they are not fundamental rights at all. It may be that sometimes in discussing the significance or importance of the right of freedom of speech guaranteed by Article 105 (1) and (2), it may have been described as a fundamental right; but the totality of rights on which Mr Setalvad relies cannot claim the status of fundamental rights at all, and the freedom of speech on which so much reliance is placed is a part of the privileges falling under Article 105, and a plea that a breach has been committed of any of these privileges cannot, of course, be raised in view***

of the decision of the Committee of Privileges of the House of Commons to which we have just referred. Besides, the freedom of speech to which Article 105(1) and (2) refer, would be available to a Member of Parliament when he attends the session of the Parliament. If the Order of detention validly prevents him from attending a session of Parliament, no occasion arises for the exercise of the right of freedom of speech and no complaint can be made that the said right has been invalidly invaded.

18. There is another aspect of this problem to which we would like to refer at this stage. Mr. Setalvad has urged that a Member of Parliament is entitled to exercise all his constitutional rights as such Member, unless he is disqualified and for the relevant disqualifications, he has referred to the provisions of Article 102 of the Constitution and Section 7 of the Representation of the People Act. Let us take a case falling under Section 7(b) of this Act. It will be recalled that Section 7(b) provides that if a person is convicted of any offence and sentenced to imprisonment for not less than two years, he would be disqualified for membership, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release. If a person is convicted of an offence and sentenced to less than two years, clearly such conviction and sentence would not entail disqualification. Can it be said that, a person who has been convicted of an offence and sentenced to suffer imprisonment for less than two years, is entitled to claim that notwithstanding the said Order of conviction and sentence, he should be permitted to exercise his right as a legislator, because his conviction and sentence do not involve disqualification? ***It is true that the conviction of a person at the end of a trial is different from the detention of a person without a trial; but so far as their impact on the alleged constitutional rights of the Member of Parliament is concerned, there can be no distinction. If a person who is convicted and sentenced, has necessarily to forgo his right of participating in the business of the Legislature to which he belongs, because he is convicted and sentenced, it would follow that a person who is detained must likewise forgo his right to participate in the business of the Legislature. Therefore, the argument that so long as the Member of Parliament has not incurred any disqualification, he is entitled to exercise his rights as such Member, cannot be accepted.***

> *19. Besides, if the right on which the whole argument is based is not a fundamental right, it would be difficult to see how the validity of the Rule can be challenged on the ground that it permits an Order of detention in respect of a Member of Parliament and as a result of the said Order the Member of Parliament cannot participate in the business of Parliament. It appears that a similar question had arisen before the Madras and the Calcutta High Courts, and the decisions of these High Courts are in accord with the view which we are inclined to take in the present proceedings. In Pillalamarri Venkateswarlu v. The District Magistrate, Guntur and Another, it was held by a Division Bench of the Madras High Court that a Member of the State Legislature cannot have immunity from arrest in the case of, a preventive detention Order. Similarly, in the case of K. Ananda Nambiar, it was held by the Madras High Court that once a Member of a Legislative Assembly is arrested and lawfully detained, though without actual trial, under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings of the House.* ***The true constitutional position, therefore, is that so far as a valid Order of detention is concerned, a Member of Parliament can claim no special status higher than that of an ordinary citizen and is as much liable to be arrested and detained under it as any other citizen."*** *(emphasis added)*

8. The said judgment holds good till date. It has been widely followed by the High Courts across the country including by a Division Bench of this Court in ***Suresh Kalmadi vs. Union of India and others 2011 SCC OnLine DEL 3639***. Relevant paragraph 29 of the same reads:

> *"29. Thus, the hub of the matter is whether this Court, in exercise of the power under Article 226 of the Constitution of India, should grant permission to the appellant to attend the parliamentary session. The appellant has been involved in offences by which loss to the Government to the tune of Rs.95 Crores is alleged to have been caused. His detention is in respect of the offences which are quite grave in nature. He has not been admitted to bail because of the nature of the offences. He does not have a right under the Constitution to claim that inspite of being in custody, he has to be allowed to*

attend the Parliament. ***In the case of K. Ananda Nambiar v. Chief Secretary to the Government of Madras & Ors., AIR 1966 SC 657, it has been clearly held that if the Order of detention is validly passed and this prevents a member from attending a session of the Parliament, no occasion arises for exercise of the right to freedom of speech and no complaint can be made that the said right has been invalidly invaded. We must fairly state that Mr. Desai has not really founded his case on the basis of any constitutional or statutory right but on the basis of the conception that the participation becomes imperative as a constitutional obligation is cast regard being had to the spectrum of parliamentary democracy which is one of the basic features of the Constitution of India. As has been stated earlier, in the case at hand, the arrest and incarceration is valid in law and the appellant has not been enlarged on bail. True it is, in the case of K. Ananda Nambiar (supra), the Apex Court was dealing with preventive detention but the present case relates to arrest and custody. When the appellant's custody is valid and the allegations are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him the permission to attend the parliamentary session solely on the foundation that he has the freedom of speech inside the Parliament or on the foundation that he enjoys exclusive privilege in the Parliament as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation. In our considered opinion, though the submission as regards the constitutional obligation has been extremely adroitly edificed, yet the same has to founder inasmuch as grant of permission in the present case to attend the parliamentary session would be an anathema to the exercise of power under judicial review that is inherent under Article 226 of the Constitution of India."*** *(emphasis added)*

9. The above judgments conclusively settle that the appellant has no right, duty, entitlement or privilege, as it may be called, to attend the parliament proceedings while in lawful custody.

10. The next issue is the entitlement of appellant to custody parole. The Delhi Prison Rules, 2018 provides for custody parole, which reads:

> *"1203. "Custody Parole" may be granted to the convict by an Order in writing, issued by the Superintendent Prison and to the under trial prisoners by the trial court concerned, for a period of not more than six hours, excluding the time taken to reach the destination and return to Prison, in the following eventualities:*
> *i. Death of a family member;*
> *ii. Marriage of a family member;*
> *iii. Serious illness of a family member or*
> *iv. Any other emergency circumstances with the approval of DIG (Range) of prisons.*
> *Note: The prisoners who have been convicted by the trial court may avail custody parole from prison authorities though their appeals are pending before the higher courts.*
> *1204. The Superintendent of Jail will verify the existence of the circumstances mentioned in Rule 1203 above from the concerned police station immediately on receipt of the application/request to that effect.*
> *1205. The custody parole may be granted to visit any place outside NCT of Delhi but within the territorial limits of India, subject to reasonable logistic and security constraints by Inspector General of Prisons. The cost of transportation of the Prisoner and the Police shall be borne by Prisoner; however, Inspector General of Prisons may waive the cost of transportation of the Prisoners, who cannot afford the same in exceptional circumstances.*
> *1206. The prisoner would be escorted to the place of visit until his return there from, ensuring the safe custody of the prisoner. Such prisoner would be deemed to be in prison for the said period which would also be treated as period spent in prison."*

11. The same are also noted by the Supreme Court in paragraph 12 in ***Asfaq vs. State of Rajasthan and others (2017) 15 SCC 55***, which reads:

> *"12. Many State Governments have formulated guidelines on parole in Order to bring out objectivity in the decision making and to decide as to whether parole needs to be granted in a particular case or not. Such a decision in those cases is taken in accordance with the guidelines framed. Guidelines of some of the States stipulate two kinds of paroles, namely, custody parole or regular parole. "Custody parole" is generally granted in emergent circumstances like:*
> *(i) death of a family member;*
> *(ii) marriage of a family member;*
> *(iii) serious illness of a family member;*
> *(iv) or any other emergent circumstances."*

12. From the above provision it is clear that a custodial parole can be granted to a convict only on account of death, marriage or serious illness in the family or to him or for any other similar emergent situation. There is no such emergent circumstance placed before us by the appellant for grant of custody parole. Sole circumstance placed is 'to attend Parliament sittings in regular course', which cannot be termed as an emergent situation comparable to death, marriage or serious illness in the family or to the applicant. Once it is already settled in law that a Parliamentarian does not have any entitlement to attend the Parliament while he is in judicial custody, to grant him custody parole for the same reason, would be indirectly doing what is barred by law.

13. At this juncture, it is apposite to refer to the considered view of the Supreme Court in case of ***Union of India vs. Tarsem Singh AIR 2025 SC 1460,*** *wherein it held*:

> *"22. On the contrary, modifying or clarifying the judgment in Tarsem Singh (supra) would lend itself to violating the*

> *doctrine of immutability, undermining the finality of the decision. In fact, what the Applicant seeks to achieve, indirectly, is to evade responsibility and further delay the resolution of a settled issue where the directions given are unequivocal—**Quando aliquid prohibetur ex directo, prohibetur et per obliquum i.e. 'what cannot be done directly should also not be done indirectly'. This Court has, on several occasions, disapproved of the practice of filing Miscellaneous Applications as a strategic litigation tactic aimed at neutralising judicial decisions and seeking a second opportunity for relief."** (emphasis added)*

14. Now, in the light of the above settled legal position, when we peruse the Order dated 25.03.2025 of the Division Bench, more particularly paragraph 23.5 of the same, it appears that the Division Bench was persuaded by the 'in custody' permission granted to the appellant for two days (11.02.2025 and 13.02.2025) by the learned Single Judge by his Order dated 10.02.2025. However, it appears that paragraph 37 of the said Order of learned Single Judge escaped notice of the Division Bench, which state:

> *"37. It is clarified that the present Order shall not be construed as a precedent as the same is being passed in the peculiar facts of this case. Any prayer for further custody parole will be considered by the concerned designate court on merits, in accordance with law."*

15. Looking into the law settled on issue and a reading of paragraph 17 and paragraph 23.5 of Order dated 25.03.2025 it appears that the Division Bench also intended to grant permission to attend the Parliament 'in custody' on a similar lines as the learned Single Judge did, for the remaining ten days of the said Parliament session. Now, since the term of the said session is over, there is no fruitful or effective purpose left in modifying the said Order dated 25.03.2025.

16. I also find it necessary to clarify that the learned Additional Sessions Judge is bound by the law declared by the High Court or the Supreme Court and not exceptional discretion, that may be exercised by them, in particular circumstances. Supreme Court in case of ***Union of India vs. Dhanwanti Devi and Ors (1996)6 SCC 44*** *(Para 9-10),* has held that a case is only an authority for what it actually decides. It cannot be quoted for a proposition that may seem to logically follow from it. The said principle is further strengthened by the Supreme Court in case of ***Government of Karnataka & Ors. vs. Gowramma & Ors. (2007) 13 SCC 482*** *(Para 10-11),* wherein, it has been held that it is the *ratio decidendi* of a case which is binding as precedent, not the obiter dicta or what may logically follow from it**.**

17. Thus, in view of the law discussed above, no case is made out by the appellant for grant of custody parole. Thus, there is no question of even waving the cost imposed by the Division Bench in a discretionary exercise of power by its Order dated 25.03.2025 or by the learned Additional Sessions Judge in its Order dated 22.07.2025. Even the period for which request is made has expired since long.

18. The modification application filed in Appeal No. 299/2025 as well as Appeal No. 1045/2025 are thus liable to and are dismissed.

VIVEK CHAUDHARY, J

NOVEMBER 07, 2025
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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 07th November, 2025

\+ CRL. A. 299/2025

ABDUL RASHID SHEIKH .....Appellant

Through: Mr. N. Hariharan, Sr. Advocate with Mr. Vikhyat Oberoi, Ms. Nishita Gupta, Mr. Shivam Prakash, Mr. Ravi Sharma, Ms. Punya Rekha Angara, Mr. Aman Akhtar, Mr. Vinayak Gautam, Mr. Vasudhara and Mr. Hashain Khawaja, Advocates.

versus

NIA .....Respondent

Through: Mr. Sidharth Luthra, Sr. Advocate with Mr. Akshai Malik, SPP for NIA, Mr. Ayush Aggarwal and Mr. Khawar Saleem, Advocates for NIA.
Mr. Ritesh Bahri, learned APP for State of NCT of Delhi (Prison Department)
Mr. B.B. Pathak, Add. SP/NIA with Mr. Abhishek Kumar, Dy. SP, NIA.

\+ CRL.A.1045/2025 & CRL.M.A. 21428/2025

ABDUL RASHID SHEIKH .....Appellant

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Vikhyat Oberoi, Ms. Nishita Gupta, Mr. Shivam Prakash, Mr. Ravi Sharma, Ms. Punya Rekha Angara, Mr. Aman Akhtar, Mr. Vinayak Gautam, Mr. Vasudhara & Mr. Hashain Khawaja, Advs.

versus

NIA .....Respondent

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Akshai Malik (SPP), Mr. Ayush

Agarwal & Mr. Khanwar Saleem, Advs.
Mr. Ritesh Bahri, learned APP for State of NCT of Delhi (Prison Department)
Mr. B. B. Pathak, Addl. SP, NIA with Mr. Abhishek Kumar, Dy. SP, NIA.

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

CRL.M.A. 9483/2025 in CRL.A. 299/2025

By way of the present application filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the applicant/appellant seeks modification of order dated 25.03.2025 passed by the court (a different Division Bench, of which I was a party), to the *limited* extent that the condition imposed *vidé* para 24.7 of that order be waived, whereby the appellant was required to bear the expenses towards "*travel and other arrangements*" to avail custody-parole. Pursuant to that condition the State has demanded from the appellant Rs.1,45,736/- per day towards various heads of expense to enable the appellant to avail that order. The appellant is aggrieved by this demand.

2. Notice on this application was issued on 28.03.2025.

3. Consequent thereupon, a reply notarised on 09.05.2025 has been filed by the respondent/National Investigation Agency ('NIA'); to which rejoinder dated 28.07.2025 has been filed by the appellant.

4. The operative para of order dated 25.03.2025 that is relevant for purposes of the present application reads as under:

> "*24. As a sequitur to the foregoing and in light of the undertaking given by the learned senior counsel for the appellant, on instructions, this court is persuaded to accept the limited prayer pressed in the present matter, by directing that the appellant –* ***Abdul Rashid Sheikh @ Rashid Engineer*** *– is permitted to attend the Second Part of the 4th Session of the 18th Lok Sabha Parliament, scheduled between 26.03.2025 and 04.04.2025,* ***'in-custody'****, subject to the following terms and conditions:*
>
> > "*24.1. The Director General (Prisons) is directed to send the appellant 'in-custody' under police escort from prison to the Parliament House on each of the dates on which the Lok Sabha is in session between 26.03.2025 and 04.04.2025, during the hours that the Lok Sabha is in session on those days;*
> >
> > * * * * *
> >
> > "*24.6. Upon conclusion of the proceedings of the Lok Sabha on each day, the appellant shall be brought back and admitted to prison even if it happens to be beyond official hours as per jail rules; and*
> >
> > "*24.7. The expense for the aforesaid travel and other arrangements shall be borne by the appellant.*
>
> "*25. The Secretary General of the Lok Sabha is requested to ensure compliance of the foregoing conditions by taking requisite steps as may be required, as per Parliament rules, to ensure that the appellant's judicial custody is not compromised.*
>
> "*26. Needless to add, that any steps taken by the Secretary General of the Lok Sabha would be consistent with the intent and purpose of the present order, which is to allow the appellant to participate in Parliamentary proceedings of the Lok Sabha for the given dates.*"
>
> (bold and underscoring in original)

5. As narrated in order dated 25.03.2025, the court was persuaded to permit the appellant to attend Parliament sessions 'in-custody' since the appellant is the elected Member of the Parliament from the

Baramulla constituency in the Union Territory of Jammu and Kashmir, returned to the 18th Lok Sabha from that constituency.

6. After order dated 25.03.2025 was passed, the appellant moved the present application bringing to the notice of the court that he had received an e-mail dated 26.03.2025 from the jail authorities that he is required to pay an estimated cost of Rs.1,45,736/- per day towards the travel and related arrangements that are required to be made for him to attend Parliament, in compliance of order dated 25.03.2025.

7. At that stage, the appellant had contended that since he is in custody, he is unable to arrange the amount demanded by the jail authorities, while also pointing-out that *vidé* judgment dated 10.02.2025 passed in W.P.(CRL) No.233/2025, a learned Single Judge of this court had granted to the appellant custody-parole to attend Parliament sessions on an earlier occasion, without any condition requiring him to bear the cost for the travel and other arrangements.

8. The appellant had also informed the court that without prejudice to his objection, and in order to avail the benefit of order dated 25.03.2025, he had deposited the sum demanded by the jail authorities for one day, while also praying that the condition imposed *vidé* para 24.7 of that order, be deleted. In order dated 28.03.2025, the court had also recorded the statement made by learned senior counsel appearing on behalf of the appellant, that the appellant was ready to deposit 50% of the total cost demanded by the jail authorities for attending Parliament sessions.

9. Upon depositing the amount as offered by the appellant *at that stage*, the court had directed that the appellant be allowed to attend Parliament sessions as per order dated 25.03.2025.

10. In their reply filed to the present application, the NIA has strongly opposed waiver of the condition requiring the appellant to pay the cost, as demanded by the State (Prison Department).

11. This Division Bench has heard Mr. N. Hariharan, learned senior counsel appearing on behalf of the appellant; Mr. Sidharth Luthra, learned senior counsel appearing for the NIA; as well as Mr. Ritesh Bahri, learned APP, who has appeared on behalf of the State of NCT of Delhi (Prison Department).

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Upon a preliminary query put to learned senior counsel appearing for the appellant as to whether the relief sought amounts to seeking a review of order dated 25.03.2025, which would be barred by section 403 of the BNSS [corresponding to section 362 of the Code of Criminal Procedure 1973 ('Cr.P.C.')], Mr. Hariharan submits that the appellant is not challenging order dated 25.03.2025 on merits, but is only seeking modification of one of the conditions, since the State is seeking to implement that condition in a manner which is rendering the order itself infructuous.

13. Learned senior counsel has argued that the purpose of granting custody-parole to the appellant was to enable him to attend Parliament sessions, which has been rendered impossible since the State is demanding Rs.1,45,736/- per day as the cost from the appellant, if he wishes to avail the benefit of that order.

14. To highlight the importance of a parliamentarian attending proceedings of Parliament, Mr. Hariharan has drawn attention to the decision of the Supreme Court in ***Rajesh Ranjan vs. State of Bihar & Anr.***,[1] and in particular, to the following observations of the Supreme Court in that decision :

> "*1. The petitioner Rajesh Ranjan is an elected Member of Parliament. He has not taken oath so far and unless he is allowed to take oath, he is likely to lose his membership of Parliament. We, therefore, direct the State of Bihar and other authorities concerned to take the petitioner to Parliament Police Station on 23-2-2000 at 10.00 a.m. Officers taking the petitioner to Parliament Police Station shall hand him over to the appropriate staff of the Lok Sabha Secretariat so that they may take the petitioner to the Speaker of the Lok Sabha or the designated officer for the purpose of taking oath on that day. The petitioner shall also be permitted to attend the proceedings of Parliament on that day. Learned Solicitor General states that after the petitioner is given the oath and after he attends Parliament session on that day, the Secretariat of Parliament will hand him over back to the authorities who shall then take him back to the place of custody.*"
>
> (emphasis supplied)

15. Relying upon the aforesaid, learned senior counsel has argued that in the afore-cited decision, a similarly placed person was allowed, not only to take oath as a parliamentarian, but also to attend the proceedings of Parliament for the day. Learned senior counsel submits, that it be noted that on the day when the Supreme Court permitted the petitioner in that case to be taken to Parliament in-custody, he was yet to be sworn-in as a member of Parliament; and yet the Supreme Court granted him relief, appreciating the immense

[1] (2000) 9 SCC 222

importance of not obstructing a parliamentarian in representing his constituency.

16. Distinguishing the decision of a Division Bench of this court in ***Suresh Kalmadi vs. Union of India & Ors.,***[2] Mr. Hariharan has explained that in the said case the court has specifically noted that :

> "*29. … … We must fairly state that Mr. Desai has not really founded his case on the basis of any constitutional or statutory right but on the basis of the conception that the participation becomes imperative as a constitutional obligation is cast regard being had to the spectrum of parliamentary democracy which is one of the basic features of the Constitution of India. As has been stated earlier, in the case at hand, the arrest and incarceration is valid in law and the appellant has not been enlarged on bail. True it is, in the case of K. Ananda Nambiar (supra), the Apex Court was dealing with preventive detention but the present case relates to arrest and custody. When the appellant's custody is valid and the allegations are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him the permission to attend the parliamentary session solely on the foundation that he has the freedom of speech inside the Parliament or on the foundation that he enjoys exclusive privilege in the Parliament as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation. In our considered opinion, though the submission as regards the constitutional obligation has been extremely adroitly edificed, yet the same has to founder inasmuch as grant of permission in the present case to attend the parliamentary session would be an anathema to the exercise of power under judicial review that is inherent under Article 226 of the Constitution of India.*"
>
> (emphasis supplied)

17. It has accordingly been submitted that *Suresh Kalmadi* did not consider any constitutional or statutory rights that an elected

[2] 2011 SCC OnLine Del 3639

parliamentarian enjoys; and even more importantly, in that decision the court has not dilated upon the *constitutional obligation* that is cast upon an elected member of Parliament to represent his constituency in the Parliament.

18. Mr. Hariharan has also relied upon the celebrated decision of the Supreme Court in ***Usmanbhai Dawoodbhai Memon & Ors. vs. State of Gujarat***[3] to argue, that in any case, section 403 BNSS does not bar the prayer made in the present proceedings, since it is settled law that an order granting or refusing bail is essentially an interlocutory order, and on the same analogy, an order granting or refusing custody-parole, would also be interlocutory in nature; and therefore amenable to review. In support of his submission, learned senior counsel has cited para 24 of *Usmanbhai Dawoodbhai Memon*, which reads as under :

> "*24. ... ... In V.C. Shukla v. State [1980 Supp SCC 92 : 1980 SCC (Cri) 695], Fazal Ali, J. in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles, namely, (i) that a final order has to be interpreted in contradistinction to an interlocutory order; and (ii) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. It was observed that these principles apply to civil as well as to criminal cases. In criminal proceedings, the word "judgment" is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused. Applying these tests, it was held that an order framing a charge against an accused was not a final order but an interlocutory order within the meaning of Section 11(1) of the*

[3] (1988) 2 SCC 271

Special Courts Act, 1979 and therefore not appealable. It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time. ... ..."

(emphasis supplied)

19. Specifically in the context of a prayer for varying the conditions of bail, Mr. Hariharan has cited a pointed decision of the Supreme Court in ***Ramadhar Sahu vs. The State of Madhya Pradesh***,[4] where the Supreme Court has, in so many words, held that *conditions of bail can be varied* if a case is made-out for such variation; and the prohibition contemplated in section 362 Cr.P.C. (corresponding to section 403 BNSS) would not apply in such cases. The relevant extract of *Ramadhar Sahu* is the following:

"*5. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.*"

(emphasis supplied)

[4] Order dated 16.10.2023 made in SLP (Crl.) No.11130/2023

20. Emphasising the importance of the duty cast upon an elected parliamentarian to discharge his functions as such, learned senior counsel has referred to the observations of a Constitution Bench of the Supreme Court in ***P.V. Narasimha Rao vs. State (CBI/SPE)***[5] in which the Supreme court has said:

> "*162. …… In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest. The submission that this Court was in error in Antulay case [(1984) 2 SCC 183 : 1984 SCC (Cri) 172 : (1984) 2 SCR 495] in holding that a Member of a State Legislature "performs public duties cast on him by the Constitution and his electorate" must be rejected outright. It may be — we express no final opinion — that the duty that a Member of Parliament or a State Legislature performs cannot be enforced by the issuance of a writ of mandamus but that is not a sine qua non for a duty to be a public duty. We reject the submission, in the light of what we have just said, that a Member of Parliament has only privileges, no duties. Members of Parliament and the State Legislatures would do well to remember that if they have privileges it is the better to perform their duty of effectively and fearlessly representing their constituencies.*"

(emphasis supplied)

21. Mr. Hariharan has also cited another judgment of the Supreme Court in ***Dr. Sunil Kumar Singh vs. Bihar Legislative Council (Through***

[5] (1998) 4 SCC 626

Secretary) & Ors.,[6] in which the court has highlighted the need and importance of Members of Parliament participating in its proceedings. The relevant observations read thus:

> "*59. The removal of a member from the House therefore is a significant issue for both the member and the constituency they represent. The democratic process relies on the active participation of all members, and even brief absences can impede a member's ability to contribute to critical legislative discussions and decisions. This underscores the importance of their presence in all parliamentary activities, as their absence can have far-reaching implications on the legislative outcomes and the representation of their constituency's interests. We clarify that while representation of the constituency is not the sole factor in determining the punishment to be imposed on a member, it nonetheless remains an important aspect that merits due consideration.*
>
> "*60. As stated, the absence of a duly elected representative disrupts the democratic process and undermines the voice of the electorate. In such a situation, if the punishment inflicted upon the member concerned appears to be prima facie harsh and disproportionate, Constitutional Courts owe a duty to undo such gross injustice and review the proportionality of such disqualifications or expulsions.*"
>
> (emphasis supplied)

22. The argument accordingly is, that if the State is allowed to demand an exorbitant sum of money from the appellant to avail custody-parole *that has already been granted* to him, the appellant would be prevented from performing his public duty; apart from the fact that the order of custody-parole passed by the court would stand frustrated and nullified at the State's instance.

[6] 2025 SCC OnLine SC 439

23. Mr. Hariharan submits, that it must be noted that when a Parliament session is convened, an order/summons is received from no less than the President of India, in effect commanding the Members of Parliament to remain present during the sessions; and that the State must not be allowed to impede or prevent the appellant from honouring the order/summons received from the President.

24. In response to the directions issued by the court *vidé* order dated 12.08.2025 made in CRL.A. No.1045/2025, the State has also placed on record a Status Report dated 16.08.2025 showing a break-up of the costs that the appellant must pay on a per-day basis to be able to avail custody-parole granted by order dated 25.03.2025 in CRL.A. No. 299/2025, as well as by order dated 22.07.2025 made by the learned Additional Sessions Judge/Special Judge, Patiala House Courts, New Delhi in RC No.10/2017/NIA/DLI. The tabulated break-up is as follows:

Rank wise deployment	Calculation per shift in Rs.	Total Amount in Rs.
01 ACP (02 Shift)	7039x1x2	14078
01 INSPR. (02 Shift)	7176x1x2	14352
01 SI (02 Shift)	5739x1x2	11478
02 ASI (02 Shift)	4783x2x2	19132
07 HC (02 Shift)	4232x7x2	59248
03 HC (Dvr.) (02 Shift)	4232x3x2	25392
Jail Van Expenses		1036
Escort Vehicle Expenses	510x2	1020
Total Cost		**Rs.145736**

The Estimate cost for 06 days is 145736x06= Rs. 8, 74,416 /-

Note: - If the working hours of parliament session increase/decrease then the estimate cost may vary, accordingly.

25. Learned senior counsel appearing for the appellant submits, that it be noticed that the per day 'cost' of Rs.1,45,736/- demanded from the

appellant includes a per-shift payment for 01 Assistant Commissioner of Police, 01 Inspector, 01 Sub-Inspector, 02 Assistant Sub-Inspectors, 7 Head Constables, and 3 Head Constables (Drivers).

26. Mr. Hariharan submits, that evidently the *salary* of State police officials *is also being demanded* from the appellant, which is wholly misconceived and untenable.

SUBMISSIONS ON BEHALF

OF THE NIA & THE STATE

27. Defending their position Mr. Sidharth Luthra, learned senior counsel appearing for the NIA; and Mr. Ritesh Bahri, learned APP appearing for the State have presented two principal arguments :

27.1. *First*, it is their contention that modification of the condition contained in para 24.7 of order dated 25.03.2025 would amount to a review of that order, which is barred under section 403 BNSS; and

27.2. *Second*, that sections 38, 39, and 40 of the Delhi Police Act 1978 ('DP Act') specifically provide that the cost of deploying police to perform any duties at the instance of a person seeking protection is to be borne by such person. They further argue, that in exercise of its power under sections 38(2), 39(2) and 40(2) of the DP Act, *vidé* Notification dated 12.11.2024 the Government of NCT of Delhi has published the schedule of charges for deployment of additional police on payment to private persons, to commercial establishments, and for other duties of the nature as provided under sections 38, 39, and 40;

and that the costs sought to be recovered by the State from the appellant are in consonance with that notification.

28. In this behalf, the NIA and State have drawn attention to sections 38 and 39 of the DP Act, which read as under :

> ***38. Employment of additional police to keep peace****.—(1) The Commissioner of Police may, on the application of any person, depute any additional number of police to keep the peace, to preserve order, to enforce any of the provisions of this Act or of any other law in respect of any particular class or classes of offences or to perform any other duties imposed on the police at any place in Delhi.*
>
> *(2) Such additional police shall be employed at the cost (which shall be determined by the Commissioner of Police in accordance with the rules made in this behalf) of the person making the application, but shall be subject to the orders of the police authorities and shall be employed for such period as the Commissioner of Police considers necessary.*
>
> *(3)* * * * * *
>
> *(4) Where there is any dispute as to the amount to be paid by way of cost, the Commissioner of Police shall, on an application made in that behalf by the aggrieved party, refer the matter to the District Collector, whose decision thereon shall be final.*
>
> ***39. Employment of additional police in cases of special danger to public peace.****—(1) If in the opinion of the Administrator any area in Delhi is in a disturbed or dangerous condition or the conduct of the inhabitants or of any particular section or the class of the inhabitants of such area renders it expedient to employ temporarily additional police in the area, he may, by notification in the Official Gazette, specify the area (hereafter in this section referred to as the disturbed area) in which, and the period for which, the additional police shall be employed and thereupon the Commissioner of Police shall depute such number of additional police officers as he considers necessary, in the disturbed area:*

Provided that the period so specified may be extended by the Administrator from time to time, if in his opinion it is necessary so to do in the interests of the public.

(2) On the issue of a notification under sub-section (1), the Administrator may require the District Collector, or any other authority specified by the Administrator, to recover, whether in whole or in part, the cost of such additional police generally from all persons who are inhabitants of the disturbed area or specially from any particular section or class of such persons, and in such proportion as the Administrator may direct.

(3) * * * * *

Explanation. — * * * * *

(emphasis supplied)

29. Furthermore, Notification dated 12.11.2024 cited by the State, reads thus :

"***NOTIFICATION***

F. No.06/47/12/HP-I/Estt./-In exercise of the powers conferred by section 147 of Delhi Police Act, 1978 (34 of 1978) read with sub-section (2) of section 38, sub-section (2) of section 39 and sub-section (2) of section 40 of the Delhi Police Act, 1978 read with rule 4 of Delhi Police (Miscellaneous Matters) Rules, 1980 and in supersession of this Governments Notification No. F.No. 06/47/12/HP-I/Estt./5440 to 5447 dated 10th December, 2014, the Lieutenant Governor of the National Capital Territory of Delhi is pleased to direct that the following scales of charges, in respect of deployment of additional police on payment, to private persons, commercial establishments and for other duties of the nature as provided under section 38, section 39 and section 40 of the said Act, shall come into force with immediate effect, namely:-

1. Assistant Commissioner of Police	*- Rs. 7039/-*	*Per day for five hours or per night of four hours.*
2. Inspector of Police	*- Rs. 7176/-*	
3. Sub Inspector of Police	*- Rs. 5739/-*	
4. Assistant Sub-Inspector of Police.	*- Rs. 4783/-*	
5. Head Constable	*- Rs. 4232/-*	
6. Constable	*- Rs. 3658/-*	

The charges shall be doubled in case the deployment exceeds the above- specified hours per day/night.

Further, the aforesaid scale of charges shall increase @ 3% per year on the above price till the revision of rates by Competent Authority.

By order and in the name of the
Hon'ble Lieutenant Governor of National
Capital Territory of Delhi

Rajiv Kumar Tyagi
Deputy Secretary (Home-I)
Govt. of NCT of Delhi
Dated 12/11/2024"
(bold in original)

30. The argument on behalf of the State therefore is, that the costs being demanded from the appellant are based on the statutory provisions of the DP Act read with the notification issued by the Government of NCT of Delhi in that behalf; and are therefore justified and payable by the appellant.

REJOINDER SUBMISSIONS ON BEHALF OF THE APPELLANT

31. In rejoinder, Mr. Hariharan submits, that to be clear the appellant is ready and willing to bear the cost of *travel*, that is to say the cost that may be incurred by the State towards deployment of a jail van and escort vehicles for taking the appellant from prison to Parliament and back, on each day that he attends Parliament sessions, but the appellant cannot be expected to pay the *salaries* of several police officers, who the State determines are required to accompany the appellant for the purpose.

32. Mr. Hariharan in fact questions as to whether, *if* the appellant was to pay the amount demanded by the State towards daily salaries or

charges of the various police officers, would those police officers *not* be paid their regular salaries for those days; or would they receive double salary for those days?

33. Senior counsel has also drawn attention to the stand taken by the NIA in its reply dated 15.07.2025 filed to the appellant's application bearing IA No.35/2025 seeking interim bail (or in the alternative custody-parole) before the learned Additional Sessions Judge/Special Judge, Patiala House Courts, New Delhi in RC No.10/2017/NIA/ DLI, where the *NIA has conceded that they do not oppose* the appellant being taken 'in-custody' for attending Parliament sessions. The relevant portion of the NIA's reply filed in those proceedings reads as under :

> "*In view of the facts and circumstances mentioned above, it is respectfully prayed before this Hon'ble Court that the present application under Section 439 Cr.PC of applicant/accused Abdul Rashid Sheikh, seeking Interim Bail to attend the Fifth Parliamentary session may be dismissed.*
>
> *However, considering the peculiarity of circumstances,* ***the Applicant maybe allowed to be taken 'in-custody' for the purpose of attending parliamentary session on the dates of sittings with effect from 21.07.2025 to 21.08.2025 or for the limited days as the Hon'ble Court may deemed fit****, as a matter of concession on strict conditions as convenient to this Hon'ble Court which may be similar to the directions passed in Order dated 25.03.2025 by the Hon'ble Delhi High Court in Criminal Appeal No. 299/2025 titled as Abdul Rashid Sheikh v. NIA including but not limited to the condition that* ***the Applicant shall bear his expenditure for the costs for his travel/other arrangements***."
>
> (emphasis supplied)

It is argued therefore, that at most, the appellant may have to bear the expenditure for his travel, to and from prison,

and the 'other arrangements' referred-to by the NIA in their reply must relate only to the travel costs involved.

ANALYSIS & CONCLUSIONS

34. I would first address the objection raised on behalf of the NIA, that the present application is not maintainable since in light of section 403 of the BNSS (section 362 of the Cr.P.C.), the court does not have the power of 'review'. This objection may be dealt-with in the following manner :

34.1. *Firstly*, as held by the Supreme Court in *Usmanbhai Dawoodbhai Memon*, the bar of section 362 Cr.P.C. applies to a final order or judgment; and the test for determining the finality of an order is whether the order finally disposes-of the rights of the parties. Order dated 25.03.2025 that is the subject-matter of consideration in the present proceedings is merely a direction to the State to take the appellant in-custody to attend Parliament sessions; and by no stretch of the law, logic, or reasoning, can this order be said to be determinative of the rights of the appellant. There is absolutely no finality attaching to that order; nor does that order decide any matter concerning the appellant on merits;

34.2. *Secondly*, as correctly argued on behalf of the appellant, in *Ramadhar Sahu* the Supreme Court has, in so many words held, that the prohibition contemplated in section 362 of the Cr.P.C. does not apply when the court is merely varying the

conditions of bail granted to an accused; and the same principle would apply to custody-parole; and

34.3. *Thirdly*, all else apart, *if* the State's contention that there is no provision in the BNSS empowering the court to modify the conditions imposed while granting custody-parole has any merit, the power to do so would inhere in the court under section 528 of the BNSS, which provision contains the plenary and inherent powers of the High Court to act *ex-debito justitiae* (for the reasons as discussed in detail hereinafter). I may also rely on the view taken by a Division Bench of the Madhya Pradesh High Court in ***Jagdish Arora & Anr. vs. Union of India***,[7] which holds that the power to modify or delete a condition subject to which bail is granted, is inherent in the High Court; and most importantly, the power to amend or delete any such condition is contained in section 482 of the Cr.P.C. (corresponding to section 528 of the BNSS), since such power is not expressly provided elsewhere in the Cr.P.C.[8] Analogously therefore, the power to amend or even delete any condition imposed on grant of custody-parole is contained in section 528 of the BNSS.

35. I am accordingly of the view that there is nothing in law that bars the court from entertaining and deciding the present application.

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[7] Order dated 31.03.2022 in MCRC No.4923 of 2022

[8] Paras 8.1, 8.2, 8.3, and 9.1

36. Having dealt with the preliminary objection as aforesaid, after a careful consideration of the rival submissions made by the parties, and after sifting through the contentions raised, I am of the view that the most relevant and material aspects of the case, upon which the decision of the present petition would turn, are the following :

36.1. The court cannot lose sight of the fact that the appellant (applicant) *is an under-trial*, and *not a convict*. The presumption of innocence, which is a fundamental principle of our criminal jurisprudence, therefore enures in the appellant's favour;

36.2. It is also a significant factor that the appellant is a Member of Parliament, having been elected to the 18th Lok Sabha from the Baramulla constituency of the Union Territory of Jammu & Kashmir, and therefore owes a solemn obligation to his constituents to represent them in the Lok Sabha;

36.3. It also cannot escape the notice of the court, that the NIA had expressed its 'no-objection' to the appellant campaigning for elections in the Union Territory of Jammu & Kashmir as well as to perform parliamentary functions for his constituency as a Member of Parliament, *and even at that time the appellant was an under-trial in the FIR* that is the subject matter of the present proceedings, and it was so recorded in order dated 10.09.2024 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi in RC No.10/2017/NIA/DLI;[9]

[9] Page 763 of the paper-book in CRL.A. 299/2025

36.4. I would emphasize, that in a Parliamentary democracy, an elected Member of Parliament owes a solemn obligation to his electors, and it is his bounden duty to represent his constituents in parliamentary proceedings. As observed by the Supreme Court in *Dr. Sunil Kumar Singh*, even a brief absence of a Member from parliamentary activities can have far-reaching implications on legislative outcomes and the representation of the constituency's interests, which can disrupt the democratic process and undermine the voice of the electorate.[10] The importance of that role is highlighted by the fact, that when a Parliament session is convened, no less a person than the President of India calls upon Members of Parliament to attend its proceedings;

36.5. It needs to be said that *vidé* order dated 25.03.2025 passed by the court, the appellant was granted 'custody-parole' to attend the then ongoing session of the Lok Sabha. To be sure, the direction issued to the State *vidé* order dated 25.03.2025 to take the appellant in-custody to attend Parliament sessions was nothing but custody-parole as understood in our criminal jurisprudence. The appellant has *not been granted his liberty*, as it were, but has only been permitted to be taken 'in-custody' by the jail authorities for the limited purpose of allowing him to participate in the proceedings of the Lok Sabha. It is not available to the appellant, to enjoy any liberty or freedoms

[10] *Dr. Sunil Kumar Singh*, paras 59 and 60

except in the terms contained in order dated 25.03.2025. The appellant continues to remain in the custody of the court; and

36.6. The limited relief that the appellant is seeking by way of the present application is therefore in the nature of a *clarification* of one of the conditions imposed on the grant of custody-parole, namely the condition that "*the expense for the aforesaid travel and the other arrangements shall be borne by the appellant*."

37. I may also refer to Rule 1205 of the Delhi Prison Rules 2018, which is the provision relating to the expense for availing custody-parole, which reads as under :

> *1205. The custody parole may be granted to visit <u>any place outside NCT of Delhi</u> but within the territorial limits of India, subject to reasonable logistic and security constraints by Inspector General of Prisons. <u>The **cost of transportation** of the Prisoner and the Police shall be borne by Prisoner</u>; however, Inspector General of Prisons may waive the cost of transportation of the Prisoners, who cannot afford the same in exceptional circumstances.*
>
> (emphasis supplied)

38. So even as per the Delhi Prison Rules, a prisoner who wishes to avail custody-parole is required to bear the expenses incurred by the jail authorities, *subject to* two important qualifications : *one*, that cost is to be borne by the prisoner only if he is to be taken on custody-parole *outside the NCT of Delhi*; and *two*, that what the prisoner is required to bear is the cost of transportation (for himself and for the police accompanying him) to the place that he wants to visit, and in exceptional circumstances even that cost can be waived by the prison authorities.

39. In the present case, the appellant is not even seeking to be taken outside the NCT of Delhi; and that therefore, at most what he can be required to pay is only the expenses incurred for transportation from prison to Parliament and back.

40. Insofar as section 38 of the DP Act is concerned, on a plain reading of that provision, it is seen that it applies to a situation where additional police are to be deployed to keep peace, or to preserve order, or to enforce any of the provisions of the DP Act or any other law, or to perform any other duties imposed on the police at any place in Delhi. Section 39 comes into play where the Administrator is of the opinion that it is expedient to deploy additional police in an area that is disturbed or dangerous or if the inhabitants of an area (or any particular section or class thereof) are indulging in conduct that requires such deployment.

41. It is in such circumstances that sections 38 and 39 provide that the cost of deployment of additional police must be borne by the person(s) who applies for deployment of additional police, or even generally by all persons who are inhabitants of the disturbed area.

42. Clearly, in the present case, the appellant is neither requesting nor applying for deployment of any additional police to keep peace, or to preserve order, or to enforce any provision of any law; nor is there any basis to say that any area is disturbed or dangerous or that the conduct of its inhabitants warrants deployment of additional police.

43. It is in fact the jail authorities that are requesting for deployment of additional police personnel to secure the appellant's custody and

safety, in order to operationalise the directions contained in order dated 25.03.2025 passed by the court.

44. In my opinion therefore, sections 38 and 39 of the DP Act have no application to the present case.

45. Admittedly, Notification dated 12.11.2024, based on which the break-up of costs as set-out in the table referred-to above, has been issued in exercise of the powers conferred under sections 38, 39, and 40 of the DP Act. Once those provisions are held to be inapplicable to the present case, the schedule of costs indicated in that table *per-se* also has no application since the notification itself does not apply.

46. That said, on being asked to explain the basis of calculating the figure of Rs.1,45,736/- as the per day cost that the appellant must pay for availing custody-parole, the State has given the break-up of costs as set-out in the table above. The learned APP has also clarified that towards the requirement of (additional) police officials, *who the State says* are required to accompany the appellant, the State has added charges co-related to the *per day salaries* of those police officials, depending on the rank ranging from Rs.4232/- to Rs.7176/- *per-diem*.

47. The State has been unable to offer any cogent answer to the query whether the salaries ordinarily payable by the State to those police official would be deducted proportionately *if* the appellant were to pay the cost sought to be recovered from him; *or* would those police official get a 'double-payment' for the days they accompany the appellant to Parliament. It is anybody's guess that the money that the State is demanding from the appellant, in particular the charges for various police officers, would *not* be adjusted against the salaries

payable to the concerned police officers in the usual and ordinary course, for performing their duties as public servants.

48. On the other hand, the appellant's perspective is that he has *not* been granted any 'liberty' since it is not the purport of order dated 25.03.2025 that the appellant would be released from custody; and the only limited relief that the court has granted to the appellant is that he would be taken 'in-custody' to attend the proceedings of Parliament and would then be returned to prison every night. This perspective commends itself for acceptance by the court, since throughout the period when the appellant is taken from prison to Parliament and back, his liberty would continue to be curtailed; and as has been held by me (sitting singly) in ***Mohd. Shahabuddin vs. State Govt. of NCT Delhi & Anr.***[11] during the period a prisoner is on a custody-parole, the prisoner continues to remain in *custodia-legis* and it is in fact the *jail that travels with the prisoner* during that period.

49. Left to himself, the appellant would contend, that he be permitted to leave prison freely to attend Parliament sessions; that he is not a flight-risk; that he does not need any heightened level of security; and that he would return to prison on his own recognizance every day after attending Parliament. If however the State is fearful, either that the appellant is a flight risk, or that there is risk to the appellant himself, *it is for the State to incur the required expense and effort to ensure against their own apprehensions*. It is therefore for the State to determine what level of security is required to ensure the appellant's

[11] 2020 SCC OnLine Del 1907, para 37

continued safe-custody. It is for the State to decide how many security personnel are required for that purpose, including their rank and duties, to ensure that the appellant does not flee and that he also does not come to any harm.

50. I am of the view that in *Suresh Kalmadi* a Division Bench of this court has only ruled that a Member of Parliament has *no constitutional right* to attend the sessions of Parliament;[12] but nowhere has the Division Bench held that the court is not empowered to permit a parliamentarian to attend Parliament sessions. It is extremely important to note that *Suresh Kalmadi* was a decision rendered in a Letters Patent Appeal, arising from a writ petition filed by that petitioner under Article 226 of the Constitution; but, as recorded in para 29 of *Suresh Kalmadi*, having filed a writ petition, the petitioner had "… *not really founded his case on the basis of any constitutional or statutory right but on the basis of the conception that the participation becomes imperative as a constitutional obligation is cast regard being had to the spectrum of parliamentary democracy*…." It is in this circumstance that the Division Bench held that the petitioner had no "*right under the Constitution"* to claim that he be allowed to attend Parliament despite being in custody. However, nowhere did the Division Bench hold that custody-parole cannot be granted; and muchless, that a condition imposed while granting custody-parole, cannot be modified.

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[12] *Suresh Kalmadi*, para 29

51. In any case, that is not the scope of the prayer in the present application nor has the NIA challenged the direction issued by the court *vidé* order dated 25.03.2025 permitting the appellant to be taken in-custody to attend the sessions of Parliament. The limited concern in the present application is whether the court, can and should, clarify one of the conditions imposed by it while issuing the said direction.

52. In fact, in its recent decision in ***A.S. Ismail vs. National Investigation Agency***[13] a Division Bench of this court has, it would appear merely for the asking, modified the terms of custody-parole granted by the trial court to a prisoner, who is alleged to be a member of the Students Islamic Movement of India and the State President of the Popular Front of India, to travel in-custody from Delhi to Coimbatore, Tamil Nadu, to attend his daughter's wedding. By its judgment dated 16.10.2024 in *A.S. Ismail*, the Division Bench has also increased the length of the custody-parole to 08 hours every day to enable the prisoner to attend his daughter's wedding, further directing that the expenses for availing custody-parole shall be borne by the State unless the prisoner wishes to travel by air, in which case he would have to incur the expenses for air travel of the police officials as well. It is noteworthy that *vidé* order dated 04.11.2024 made in SLP(Crl.) No.14890/2024 challenging judgment dated 16.10.2024 passed in *A.S. Ismail*, the Supreme Court set-aside the condition of 08 hours and also extended the custody-parole granted, by 02 more days.

[13] 2024 SCC OnLine Del 7270

53. I must remind myself of the observations of the Supreme Court in *P.V. Narasimha Rao*, where the court has in no uncertain terms said that there cannot be a duty that is more public than that of a Parliamentarian; and that in such duty, *the State, the public, and the community at large* have the greatest interest. Those words bear repetition :

> "*… … It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest … …*"

54. Then again in *Dr. Sunil Kumar Singh*, the Supreme Court has highlighted how the *voice of the public is undermined* if a Member of Parliament does not participate in its proceedings. The words of the Supreme Court may be noticed again :

> "*… … the absence of a duly elected representative disrupts the democratic process and undermines the voice of the electorate.*"

55. By denying the appellant's simple prayer for clarification of the condition imposed *vidé* order dated 25.03.2025, the court would disable the appellant from performing that duty, to the detriment of the State, the public, and the community at large.

56. In my opinion therefore, the ruling in *Suresh Kalmadi* would not in any manner deter the court from exercising its plenary and inherent powers under section 528 of the BNSS to grant relief where it is made-out.

57. In the closing, it must also be observed, that it is a settled principle of bail jurisprudence, that an unconscionable condition or a condition that is impossible of performance, must never be imposed once a court decides that a prisoner deserves bail. This tenet has been

enunciated by the Supreme Court in several decisions, including in ***Munish Bhasin & Ors. vs. State (Government of NCT of Delhi) & Anr.***[14] in the following words :

> "*10.* ***It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions****. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code.* ***However, the accused cannot be subjected to any irrelevant condition at all****.*
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> *"12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all.* ***There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code***."

(emphasis supplied)

58. The same principle must apply *a-fortiori* to the grant of custody-parole, since it would be anathema for a constitutional court to grant relief to an under-trial with one hand and take-away that relief with the other hand, by imposing an unconscionable or impossible condition. I would emphasise, that in the present case, the appellant has *not even been granted* liberty or *protection from arrest*, as was the case in *Munish Bhasin* (supra), yet the principle enunciated by the

[14] (2009) 4 SCC 45

Supreme Court would apply inasmuch as any condition imposed in a court order cannot be, *and* cannot be so implemented as to frustrate the very object of the order.

59. Though, I do not believe that the condition imposed *vidé* para 24.7 of order dated 25.03.2025 is *per-se* unconscionable or impossible of performance, however the manner in which the State is attempting to operationalise and implement that condition, by demanding a large sum of money from the appellant to avail custody-parole, renders the condition unconscionable, which action of the State needs to be corrected.

60. In fact, I am of the view, that far from amounting to a review of order dated 25.03.2025, the present order is necessary to ensure that that order is implemented *as passed* and as intended. To dispel any doubt, it must also be noted that the present application was filed by the appellant on 26.03.2025, *i.e.*, the very next day after order dated 25.03.2025 was passed; and though the appellant has availed custody-parole by paying a partial sum as permitted by order dated 28.03.2025, the State's demand that the appellant must pay the remaining amount claimed by them, still survives. The present application is therefore *not infructuous* merely because the Parliament session is over.

61. I accordingly hold that the *only* legitimate expense that the appellant can be asked to bear is the cost of *transportation* for taking him from prison to Parliament and back; and the State's demand that the appellant must foot the charges for all police officers, who are public

servants, and who *the State says* are required to accompany the appellant, is wholly unjustified and deserves to be quashed.

62. As a sequitur to the above, I am of the view that the condition imposed *vidé* para 24.7 of order dated 25.03.2025 is required to be clarified, to hold that the appellant shall *only be liable to pay reasonable costs that would be incurred by the State towards his transportation from Tihar Jail to Parliament and back for every day* that he avails custody-parole to attend Parliament proceedings. Though I have held that Notification dated 12.11.2024 does not *per-se* apply, going by the tabulated break-up of costs set-out in Status Report dated 16.08.2025, the costs payable by the appellant would *only* be towards Jail Van Expenses and Escort Vehicle Expenses at Rs. 1036/- and Rs. 1020/- per day respectively.

63. All other conditions imposed *vidé* order dated 25.03.2025 shall remain as they are.

64. It is clarified however, that the appellant shall not be entitled to seek refund or adjustment towards future costs of any money already paid by him to the State towards costs and expenses for availing custody-parole pursuant to order dated 25.03.2025.

65. The application is disposed-of in the above terms.

CRL.A.299/2025

66. The appeal already stood disposed-of *vidé* order dated 25.03.2025.

CRL. A. 1045/2025

67. In view of the order passed above, condition No.07 imposed *vidé* order dated 22.07.2025 made by the learned ASJ-03, Special Judge, Patiala House Courts, New Delhi in RC No.10/2017/NIA/DLI,

directing the appellant to bear the expenses towards custody-parole shall also be restricted *only* to the cost of travel, in line with what I have held above.

68. The appeal stands disposed-of in the above terms.

69. Pending applications, if any, also stand disposed-of.

70. Nothing in this judgment shall however prevent the appellant from seeking appropriate relief *inter-alia* by way of custody-parole/interim bail/bail subsequently, as the appellant may be advised, in accordance with law.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 07, 2025
*V.Rawat/*ds