



CRL.A NO. 1749 OF 2025

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2026:KER:65804

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 31ST DAY OF AUGUST 2026 / 9TH BHADRA, 1948

CRL.A NO. 1749 OF 2025

AGAINST THE ORDER DATED 09.09.2025 IN CRMP.NO.381 OF 2025 IN SC
NO.2 OF 2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM
(CRIME NO.RC 02/2022 OF NATIONAL INVESTIGATION AGENCY, KOCHI)

APPELLANTs/PETITIONERS/ACCUSED NOS.19 AND 20:

- 1 ABDUL KADER, AGED 37 YEARS
 S/O MUHAMMED, MUNDOOR,
 PALAKKAD DISTRICT, PIN - 678592
- 2 FIROZ, AGED 36 YEARS
 S/O.MUTHALEEF, 13/574, KAMMANTHARA,
 KAVILPAD (VILLAGE /POST), PUDUPPARIYARAM,
 PALAKKAD DISTRICT, PIN - 678006

BY ADVS.
SHRI.E.A.HARIS
SRI.P.P.HARRIS
SRI.RENJITH B. MARAR

RESPONDENTS/RESPONDENTS/COMPLAINANT:

- 1 UNION OF INDIA
 REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
 INVESTIGATION AGENCY, KOCHI, PIN - 682020
- 2 INSPECTOR OF POLICE
 NATIONAL INVESTIGATION AGENCY, NIA KOCHI UNIT,
 KOCHI, PIN - 682020



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BY ADVS.

SHRI.SREENATH SASIDHARAN

SHRI.SASTHAMANGALAM S. AJITHKUMAR (SR.), SPECIAL
PROSECUTOR, NIA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10.06.2026,
THE COURT ON 31.08.2026 DELIVERED THE FOLLOWING:



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**"C.R"****JUDGMENT****Anil K. Narendran, J.**

The appellants - Abdul Kader and Firoz – are the 19th and 20th accused in S.C.No.2 of 2023 on the file of the Special Court for the Trial of NIA Cases, Ernakulam, and the petitioners in Crl.M.P.No.381 of 2025, a bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.PC). The appellants have filed this criminal appeal, invoking the provisions under Section 21 of the National Investigation Agency Act, 2008 (NIA Act), to set aside the order dated 09.09.2025 of the Special Court in Crl.M.P.No.381 of 2025 in S.C.No.2 of 2023 (Annexure A10), and to grant them regular bail. The 1st appellant-19th accused was arrested on 24.04.2022, and the 2nd appellant-20th accused was arrested on 26.04.2022, in crime No.318 of 2022 of Palakkad Town South Police Station. After the National Investigation Agency took over the investigation of the said case as a connected offence, the 19th and 20th accused were produced before the Special Court on production warrants, and the National Investigation Agency



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recorded their formal arrest on 10.02.2023.

2. **Factual Matrix:-** Crime No.318 of 2022 of Palakkad Town South Police Station was registered on the allegation that Popular Front of India (PFI) leaders and members conspired together with the intention to create terror and communal divide in the society, conducted intense recce of several Hindu leaders of that locality, whom they had shortlisted using their 'Reporter Wing' and subsequently selected and brutally murdered one Sreenivasan, who was available, on 16.04.2022, at Palakkad. The Kerala Police filed a charge sheet in that case against 44 persons for offences under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 read with Section 149 of the Indian Penal Code, 1860 (IPC) and Section 3(a)(b)(d) read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988.

3. It is alleged that the PFI, a society registered under the Societies Registration Act, 1860, was formed in the year 2006, merging the three radical organisations with extremist ideologies, namely, National Democratic Front (NDF) from Kerala, Manitha



Neethi Pasarai (MNP) from Tamil Nadu and Karnataka Forum for Dignity (KFD) from Karnataka. The founder leaders of PFI were former cadres and leaders of the Students Islamic Movement of India (SIMI), an organisation proscribed by the Government of India in 2001. PFI has the strongest presence in Kerala, where it has been repeatedly involved in cases of murder, rioting, intimidation, and having links with terrorist organisations.

4. PFI has frontal organisations like Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organisation (NCHRO), National Women's Front (NWF), Junior Front, Empower India Foundation and Rehab Foundation, in addition to their political wing, Social Democratic Party of India (SDPI). On 28.09.2022, the Government of India declared the Popular Front of India and its affiliates/frontal organisations as an Unlawful Association, as per the provisions of the Unlawful Activities (Prevention) Act, 1967, for brevity 'the UA (P) Act'.

5. The Central Government received credible information that the office bearers, members and cadres of PFI and its



affiliates in Kerala have conspired to instigate communal violence and radicalise its cadres to commit terrorist acts in the State of Kerala and various other parts of the country. PFI members and office bearers based in Kerala having earlier association with the proscribed terrorist organisation, SIMI, maintain operational nexus with other proscribed international terrorist organisations like Lashkar-e-Taiba (LeT), Islamic State of Iraq and Syria (ISIS)/Daesh and Al-Qaida.

6. Some of the members of PFI cadres are also members of the above proscribed terrorist organisations. PFI has created an organisational web, which is stretched to recruit vulnerable Muslim youths into proscribed international terrorist organisations to commit terrorist acts. PFI and its members are also indulging in activities prejudicial to the maintenance of harmony by creating feelings of enmity between people of different religions and groups through violent speeches, publications, articles, social media posts, etc., with the intention to disrupt public tranquility and organised movements intending that the participants be trained to use criminal force against people of other religions and groups



so as to cause terror, fear and alarm, besides the feeling of insecurity among members of other religions and groups. In the last few years, they have been responsible for many violent incidents and murders in Kerala that have created terror in the minds of the general public. PFI, its members and office bearers also indulged in unlawful activities with the intention to cause disaffection against India by inciting people and innocent Muslims to defy the Government and institutions established by law and thereby commit disruption of the sovereignty and integrity of India.

7. The Central Government formed an opinion that the aforesaid activities of PFI are offences under Sections 120B, 153A of the IPC and Sections 13, 18, 18B, 38 and 39 of the UA (P) Act, which are scheduled offences under the NIA Act. Considering the gravity of the offence and its repercussions on national security, the Government of India, Ministry of Home Affairs, CTCR Division, vide order No.11011/82/2022-NIA dated 16.09.2022, directed the NIA to take up investigation of Crime No.318 of 2022 of Palakkad Town South Police Station. Accordingly, the case was registered as



RC 02/2022/NIA/KOC at NIA Police Station, Kochi, on 19.09.2022, under Sections 120B, 153A of the IPC and Sections 13, 18, 18B, 38 and 39 of the UA (P) Act.

8. The investigation revealed that Crime No.318 of 2022 of Palakkad Town South Police Station, i.e., Sreenivasan murder case, is a connected offence in terms of Section 8 of the NIA Act. Therefore, the Government of India, vide its order No.11011/82/2022/NIA (Part) dated 19.12.2022, directed the National Investigation Agency (NIA) to investigate Crime No.318 of 2022 of Palakkad Town South Police Station, as per Section 8 of the NIA Act. In pursuance of that order and subsequent orders of the High Court and the jurisdictional Court, the case records and materials relating to that case were transferred to the Special Court for Trial of NIA Cases, on 30.01.2023.

9. It is alleged that in pursuance of its larger conspiracy, PFI had established 3 Wings - Reporters Wing, Physical and Arms Training Wing/PE Wing and Service Wing/Hit Teams. Through its Reporters Wing, a quasi-intelligence division, PFI collected private and personal information about prominent personalities in the



society, besides the leaders of other communities, especially the Hindu Community, including their day-to-day activities. The data is compiled at the district level and communicated to the State hierarchy of PFI. The details are regularly updated and utilised to 'target' the individuals as and when required by the terrorist gang. PFI trained its cadres for collection of such data and stored them, besides providing the same to its assault teams in the Service Wing for attack, as and when decided by its leadership. In furtherance of its agenda, PFI, through its Arms Training Wing, prepared master trainers to impart uniform physical and arms training under a common syllabus with a set course to its cadres in various stages under the guise of yoga training programs, rescue and relief activities, martial arts and other physical development activities. PFI devised a program to filter the cadres through various stages and gave arms and explosives training to selected cadres through these stages. PFI used its facilities and affiliated institutions, including institutions run in the name of Trusts, besides other places, to conduct such training camps and secret meetings. PFI used these trained cadres to eliminate



shortlisted targets, as and when required, based on the decision of its leadership. PFI also used such selected cadres as executioners of the decisions of its pseudo court, 'Darul Qaza'.

10. It is alleged that PFI used its 'Reporters' and 'Service Wing' to eliminate many targeted personalities in Kerala. PFI, its office bearers and cadres, had conspired to commit terrorist acts by killing many targeted persons of other religions/sections of the society to create terror in the minds of other communities and the public at large. In furtherance of that, PFI leaders and cadres carried out intensive recce on the members of other religions, particularly the Hindu community, and compiled the same for targeting through its 'Service Wing/Hit Teams'. PFI, its leaders and cadres, had on many occasions conspired to target innocent persons merely for them being prominent members of other communities. They do recce of several persons of the other communities listed through their 'Reporter Wing' and search for their presence on the intended day of elimination, and the available person is executed by their 'Service Wing/Hit Team'. The whole process has created terror and fear in the minds of the



public at large. Fearing such targeting, people stay away from their homes for long periods.

11. In murder cases involving PFI cadres, including the one in Crime No.318/2022 of Palakkad Town South Police Station, none of the accused had any personal enmity with the deceased. The victims have been selected solely because of their leadership/membership in a particular community and were killed to create terror in the society. PFI has been targeting people from different communities as part of its larger plan to achieve its objective to strike terror among the members of such organisations and communities. PFI, through such acts, intended to disturb harmony within the society and to terrorise people with a view to create a sense of fear and insecurity in their minds. PFI also intended to instil confidence among its cadres by executing such acts. The plans so made were executed to prevent any defiance of its command in future. In one such specific incident in pursuance of its larger conspiracy, leaders and accused persons being members of PFI conducted conspiracy at various places in Palakkad on 15th and 16th of April, 2022, conducted



reconnaissance of residences belonging to several leaders of the Hindu community, who appear in their target list, and chose and decided to eliminate one prominent Hindu leader named S.K. Sreenivasan of Palakkad. They, in furtherance of the conspiracy, set out to commit that terrorist act on 16.04.2022, for which 5 accused persons (A-17 to A-21) came on 3 two-wheelers, 3 of whom criminally trespassed into SKS Autos, situated at Melamuri, Pallippuram, Palakkad, run by Sreenivasan, and inflicted grievous injuries on Sreenivasan and killed him by hacking his head and other parts of his body with choppers, which the assailants were carrying with the sole intention and purpose to brutally murder him, so as to create terror in the minds of other communities and the public at large. The above act of murder is in furtherance of the larger conspiracy of the 1st accused to create terror. Kerala Police filed a final report against 44 persons regarding the incident in Crime No.318/2022 of Palakkad Town South Police Station, under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302, read with Section 149 of IPC and Section 3(a)(b)(d) read with 7 of the Religious Institutions (Prevention of



Misuse) Act, 1988.

12. The investigation revealed that the leaders of PFI had justified the activities of cadres in support of the proscribed terrorist organisation ISIS and were found in possession of ISIS propaganda videos and documents for propagation, and that some cadres of PFI, who joined ISIS, were also arrested and convicted for those offences. PFI was involved in various unlawful activities, including delivery of alternate justice. PFI, its leaders and cadres have incited the people through provocative speeches and slogans, causing communal disharmony. The activities and veiled objectives of PFI have a strong communal and anti-national agenda to establish an Islamic Rule in India. To achieve this, PFI conducted stage-wise radicalisation of Muslim youths, mainly through its 'Tharbiyath classes', showing videos, taking lectures and ensuring allegiance through Bayath (oath) to PFI in the name of Allah. During their Tharbiyath classes, PFI radicalised vulnerable youths by communalising and magnifying stray incidents against Muslims with the intention to undermine democracy and establish Islamic Rule in India by subverting the Constitution. The gullible



Muslim youths were radicalised and motivated against the so-called kafirs or non-believers and all who were opposed to their ideology, including the members of the Muslim community, the Government and leaders of the Hindu organisations, by repeatedly showing videos and photos of incidents such as Babri Masjid demolition, Gujarat riots, mob lynching, etc., to portray that the whole Muslim community in India are being targeted and oppressed by the entire State machinery and the Government agencies.

13. In furtherance of the larger conspiracy, the accused in the case conspired at various places to indulge in unlawful activities for creating enmity between members of different religions and groups prejudicial to maintenance of harmony with the intention to disrupt public tranquillity and cause disaffection against India, propagating an alternative justice delivery system and justifying the use of criminal force causing alarm and fear amongst the general public. The accused have also encouraged vulnerable youths to join terrorist organisation - ISIS/Daesh for furthering its activities. They, being a part of a terrorist gang



formed by PFI, caused the recruitment of cadres of PFI to that terrorist gang, and collected the details of various leaders of the Hindu community and the members of its organisations through their 'Reporter Wing'. They have attended, conducted, supervised and imparted physical and arms training to the cadres of PFI, planned to stock weapons and explosives, possessed arms for preparing them to commit terrorist acts with the intention to establish Islamic Rule in India. In furtherance of the larger conspiracy, accused in this case knowingly and intentionally took part in the conspiracy hatched at Palakkad on 15th and 16th of April, 2022, for committing the terrorist act of murdering any prominent leader of the Hindu community or its organisations, to create terror in the minds of the Hindu community and the public at large, which has resulted in the murder of S.K. Sreenivasan on 16.04.2022 at Palakkad. The accused also committed the offence of destruction of evidence and knowingly harboured the accused in this case after the commission of the terrorist act.

14. On completion of investigation against A1 to A14, A16 to A19, A21 to A26, A29 to A40, and A42 to A63 and A66, final



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report was filed against them on 17.03.2023, for the offence under Sections 120B, 34, 109, 115, 118, 119, 143, 144, 147, 148, 449, 153A, 341, 302, 201, 212, read with Sections 149, 120B read with Section 302 of IPC, Section 3(a)(b)(d), read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, and Sections 13, 16, 18, 18A, 18B, 20, 22C, 23, 38 and 39 of the UA (P) Act and Section 25(1)(a) of the Arms Act, 1959. Supplementary final reports were filed against some of the other accused.

15. The appellants-19th and 20th accused filed Crl.M.P.No.381 of 2025 in S.C.No.2 of 2023, an application for bail under Section 439 of the Cr.P.C., before the Special Court for Trial of NIA Cases, Ernakulam. NIA opposed the application by filing detailed objections. After considering the rival contentions, the Special Court, by Annexure A10 order dated 09.09.2025, dismissed Crl.M.P.No.381 of 2025, for the reasons stated therein. The Special Court found that, apart from the statement of witnesses, there are materials which prima facie suggest that the petitioners-19th and 20th accused had an active role in the commission of the offence. The materials placed before the court



prima facie make out the offence under Chapter IV of the UA (P) Act. In order to make out a 'terrorist act' as defined in Section 15 of the UA (P) Act, the person need not be a member of the terrorist organisation. In the case at hand, there is a specific allegation that the accused have hatched a conspiracy to further their target of 'India 2047', allegedly, to establish Islamic rule in India. It is further alleged that the murder of Sreenivasan is part of their attempt to further such activities, and part of the larger conspiracy. There are materials that prima facie show the involvement of the 19th and 20th accused in the conspiracy and destruction of evidence. The Special Court noted that, while considering an application for bail, the court need not go deep into the evidence, as held by the Apex Court in **Jagjeet Singh v. Ashish Mishra @ Monu [(2022) 9 SCC 321]**. The Special Court further noted that the 19th and 20th accused have criminal antecedents and are accused in other cases. Therefore, the fact that some of the other accused have been released on bail is not a ground for releasing the 19th and 20th accused on bail. On scrutiny of the materials on record, the Special Court found



reasonable grounds to believe that the accusation against the 19th and 20th accused is prima facie true. The allegations against them are serious. The proviso to Section 43-D(5) of the UA (P) Act applies to the 19th and 20th accused, and they are not entitled to be released on bail at this stage. After referring to the law laid down by a Three-Judge Bench of the Apex Court in Union of India v. K.A. Najeer [(2021) 3 SCC 731] and other precedents on the point, the Special Court observed that only the constitutional courts can relax the rigour of Section 43-D(5) of the UA (P) Act, when there is violation of Part-III of the Constitution of India. Accordingly, by Annexure A10 order dated 09.09.2025, the Special Court dismissed the bail application.

16. On 10.06.2026, we heard detailed arguments of Sri Renjith B. Marar, the learned counsel for the appellants-19th and 20th accused and Sri Sasthamangalam S. Ajithkumar, the learned Senior Counsel and Special Public Prosecutor for NIA. Both sides have submitted written submissions on 15.06.2026.

17. **Arguments on behalf of the appellants-19th and 20th accused:-** The learned counsel for the appellants-19th and



20th accused contended that no written grounds of arrest have been served on the 1st appellant-19th accused, who was arrested on 24.04.2022, and the 2nd appellant-20th accused, who was arrested on 26.04.2022, in crime No.318 of 2022 of Palakkad Town South Police Station. After NIA took over the investigation of the said case as a connected offence, the 19th and 20th accused were produced before the Special Court on production warrants, and NIA recorded their formal arrest on 10.02.2023. The arrest of the appellants is illegal in view of the decision of the Apex Court in **Pankaj Bansal v. Union of India [(2024) 7 SCC 576]**. The materials placed before the Special Court do not make out a *prima facie* case against the 19th and 20th accused for the alleged offences, including the offences under the UA (P) Act.

17.1. The learned counsel for the appellants contended that the 19th accused, who was arrested on 24.04.2022, and the 20th accused, who was arrested on 26.04.2022, in crime No.318 of 2022 of Palakkad Town South Police Station, have undergone more than 4 years and 1 month of actual custody. Certain accused in S.C.No.2 of 2023, who are alleged to have taken active part in the



alleged 'terrorist act' of murdering Sreenivasan on 16.04.2022, have been granted bail by the decision of a Division Bench of this Court in **Muhammed Bilal v. Union of India [2025 KHC OnLine 2006]**. There is no possibility that the trial in S.C.No.2 of 2023 would either commence or conclude in the near future. There are 71 accused, 937 witnesses, 60 protected witnesses and 4 approvers (total 1001); 1634 documents and 54 protected documents (total 1688); 692 material objects; and 10 Terabytes (TB) of FSL reports. Out of 71 accused, 4 are absconding, 10 are in judicial custody, 55 are on bail, 4 approvers are on bail, and 1 accused is dead. Therefore, the appellants are entitled to be released on bail.

17.2. The learned counsel for the appellants submitted that a challenge made to the power of NIA to register a fresh FIR and the subsequent transfer of the case to NIA was repelled by this Court, vide the judgment dated 01.12.2023 in W.P.(Crl.)1044 of 2023 and Crl.M.C.No.8198 of 2023. Challenging the said judgment, SLP(Crl.)Nos.3658 of 2024 and 4384 of 2024 were filed before the Apex Court. By the interim order dated 06.05.2024, the



Apex Court ordered that charge shall not be framed in S.C.No.2 of 2023. The said interim order was vacated by Annexure A17 order dated 19.05.2026. By that order, NIA would be at liberty to proceed with the trial, in accordance with law, without prejudice to the rights of the petitioners therein, subject to the final outcome of the Crl.Appeals pending before the Apex Court.

18. **Arguments on behalf of the respondents:-** The learned Special Public Prosecutor for NIA contended that the decision of the Apex Court in **Pankaj Bansal [(2024) 7 SCC 576]** was rendered only on 03.10.2023, much after the arrest of the appellants, who were arrested on 24.04.2022 and 26.04.2022 respectively, in Crime No.318 of 2022 of Palakkad Town South Police Station. After NIA took over the investigation of the said case as a connected offence, the 19th and 20th accused were produced before the Special Court on production warrants, and NIA recorded their formal arrest on 10.02.2023. As rightly found by the Special Court in the impugned order dated 09.09.2025, the materials placed before the court make out a *prima facie* case against the 19th and 20th accused for the alleged offences,



including the offences under the UA (P) Act. The final report in S.C.No.2 of 2023, along with the evidence collected, discloses a prima facie case for commission of offences by the 19th and 20th accused.

18.1.The learned Special Public Prosecutor for NIA contended that the 19th and 20th accused are not entitled to be released on bail on the ground of any delay in the trial of S.C.No.2 of 2023. The gravity of the offence, the legislative context, and the prima facie material on record cannot be eclipsed merely because the trial has taken time. No claim for parity in granting bail can be applied with regard to the grant of bail to the 19th and 20th accused, considering their active role in the commission of the offence.

18.2.The learned Special Public Prosecutor for NIA pointed out that, in murder cases involving PFI cadres, including the one in Crime No.318/2022 of Palakkad Town South Police Station, none of the accused had any personal enmity with the deceased. The victims have been selected solely because of their leadership/membership in a particular community and were killed



to create terror in the society. On an application made by the co-accused, the Apex Court stayed the framing of charges in S.C.No.2 of 2023, vide the order dated 06.05.2024. The said interim order restraining the framing of charges was vacated by the Apex Court only on 19.05.2026, and ordered that NIA would be at liberty to proceed with the trial in accordance with law. Hence, there is no delay on the part of the prosecution in commencing the trial. In compliance with the order of the Apex Court dated 08.05.2026 in Suo Moto Writ Petition (Crl.)No.1 of 2026, the Government of Kerala accorded sanction for the establishment of two exclusive NIA Special Courts in Ernakulam. Hence, there will be a speedy trial of the case.

19. **No written grounds of arrest:-** Article 22 of the Constitution of India provides for protection against arrest and detention in certain cases. As per Article 22(1), no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.



20. In **Pankaj Bansal [(2024) 7 SCC 576]**, a Two-Judge Bench of the Apex Court noted that Article 22(1) of the Constitution of India provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Prevention of Money Laundering Act, 2002 (PML Act), enables the person arrested under Section 19 thereof to seek release on bail, but it postulates that unless the 'twin conditions' prescribed thereunder are satisfied, such a person would not be entitled to the grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for



the arrested person to be aware of the grounds on which the authorised officer arrested him under Section 19 of the PML Act and the basis for the officer's 'reason to believe' that he is guilty of an offence punishable under the said Act. It is only if the arrested person has knowledge of these facts that he would be in a position to plead and prove before the Special Court that there are grounds to believe that he is not guilty of such offence, so as to avail the relief of bail. Therefore, the Apex Court held that communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution of India and Section 19 of the PML Act, is meant to serve this higher purpose and must be given due importance.

21. In **Pankaj Bansal [(2024) 7 SCC 576]**, the Two-Judge Bench noted that the language of Section 19 of the PML Act puts it beyond doubt that the authorised officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the said Act. Sub-section (2) of Section 19 requires the authorised officer to forward a copy of the order of arrest along with the material in



his possession, referred to in sub-section (1) of Section 19, to the adjudicating authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the adjudicating authority under sub-section (2) of Section 19, he has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorised officer in keeping with the mandate of sub-section (1) of Section 19 of the PML Act.

22. In **Pankaj Bansal [(2024) 7 SCC 576]**, the Two-Judge Bench noted that the mode of informing the grounds of arrest to the persons arrested is left to the option of authorised officers of the Enforcement Directorate in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person. That apart, Rule 6 of the Prevention of Money Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention)



Rules, 2005, titled 'Forms of Records', provides that the arresting officer while exercising powers under sub-section (1) of Section 19 of the PML Act, shall sign the arrest order in Form III appended to those Rules [reproduced in Para.40 @ Page 596 of SCC], wherein the authorised officer has to state that the person arrested has been informed of the grounds for such arrest. The said format is being followed all over the country by the authorised officers, who exercise the power of arrest under sub-section (1) of Section 19, but, in certain parts of the country, the authorised officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorised officer would only read out or permit reading of the contents of the grounds of arrest. The Two-Judge Bench found that this dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the prescribed format.

23. In **Pankaj Bansal [(2024) 7 SCC 576]**, the Two-Judge Bench found that there is no valid reason as to why a copy



of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception.

There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle.

Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further, and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. The very purpose of the constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) of the Constitution of India and the statutory mandate under sub-section (1) of Section 19 of the PML Act. The grounds of arrest recorded by the authorised officer,



in terms of sub-section (1) of Section 19, would be personal to the person who is arrested and there should ordinarily be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorised officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation. Paragraphs 42 to 44 of the said judgment read thus;

“42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that



witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji v. State* [(2024) 3 SCC 51]. Such a precarious situation is easily avoided, and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.

43. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji v. State* [(2024) 3 SCC 51] are placed on record, and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of



arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA. 44. We may also note that the grounds of arrest recorded by the authorised officer, in terms of Section 19(1) PMLA, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorised officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.”

(underline supplied)

24. In **Pankaj Bansal [(2024) 7 SCC 576]**, the Two-



Judge Bench held that, in order to give true meaning and purpose to the constitutional requirement of Article 22(1) and the statutory mandate of sub-section (1) of Section 19 of the PML Act, of informing the arrested person of the grounds of arrest, it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. On the facts of the case at hand, the Two-Judge Bench found that the admitted position is that the investigating officer of the Enforcement Directorate merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and sub-section (1) of Section 19 of the PML Act, the Two-Judge Bench held that the arrest of the appellants was not in keeping with the provisions of sub-section (1) of Section 19 of the said Act. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the Enforcement Directorate and, thereafter, to judicial custody, cannot be sustained. Paragraphs 45



and 46 of the said judgment dated 03.10.2023 read thus;

"45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi v. Union of India [2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal v. Union of India [2016 SCC OnLine Bom 9938], which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted the reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and,



thereafter, to judicial custody, cannot be sustained.

46. The appeals are accordingly allowed, setting aside the impugned orders - Pankaj Bansal v. Union of India [2023 SCC OnLine P&H 2028] - passed by the Division Bench of the Punjab and Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto.” (underline supplied)

25. In **Vijay Madanlal Choudhary v. Union of India [(2023) 12 SCC 1]**, a Three-Judge Bench, while upholding the validity of Section 19 PML Act, held that the said provision has reasonable nexus with the purposes and objects sought to be achieved by the PML Act. The Three-Judge Bench noted that the safeguards provided in the PML Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19, are equally stringent and of a higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of an offence of money laundering even before filing of the complaint before the Special Court under Section 44(1)(b)



of the PML Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and punished as specified under Section 62 of the PML Act. Considering the above, the Three-Judge Bench upheld the validity of Section 19 of the PML Act and rejected the grounds pressed into service to declare Section 19 of the PML Act as unconstitutional. The Three-Judge Bench held that Section 19 has reasonable nexus with the purposes and objects sought to be achieved by the PML Act of prevention of money laundering and confiscation of proceeds of crime involved in money laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof.

26. In **Ram Kishor Arora v. Directorate of Enforcement [(2024) 7 SCC 599]**, before a Two-Judge Bench of the Apex Court, the learned Senior Counsel for the appellant, placing heavy reliance on the decision in Pankaj Bansal [(2024) 7 SCC 576], argued that mere informing the accused orally about



the grounds of arrest and making him read the same and obtaining his signature thereon, and not furnishing in writing the grounds of arrest to the accused, has been held to be not in consonance with the provisions contained in sub-section (1) of Section 19 of the PML Act. Taking note of the inconsistent practice being followed by the officers of the Enforcement Directorate, it has been directed that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. According to the learned Senior Counsel, the said direction was the reiteration of the principle or doctrine already existing and also stated in **V. Senthil Balaji v. State [(2024) 3 SCC 51]** and, therefore, the decision in Pankaj Bansal [(2024) 7 SCC 576] is required to be applied retrospectively though the word 'henceforth' has been used. To buttress the said argument, the learned Senior Counsel relied on the decision in **Assistant Commissioner, Income Tax v. Saurashtra Kutch Stock Exchange Ltd. [(2008) 14 SCC 171]**, in which it was opined that a judicial decision acts retrospectively. Per contra, the learned Additional Solicitor General



for India argued that the decision in Pankaj Bansal [(2024) 7 SCC 576] was *per incuriam*, as the Two-Judge Bench in the said case had deviated from the position of law settled by the prior Three-Judge Bench in Vijay Madanlal Choudhary [(2023) 12 SCC 1] with respect to the compliance with the provisions of Section 19 of the PML Act. It was contended that a Two-Judge Bench cannot overlook or ignore a binding precedent of a larger or even co-equal Bench dealing with the issue; otherwise, the decision of the Two-Judge Bench would fall in the category of *per incuriam*, in view of the decision in **Sundeep Kumar Bafna v. State of Maharashtra [(2014) 16 SCC 623]**. Further, at the most, the direction contained in paragraph 35 of the decision in Pankaj Bansal [(2024) 7 SCC 576] to furnish the grounds of arrest in writing would be applicable 'henceforth' as mentioned therein, meaning thereby it would have the prospective effect and not the retrospective effect, as sought to be argued on behalf of the appellant.

27. In **Ram Kishor Arora [(2024) 7 SCC 599]**, the Two-Judge Bench noted that the validity of the various provisions,



including Section 19 of the PML Act, was examined by the Three-Judge Bench in *Vijay Madanlal Choudhary* [(2023) 12 SCC 1], in which the Bench while upholding the validity of Section 19 of the PML Act held that the said provision has reasonable nexus with the purposes and objects sought to be achieved by the PML Act. Further, while dealing with the issue as to whether it was necessary to furnish a copy of Enforcement Case Information Report (ECIR) to the person concerned apprehending the arrest or at least after his arrest, the Three-Judge Bench noted that subsection (1) of Section 19 of the PML Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution of India. Being special legislation, and considering the complexity of the inquiry/ investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. So long as the person has been informed about the grounds of his arrest, that is sufficient compliance with the mandate of Article 22(1) of the Constitution. The Three-Judge



Bench observed that non-supply of ECIR, which is essentially an internal document of the Enforcement Directorate, cannot be cited as a violation of a constitutional right. Concededly, the person arrested, in terms of Section 19 of the PML Act, is contemporaneously made aware of the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution.

28. In **Ram Kishor Arora [(2024) 7 SCC 599]**, the Two-Judge Bench noted that it is in order to guard against the possibility of inconsistent decisions on the points of law by different Division Benches that the rule of precedent has been evolved, in order to promote the consistency and certainty in the development of law, and its contemporary status that the statement of law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. After referring to the law laid down by the Constitution Bench decisions in **Union of India v. Raghubir Singh [(1989) 2 SCC 754]** and **Chandra Prakash v. State of U.P. [(2002) 4 SCC 234]**, the Two-Judge Bench observed that there remains no shadow of doubt that in view of the law laid down by the Three-Judge Bench in Vijay



Madanlal Choudhary [(2023) 12 SCC 1] that sub-section (1) of Section 19 of the PML Act has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 22(1) of the Constitution of India, any observation made or any finding recorded by the Two-Judge Bench, with lesser number of Judges, contrary to the ratio laid down in Vijay Madanlal Choudhary [(2023) 12 SCC 1], would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches in the cases referred to above. The three-Judge Bench in Vijay Madanlal Choudhary [(2023) 12 SCC 1], having already examined in detail the constitutional validity of Section 19 of the PML Act on the touchstone of Article 22(1) of the Constitution and upheld the same, it holds the field as on the date.

29. In **Ram Kishor Arora [(2024) 7 SCC 599]**, the Two-Judge Bench noted that the expression 'as soon as may be' in sub-section (1) of Section 19 of the PML Act has not been specifically explained in Vijay Madanlal Choudhary [(2023) 12 SCC 1]. Even the said expression has not been interpreted either in V. Senthil



Balaji [(2024) 3 SCC 51] or in Pankaj Bansal [(2024) 7 SCC 576]. In V. Senthil Balaji [(2024) 3 SCC 51], it was held, *inter alia*, that after forming a reason to believe that the person has been guilty of an offence punishable under the PML Act, the officer concerned is at liberty to arrest him, while performing his mandatory duty of recording the reasons, and that the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. In Pankaj Bansal [(2024) 7 SCC 576], the Court, after highlighting the inconsistent practice being followed by the Enforcement Directorate about the mode of informing the person arrested, held that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

30. In **Ram Kishor Arora [(2024) 7 SCC 599]**, the Two-Judge Bench, after referring to the Constitution Bench decision in **Abdul Jabar Butt v. State of J&K [AIR 1957 SC 281]** and **Durga Pada Ghosh v. State of W.B. [(1972) 2 SCC 656]** held that the expression 'as soon as may be' contained in Section 19 PML Act is required to be construed as - 'as early as possible



without avoidable delay’ or within ‘reasonably convenient’ or ‘reasonably requisite’ period of time. Since, by way of safeguard, a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

31. In **Ram Kishor Arora [(2024) 7 SCC 599]**, the Two-Judge Bench found that, noticing the inconsistent practice being followed by the officers arresting persons under Section 19 of the PML Act, the Two-Judge Bench in Pankaj Bansal [(2024) 7 SCC 576] directed to furnish the grounds of arrest in writing as a matter of course, ‘henceforth’, meaning thereby from the date of the pronouncement of the judgment. The very use of the word ‘henceforth’ by the Two-Judge Bench implied that the said requirement of furnishing the grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or



obligatory till the date of the said judgment [i.e., till 03.10.2023].

Hence, non-furnishing of the grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal [(2024) 7 SCC 576] could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is sufficient compliance of Section 19 of the PML Act as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal [(2023) 12 SCC 1]. Paragraphs 22 and 23 of the said decision of the Two-Judge Bench read thus;

“22. In Vijay Madanlal Choudhary [(2023) 12 SCC 1], it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with the mandate of Article 22(1) of the Constitution. It is also observed that the arrested person, before being produced before the Special Court within twenty-four hours or for the purposes of remand on each occasion, the Court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money-laundering. Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written



communication about the grounds of arrest as soon as may be, i.e., as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of the PML Act but also of Article 22(1) of the Constitution of India.

23. As discernible from the judgment in Pankaj Bansal [(2024) 7 SCC 576], also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 of the PML Act, directed to furnish the grounds of arrest in writing as a matter of course, 'henceforth', meaning thereby from the date of the pronouncement of the judgment. The very use of the word 'henceforth' implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr Singhvi for the appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary 'henceforth' that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence, non-furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal [(2024) 7 SCC 576] could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person



arrested about the grounds of his arrest is sufficient compliance of Section 19 of the PML Act as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal [(2023) 12 SCC 1].” (underline supplied)

32. In **Prabir Purkayastha v. State (NCT of Delhi) [(2024) 8 SCC 254]**, a Two-Judge Bench of the Apex Court, after referring to the provisions under sub-section (1) of Section 19 of the PML Act and sub-section (1) of Section 43-B of the Unlawful Activities (Prevention) Act, 1967 (UA (P) Act), which provides that any officer arresting a person under Section 43-A shall, as soon as may be, inform him of the grounds for such arrest, [reproduced in Paras.15.1 and 15.2 @ Pages 274 and 275 of SCC], found that there is no significant difference in the language employed in sub-section (1) of Section 19 of the PML Act and sub-section (1) of Section 43-B of the UA (P) Act, which can persuade the Court to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made in Pankaj Bansal [(2024) 7 SCC 576] should not be applied to an accused arrested under the provisions of the UA (P) Act.

33. In **Prabir Purkayastha [(2024) 8 SCC 254]**, the Two-Judge Bench found that the provision regarding the



communication of the grounds of arrest to a person arrested contained in sub-section (1) of Section 43-B of the UA (P) Act is verbatim the same as that in sub-section (1) of Section 19 of the PML Act. The contention advanced by the learned Additional Solicitor General for India that there are some variations in the overall provisions contained in Section 19 of the PML Act and Sections 43-A and 43-B of the UA (P) Act would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under sub-section (1) of Section 43-B UA (P) Act at the earliest, because, as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source from the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PML Act or under the UA (P) Act, have to be uniformly construed and applied.



34. In **Prabir Purkayastha [(2024) 8 SCC 254]**, before the Two-Judge Bench, the learned Additional Solicitor General for India referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detainee in writing. The Two-Judge Bench delved deeper into the issue as to whether it is mandatory to communicate the grounds of arrest or detention in writing to the accused or the detainee, as the case may be, even though the constitutional mandate under Articles 22(1) and 22(5) of the Constitution does not explicitly require that the grounds should be communicated in writing. The Two-Judge Bench, after referring to the Constitution Bench decision in **Harikisan v. State of Maharashtra [1962 SCC OnLine SC 117]** and that of a Two-Judge Bench in **Lallubhai Jogibhai Patel v. Union of India [(1981) 2 SCC 427]**, found that, it has been the consistent view of the Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial



measures against the deprivation of liberty. Therefore, the Two-Judge Bench reiterated that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention, as provided under Articles 22(1) and 22(5) of the Constitution of India, is sacrosanct and cannot be breached under any situation. Non-compliance with this constitutional requirement and statutory mandate would render the custody or detention, as the case may be, illegal.

35. In **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]**, a Two-Judge Bench of the Apex Court observed that as far as Article 22(1) of the Constitution of India is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds of arrest should be effectively and fully communicated to the arrestee in a manner that he will fully understand. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in Pankaj Bansal [(2024) 7 SCC 576], the Court held that



the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

36. In **Vihaan Kumar [(2025) 5 SCC 799]**, the Two-Judge Bench observed that the requirement of informing the person arrested of the grounds of arrest is not a formality but a



mandatory constitutional requirement. Article 22 is included in Part III of the Constitution of India under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate the fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered



illegal. On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

37. In **Vihaan Kumar [(2025) 5 SCC 799]**, the Two-Judge Bench noted that, in paras 42 and 43 of the decision in Pankaj Bansal [(2024) 7 SCC 576], the Court suggested that the proper and ideal course of communicating the grounds of arrest is to provide the grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, if the grounds of arrest are communicated in writing, there is no harm. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paras 42 and 43 of the decision in Pankaj Bansal [(2024) 7 SCC 576] are suggestions that merit consideration. In every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested



with the interests of society. Therefore, the police should always scrupulously comply with the requirements of Article 22 of the Constitution of India.

38. In **Vihaan Kumar [(2025) 5 SCC 799]**, the Two-Judge Bench concluded that the information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved. The conclusions of the Two-Judge Bench in para 26 of the said decision read thus;

"26. Therefore, we conclude:

26.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;



26.3. When an arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);

26.4. Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge-sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

26.5. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

26.6. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.” (underline supplied)

39. In **Mihir Rajesh Shah v. State of Maharashtra**



[(2026) 1 SCC 500] the main issue raised before a Two-Judge Bench of the Apex Court was the violation of the appellants' right under Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code, 1973 (Cr.P.C.), now Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) as the appellants asserted that they were not informed of the grounds of arrest in writing. The questions of law formulated by the Two-Judge Bench were as follows;

“(a) Whether in each and every case, even arising out of an offence under the Penal Code, 1860 (IPC) now Bharatiya Nyaya Sanhita, 2023 (BNS), would it be necessary to furnish the grounds of arrest to an accused either before arrest or forthwith after arrest; and

(b) Whether, even in exceptional cases, where on account of certain exigencies it will not be possible to furnish the grounds of arrest either before arrest or immediately after arrest, the arrest would be vitiated on the ground of non-compliance with the provisions of Section 50 Cr.P.C. (now Section 47 of BNSS).”

40. In **Mihir Rajesh Shah [(2026) 1 SCC 500]**, the Two-Judge Bench held that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in



each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands. In cases where the police already possess documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in *flagrante delicto*, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of the grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to the arrestee's production before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest, and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate. The Two-Judge Bench held that non-supply of the grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate



such arrest on the grounds of non-compliance with the provisions of Section 50 Cr.P.C. (now Section 47 of BNSS) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.

41. In **Mihir Rajesh Shah [(2026) 1 SCC 500]**, after having come to the above conclusions, the Two-Judge Bench noted that the provision of law under Section 50 Cr.P.C. (Section 47 of BNSS) does not provide for a specific mode of or time-frame for communication of the grounds of arrest to the person arrested. There existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Therefore, the Two-Judge Bench, in the judgment dated 06.11.2025, observed that the ends of fairness and legal discipline demand that this procedure, as affirmed above, shall govern arrests 'henceforth'. Paragraphs 67 and 68 of the said decision read thus;

"67. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50CrPC (Section 47 of BNSS 2023) does not provide for a



specific mode of or time-frame for communication of the grounds of arrest to the person arrested. This Court in *Prabir Purkayastha v. State (NCT of Delhi)* [(2024) 8 SCC 254], held that the grounds of arrest be conveyed to the arrestee in writing in all offences at the earliest, which means it need not be given at the time of arrest but within a reasonable time thereafter, for offences under all the statutes, which period would be as has been laid down above in this order. 68. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth."

(underline supplied)

42. As observed by the Two-Judge Bench in **Ram Kishor Arora [(2024) 7 SCC 599]**, the Three-Judge Bench in **Vijay Madanlal [(2023) 12 SCC 1]** held that the action of informing the person arrested about the grounds of his arrest is sufficient compliance of Section 19 of the PML Act as also Article 22(1) of the Constitution of India. Noticing the inconsistent practice being



followed by the officers arresting persons under Section 19 of the PML Act, the Two-Judge Bench in **Pankaj Bansal [(2024) 7 SCC 576]** directed furnishing the grounds of arrest in writing as a matter of course, 'henceforth', meaning thereby from the date of the pronouncement of the judgment, i.e., 03.10.2023. In **Ram Kishor Arora [(2024) 7 SCC 599]**, it was categorically held by the Two-Judge Bench that the very use of the word 'henceforth' by the Two-Judge Bench in **Pankaj Bansal [(2024) 7 SCC 576]** implied that the said requirement of furnishing the grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment [i.e., till 03.10.2023]. Hence, non-furnishing of the grounds of arrest in writing till the date of pronouncement of judgment in **Pankaj Bansal [(2024) 7 SCC 576]** could neither be held to be illegal, nor the action of the officer concerned in not furnishing the same in writing could be faulted with. In the case at hand, the 1st appellant-19th accused was arrested on 24.04.2022, and the 2nd appellant-20th accused was arrested on 26.04.2022, in Crime No.318/2022 of Palakkad Town South Police Station, well before



the judgment of the Two-Judge Bench in **Pankaj Bansal [(2024) 7 SCC 576]**. After NIA took over the investigation of the said case as a connected offence, the 19th and 20th accused were produced before the Special Court on production warrants, and NIA recorded their formal arrest on 10.02.2023. Therefore, non-communication of the grounds of arrest in writing is not a ground available to the appellants-19th and 20th accused, who were arrested on 24.04.2022 and 26.04.2022, respectively, to challenge their arrest as violative of Article 22(1) of the Constitution of India. The contentions to the contra raised by the learned counsel for the appellants-19th and 20th accused are untenable, and are rejected as such.

43. **Proviso to Section 43-D(5) of the UA (P) Act - prima facie materials:-** The Special Court, in the impugned order dated 09.09.2025, found that, apart from the statement of witnesses, there are materials which prima facie suggest that 19th and 20th accused had an active role in the commission of the offence. The materials placed before the court prima facie make out the offence under Chapter IV of the UA (P) Act. There are



materials that prima facie show the involvement of the 19th and 20th accused in the conspiracy and destruction of evidence. The proviso to Section 43-D(5) of the UA (P) Act applies to the 19th and 20th accused, and they are not entitled to be released on bail at this stage.

44. As per clause (o) of Section 2 of the UA (P) Act, 'unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.

45. Chapter III of the UA (P) Act deals with offences and



penalties. Section 13 deals with punishment for unlawful activities. As per sub-section (1) of Section 13, whoever (a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine. As per sub-section (2) of Section 13, whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. As per sub-section (3) of Section 13, nothing in this Section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

46. Chapter IV of the UA (P) Act deals with punishment for terrorist activities. Section 15 deals with terrorist act. In view of



the provisions under sub-section (1) of Section 15, whoever does any act enumerated in clauses (a) to (c) thereto with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, commits a terrorist act. As per sub-section (2) of Section 15, the terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

47. Section 16 of the UA (P) Act deals with punishment for a terrorist act. As per sub-section (1) of Section 16, whoever commits a terrorist act shall, (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine; (b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine. Section 17 deals with punishment for raising funds for a terrorist act.

48. Section 18 deals with punishment for conspiracy, etc.



As per Section 18, whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

49. In **Union of India v. Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench of the Apex Court observed that, for the purpose of considering the offence under Section 18 of the UA (P) Act, the commission of a terrorist act, as contemplated in Section 15, is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the



commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual commission of a terrorist act as defined in Section 15 need not be shown.

50. Section 20 of the UA (P) Act deals with punishment for being a member of a terrorist gang or organisation. As per Section 20, any person who is a member of a terrorist gang or a terrorist organisation, which is involved in a terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

51. The charges levelled against the 1st appellant-19th accused in S.C.No.2 of 2023, originally accused No.21 in Annexure A1 charge sheet, and the objections put forward by the prosecution to the grant of bail, before the Special Court, read thus;

"1. Abdul Khader @ Iqbal (A-21)

Charge in Annexure A1:

a) That, the accused Abdul Khader @ Iqbal (A-21) being a Kongad Area President of PFI, knowingly and intentionally became a part of larger conspiracy hatched by PFI, its office bearers and cadres since few years to enact their 'India



2047' agenda of establishing Islamic Rule in India. In furtherance to the conspiracy, he underwent Arms and Physical training as a preparation for committing terrorist acts. He knowingly and intentionally became a member of terrorist gang formed by PFI to commit terrorist act as a part of larger conspiracy hatched by PFI and its office bearers and cadres since last few years. In furtherance to the larger conspiracy, he attended conspiracy meetings held at Palakkad on 15th and 16th of April 2022 for committing terrorist act of murdering any available Hindu Leader with the intention of creating terror in the minds of the Hindu community and among public at large. On 16.04.2022, he, along with A-20 (Identifiable person), travelled by white activa KL-09/AK- 6726 of Khaja Hussain (A-30) to the Scene of Crime, assisted the assault team to carry out terrorist act of killing Sreenivasan on 16.04.2022. He also conspired to destroy evidence in the case. He committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

b) That, the accused Abdul Khader @ Iqbal (A-21) along with 43 other co-accused were already charge sheeted by Kerala Police in connected offence in Crime No. 318/2022 of Palakkad Town South Police Station under Section 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w 149 of IPC and Section 3(a)(b)(d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988, wherein, the offence committed by Abdul Khader @ Iqbal



(A-21) in the said connected offence has been enumerated in detail in that charge-sheet.

c) Therefore, accused Abdul Khader @ Iqbal (A-21) committed offences punishable under sections 153A of IPC and Sections 13, 16, 18 & 20 of the UA (P) Act along with additional offences under Section 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w 149 of IPC and Section 3(a)(b)(d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 as charge sheeted by the Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station."

Objections by the prosecution:

(i) Abdul Khader @ Iqbal (A-19) is alleged to be the Area President of PFI, Kongad area of Palakkad and an active cadre of PFI. The statement of witnesses CWs-771, 734, 786, 797, 798, 800, 801, 802, 809, 814, 823, 833 and 835, the statement of approver Aboobacker Sidik (A-57, now A-52), photos of Abdul Khader @ Iqbal (A-19) in PFI uniform and various posters of PFI recovered from his mobile phone (M-42) seized vide recovery mahazar dated 30.04.2022 (D-78), PFI poster of Palakkad Division council in which photo of A-19 is seen with printed writing 'Abdul Kadar (Iqbal)' 'Kongad Area President' of PFI, recovered from MO-69 mobile phone of Akbar Ali (A-45) seized vide inspection memo dated 01.05.2022 (D-729), photo of A-19 in PFI uniform recovered from mobile phone (MO-72) of Sadam Hussain (A-41) seized vide inspection memo dated 22.04.2022 (D-725), prima facie establish that A-19 is an



active cadre of PFI and Kongad Area President of PFI.

(ii) Abdul Khader @ Iqbal (A-19) is alleged to be a member of the terrorist gang formed by PFI to commit terrorist acts as a part of the larger conspiracy hatched by PFI and its office bearers and cadres since last few years to enact their 'India 2047' agenda of establishing Islamic rule in India. There is prima facie material to show the larger conspiracy of PFI to establish Islamic rule in India under their hidden agenda 'India 2047'. It also shows that the accused in this case are members of a terrorist gang, prepared for the commission of terrorist acts by imparting/undergoing arms training, collecting the details of targets and also by committing the terrorist act of murder of Sreenivasan on 16.4.2022 as a part of a larger conspiracy.

(iii) Abdul Khader @ Iqbal (A-19) allegedly attended arms training imparted by PFI at Falah Masjid, Palakkad, as preparation for committing terrorist acts. Protected Witness-17 and approver Muhammed Shajid (A-37) and accused Basheer (A-49) stated that A-19 attended arms training at Falah Masjid at Chunnambuthara, Palakkad along with the assailants. Based on the disclosure of Basheer (A-49), a disclosure-cum-scene mahazar was prepared at the Falah Masjid on 29.10.2022. CW-835 has also stated that A-49, the master trainer of PFI, imparted arms training to A-19 and other accused at the said location.

(iv) Abdul Khader @ Iqbal (A-19) allegedly attended a conspiracy meeting with other accused and cadres of PFI held near Khabristan at Palakkad on the night of



15.04.2022, for committing a terrorist act of murdering any Hindu leader. The protected witnesses 36, 37 and 38 and CW-814 have clearly stated the active involvement of A-19 in the conspiracy. Based on the disclosure of Muhammed Bilal (A-22), disclosure-cum-scene mahazar (D-16) has been prepared. CDR and IPDRS also show the presence of A-19 at the place of conspiracy on 15.04.2022.

(v) Abdul Khader @ Iqbal (A-19) allegedly attended the conspiracy meeting held at Palakkad on 16.04.2022 for committing the terrorist act of murder of Sreenivasan with the intention of creating terror in the minds of the Hindu community and among the public at large. In furtherance of the conspiracy, he handed over his mobile phone to co-accused Muhammed Rizwan (A-42), before proceeding to commit the terrorist act of murder of Sreenivasan on 16.04.2022 to screen his presence at the scene of crime. Protected witness 18, 36 and witnesses CWs-37, 38 and approver Aboobacker Sidik have given statements that they had seen A-19, along with assailants and other PFI leaders on 16.4.2022 at noon (i.e., just an hour before the murder of Sreenivasan) at the vacant land near District Hospital, Palakkad. Approver Aboobacker Siddik (A-52) has given a statement that 'the plan was to kill anyone and the decision to kill Sreenivasan was taken near hospital premises and behind the hospital'. Based on the disclosure of Muhammed Riswan (A-42), a scene mahazar (D-13) was prepared on 22.04.2022 at the conspiracy site. The CDR and IPDR reports (D-223, D-238 and D-1460) also show the presence



of Abdul Khader @ Iqbal (A-19) at the scene of conspiracy. CCTV footage shows the movement of A-19, along with other assailants, from the place of conspiracy to the scene of crime, then, after committing the terrorist act of murder of Sreenivasan, escaping from the scene of the crime. During the commission of the terrorist act of murder of Sreenivasan on 16.04.2022, the mobile phone (MO-42) of Abdul Khader @ Iqbal (A-19) was kept by co-accused Muhammed Rizwan (A-42) in his possession, to screen the presence of A-19 at the scene of the crime. The phone was later returned to A-19 after the incident and was seized under recovery mahazar dated 30.04.2022 (D-78) based on his disclosure.

(vi) Abdul Khader @ Iqbal (A-19) in furtherance of the conspiracy, proceeded to BOC road, Palakkad as rider of the scooter bearing No. KL-09/AK-6726 (MO-120), which belongs to accused Kaja Robot Kaja (A-26), with the accused Muhammed Manzoor (A-21) as pillion rider, where he received weapons from absconding accused Abdul Rasheed (A-28), for commission of the terrorist act of murder of Sreenivasan. The statements of witnesses CW-39 and CW-40 confirm that they had seen A-19 along with assailants at the spot and also stated that they had seen a person in the red car giving something to the assailants. Scene mahazar (D-100) at BOC Road, Palakkad was prepared based on the disclosure of Abdu Rahman (A-17) on 08.05.2022 regarding collection of weapons. CCTV footages (D-20, D-21, D-29, D-30, D-33, D-34, D-63 and



D-64) shows the movement of accused Abdul Khader @ Iqbal (A-19) with assailant Muhammed Manzoor (A-21) on scooter KL-09/AK-6726 (MO-120), along with other assailants on bikes and a car, to BOC Road, where Abdul Rasheed (A-28, absconding) handed over weapons to the assailants from car KL-55/D-4700 (MO-122) for committing the murder of Sreenivasan. CW-823 has identified the petitioner and other assailants from the CCTV footage.

(vii) Abdul Khader @ Iqbal (A-19), after the receipt of weapons by the assailants at BOC road, Palakkad, further proceeded to Melamuri as the rider of the white Activa scooter bearing No.KL-09/AK-6726 (MO-120) with the accused Shamnad E.K. @ Shamnad Ellikkal (A-20) as pillion rider of the said scooter and on reaching in front of SKS Autos, Melamuri, the assailants possessing lethal weapons, criminally trespassed into the said shop and hacked Sreenivasan to death on 16.04.2022. After the murder of Sreenivasan, A-19 escaped from the scene of crime along with the assailant Shamnad E.K. @ Shamnad Ellikkal (A-20), on the white scooter KL-09/AK-6726. Witnesses CW-1, CW-2, CW-3, CW-4, CW-5, CW-6, CW-8, CW-9 and CW-10 clearly stated that they had seen A-19 along with the assailants coming to the scene on one scooter and two motorcycles and Aburahman @ Adru (A-17), Ummar T (A-18) and Shamnad EK @ Shamnad Ellikkal (A-20), who were possessing lethal weapons, criminally trespassed into the shop and committed terrorist act by murdering Sreenivasan on 16.04.2022. Scene mahazar (D-3) dated 16.04.2022 has



been prepared at the scene of crime based on the pointing out of CW-1, and an associated scene mahazar (D-206) dated 30.06.2022 was also prepared at the scene of crime by the investigation officer. Scene plan of scene of crime (D-626) submitted by CW-244, MO-8 to MO-12, which are the scientific evidence collected by scientific officer from the scene of crime seized vide seizure mahazar dated 16.04.2022 (D-4) and victim's DNA was detected on forensic analysis from the MOs collected by scientific officer, vide RFSL report (D-742) and report prepared by scientific officer on examination of scene of crime (D 582) prove the terrorist act of murder of Sreenivasan. The seized CCTV footages D-45, D-46, D-49, D-50, D-53, D-54, D-203 and D-204 clearly show the movement of Abdul Khader @ Iqbal (A-19), on the scooter bearing Reg. No. KL-09/AK-6726 (MO-120) with the assailant Shamnad E.K. @ Shamnad Ellikkal (A-20) as pillion rider, and the other assailants on two motorcycles to the scene of crime. Hard Disk (MO-107) seized from NSR/ASR Vegetables shop near scene of crime contains CCTV footage which shows, A-19 along with the assailants Shamnad E.K. @ Shamnad Ellikkal (A-20), Abdurahman @ Adu (A-17), Ummer T. @ Manu (A-18), Firoz @ Thambi (A-20) and Muhammed Mansoor (A-21) coming to the scene of crime on one scooter and two motorcycles and Abdurahman @ Adu (A-17), Ummer T(A-18) and Shamnad E.K. @ Shamnad Ellikkal (A-20), possessing lethal weapons, criminally trespassing into the shop and committing the terrorist act of murder of



Sreenivasan on 16.04.2022. Inquest report (D-2) prepared on 16.04.2022 by CW-271, D-655, D-656 and D-657, the wound certificate, the death declaration certificate and the Post Mortem report, respectively, of Sreenivasan produced by witnesses CW-257, CW-258 and CW-259, respectively, will prove the death of Sreenivasan due to injuries inflicted by the assailants Abdu Rahman @ Adu (A-17), Ummar T. (A-18) and Shamnad E.K. (A-20). Document (D-248), containing the names of the accused Abdul Khader @ Iqbal (A-19) and other assailants written in it, was seized from accused Sirajudheen (A-51), vide seizure mahazar dated 17.09.2022 (D-240). Document (D-315) containing the names of A-19 and other assailants written on it was seized from approver Aboobacker Sidik (A-52), vide seizure mahazar dated 19.09.2022 (D-286), which will also prove the involvement of A-19 in committing the terrorist act of murder of Sreenivasan on 16.04.2022.

(viii) Abdul Khader @ Iqbal (A-19), after the commission of the terrorist act of murder of Sreenivasan on 16.04.2022, escaped from the scene of crime on scooter No.KL-09/AK-6726 with the assailant Shamnad E.K. @ Shamnad Ellikkal (A-20). A-19 tampered with evidence by concealing the dress worn by him, helmet, vehicle and mobile phone used by him. Based on his disclosure, recovery mahazar (D-78) dated 30.04.2022 has been prepared for the recovery of the helmet (MO-43), baniyan (MO-44) and jeans pants (MO-45) and mobile phone (MO-42) used by A-19 during the commission of the terrorist act of murder of Sreenivasan on



16.04.2022. Victim Sreenivasan's DNA has been detected from the baniyan (MO-44) and jeans pants (MO-45) of Abdul Khader @ Iqbal (A-19), vide RFSL, Thrissur report (D-742) dated 17.05.2022. Based on the disclosure of A-19, the scooter (MO-120) used by him and assailant Shamnad E.K. (A-20) to reach and escape from the scene of crime was seized, vide seizure mahazar (D-26) dated 25.04.2022. The report submitted by the scientific officer (D-583) during the pointing-out proceedings for A-19 confirms the presence of blood on the scooter. The RFSL report, Thrissur (D-744) dated 30.06.2022, shows the activa scooter and dresses (MO-44, MO-45) used by A-19 during the murder of Sreenivasan, as seen in the CCTV footage (MO-107), are similar.

(ix) Abdul Khader @ Iqbal (A-19) is also involved in Crime No.353/2020 of Palakkad Town North Police Station, Crime No.267/2026 of Kongad Police Station, Crime No.50/2020 of Kalladikkode Police Station, Crime No.933/2018 of Hemambika Nagar Police Station and Crime No.908/2020 of Palakkad Town North Police Station."

52. The charges levelled against the 2nd appellant-20th accused in S.C.No.2 of 2023, originally accused No.22 in Annexure A1 charge sheet, and the objections put forward by the prosecution to the grant of bail, before the Special Court, read thus;

"2. Firoz @Thambi (A-22)

Charge in Annexure A1:

a) That, the accused Firoz @ Thambi (A-22) being a cadre of PFI knowingly and intentionally became a member of terrorist gang formed by PFI to commit terrorist act as a part of larger conspiracy hatched by PFI and its office bearers and cadres since last few years to enact their 'India 2047' agenda of establishing Islamic Rule in India. Being a member of terrorist gang, he attended conspiracy meeting held at Palakkad on 16th of April 2022 for committing terrorist act of murdering any available Hindu Leader with the intention of creating terror in the minds of the Hindu community and among public at large which resulted in the murder of Sreenivasan on 16.04.2022 by PFI cadres. In furtherance to the conspiracy, on 16.4.2022, he travelled with Ummar (A-19) to the Scene of Crime by his Motorcycle TN-37-BF-4800 and assisted the assault team to carry out the terrorist act of killing Sreenivasan on 16.04.2022. He also conspired to destroy evidence in the case. He committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

b) That, the accused Firoz @ Thambi (A-22) along with 43 other co-accused were already charge sheeted by Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station under Section 120B, 34, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w 149 of IPC and Section 3(a)(b)(d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988, wherein, the



offence committed by Firoz @ Thambi (A-22) in the said connected offence has been enumerated in detail in that charge-sheet.

c) Therefore, accused Firoz @ Thambi (A-22) committed offences punishable under Sections 153A of IPC and sections 13, 16, 18 & 20 of the UA (P) Act along with additional offences under Section 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w 149 of IPC and Section 3(a)(b)(d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 as charge sheeted by the Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station.

Objections by the prosecution:

(i) Firoz @ Thambi (A-20) is alleged to be an active cadre of PFI. The statement of approver Aboobacker Sidik and the statements of CWs-784, 786, 797, 798, 800, 809 & 835 and PFI procession video recovered from the mobile phone (MO-29) of Muhammed Bilal (A-22) prima facie show that A-20 is an active cadre of PFI.

(ii) Firoz @ Thambi (A-20) is alleged to be a member of a terrorist gang formed by PFI to commit terrorist act as part of the larger conspiracy hatched by PFI. There are prima facie materials to substantiate the allegation of the larger conspiracy of PFI to establish Islamic rule in India. It also shows that the accused in this case are members of a terrorist gang, prepared for the commission of the terrorist act by imparting/undergoing arms training, collecting the details of targets and also by committing the terrorist act of



murder of Sreenivasan on 16.4.2022 as a part of larger conspiracy.

(iii) Firoz @ Thambi (A-20) allegedly attended arms training imparted by PFI at Falah Masjid, Palakkad as preparation for committing terrorist acts. The protected witness 17 has given a statement that arms training to PFI cadres was imparted at Falah Masjid at Palakkad and A-20 attended arms training at Falah Masjid at Palakkad along with assailants. Based on the disclosure of Basheer (A49), he had imparted arms training to A-20 and other accused at the said location, and a disclosure-cum-scene mahazar (D-347) was prepared at Falah Masjid at the instance of A-49 on 29.10.2022. CW-835 has given a statement that Basheer (A-49) is the master trainer of PFI, imparted arms training to A-20 and the assailants at Falah Masjid.

(iv) Firoz @ Thambi (A-20) attended conspiracy meetings held at Palakkad on 16.04.2022 for committing the terrorist act of murder of Sreenivasan. Protected witnesses 13, 18, 19 and 20, and witness CW-38 have given statements that they had seen A-20 along with the assailants and other PFI leaders and cadres on 16.04.2022 at noon (i.e., just before the murder of Sreenivasan) at the vacant land near District Hospital, Palakkad. Approver Aboobacker Siddik (A-52) has given a statement that 'the plan was to kill anyone and the decision to kill Sreenivasan was taken near hospital premises and behind the hospital', and other accused were also part of the conspiracy. Based on the disclosure of Muhammed Riswan @ Riswan (A-42), scene mahazar (D-



13) was prepared on 22.04.2022. The CDR/IPDRS show the presence of Firoz @ Thambi (A-20) at the scene of the conspiracy.

(v) Firoz @ Thambi (A-20), in furtherance of the conspiracy, travelled with Ummer T @ Manu (A-18) as a pillion rider on his motorcycle No.TN-37/BF-4800 to BOC Road, Palakkad, where Ummer T. (A-18) received weapons from Abdul Rasheed (A-28), and on receipt of weapons, they proceeded to the scene of crime. The statements of witnesses CW-39 and CW-40 confirmed that they had seen A-20 and other accused at the spot and stated that they had seen a person in the red-coloured car giving something to the assailants. Scene mahazar (D-100) at BOC Road, Palakkad was prepared based on the disclosure of Abdu Rahman (A-17) on 08.05.2022 regarding collection of weapons. CCTV footages D-20, D-21, D-29, D-30, D-33, D-34, D-63 and D-64 show the movement of A-20 with assailant Ummer T @ Manu (A-18) on motorcycle No.TN-37/BF-4800, along with other assailants on bikes and a car, to BOC Road, where Abdul Rasheed (A-28, absconding) handed over weapons to the assailants from car No.KL-55/D-4700 (MO-122) for committing the murder of Sreenivasan. CW-823 has identified A-20 and other assailants from CCTV footage.

(vi) Firoz @ Thambi (A-20), after the receipt of weapons by the assailants at BOC road, Palakkad, further proceeded to Melamuri as the rider of a motorcycle bearing No.TN-37/BF-4800 with the assailant Ummar T @ Manu (A-18) as pillion rider of the said motorcycle and on reaching in front of SKS



Autos, Melamuri, the assailants possessing lethal weapons, criminally trespassed into the said shop and committed the terrorist act of murder of Sreenivasan on 16.04.2022. After the commission of the terrorist act of murder of Sreenivasan on 16.04.2022, A-20 further escaped from the scene of crime along with the assailant Ummer T. (A-18) on motorcycle No.TN-37/BF-4800. Witnesses CW-1, CW-2, CW-3, CW-4, CW-5, CW-11 and CW-12 clearly stated that they had seen Firoz @ Thambi (A-20), along with assailants coming to the scene on one Scooter and two motorcycles and Abdurahman @ Adru (A-17), Ummar T. (A-18) and Shamnad E.K. @ Shamnad Ellikkal (A-20), possessing lethal weapons, criminally trespassed into the shop and committed the terrorist act by murdering Sreenivasan on 16.04.2022. Scene mahazar (D-3) dated 16.04.2022 has been prepared at the scene of crime based on the pointing-out of CW-1, and associated scene mahazar (D-206) dated 30.06.2022 has also been prepared at the scene of crime by the investigation officer. Scene plan of scene of crime (D-626) submitted by CW-244, the scientific evidence (MO-8 to MO-12) collected by the scientific officer from the scene of crime, seized vide seizure mahazar dated 16.04.2022 (D-4) and victim's DNA was detected on forensic analysis from the MOs collected by the scientific officer, vide RFSL report (D-742) and report prepared by the scientific officer on examination of scene of crime (D-582) proves the terrorist act of murder of Sreenivasan. The seized CCTV footages (D-45, D-46, D-49, D-50, D-53, D-54, D-203 and D-204)



clearly shows the movement of Firoz @ Thambi (A-20) on motorcycle No.TN-37/BF-4800 with the assailant Ummer T. @ Manu (A-18) as the pillion rider, and the other assailants on two motorcycles to the scene of crime. There are other materials such as CCTV footage to prove the presence of A-20 at the scene of the incident at the relevant time.

(vii) Firoz @ Thambi (A-20), tampered with evidence by way of concealing the dress he had worn during the commission of the terrorist act and the motorcycle No.TN-37/BF-4800, which was used for the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. A-20 handed over his mobile phone to accused Muhammed Rizwan (A-42) for screening his presence from the scene of crime. The seized CCTV footages D-67, D-68, D-87, D-88, D-102 and D-103 show A-20 with the assailant Ummer T. @ Manu (A-18), as the pillion rider on the motorcycle No.TN-37/BF-4800 escaping from the scene of crime, after the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. Based on his disclosure, recovery mahazars (D-43) dated 27.04.2022 and (D105) dated 09.05.2022 were prepared for the seizure of the T-shirt (MO-24) and jeans pants (MO-33) worn by Firoz @ Thambi (A-20), and white plastic cover (MO-34) and motorcycle No.TN-37/BF-4800 used by A-20 and the assailant Ummer T. @ Manu(A-18), for the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. Victim Sreenivasan's DNA has been detected from the T-shirt (MO-24) and jeans pants (MO-33) of Firoz @ Thambi (A-20), vide the report of RFSL, Thrissur dated



17.05.2022 (D-742). The scientific officer found blood stains in the seat cover and footrest (MO-35 and MO-36) of the seized motorcycle bearing No.TN-37/BF-4800 and submitted in sealed cover, and the same was seized vide seizure mahazar dated 09.05.2022 (D-106). Recovery mahazar dated 04.05.2022 (D-92) was prepared for the recovery of five number plates (MO-46 to MO-50), including the number plates bearing registration No.TN-37/BF-4800 and KL-37/BF-4800, which were the registration numbers of the vehicle used by A-20 and the assailant Ummer T. @ Manu (A-18) for the commission of the terrorist act of murder of Sreenivasan on 16.04.2022, based on the disclosure of the accused Haneefa (A-34). Further, the witnesses CW-35 and CW-36 have stated that the motorcycle No.TN-37/BF-4800 is owned by Firoz @ Thambi (A-20). Photographs recovered from the phone (MO-99) of A-20 also establish that he is in actual possession of the motorcycle. Report of RFSL, Thrissur dated 30.06.2022 (D-744), comparing the dress (MO-24 and MO-33) worn by A-20 during the commission of the terrorist act of murder of Sreenivasan on 16.04.2022 and motorcycle No.TN-37/BF-4800 with the CCTV footage on the hard disk (MO-107) of the scene of crime are found to be similar. Moreover, the mobile phone (MO-99) of A20 was possessed by the accused Muhammed Rizwan (A-42) to screen his presence at the scene of crime during the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. The said mobile phone (MO-99) was later handed over to accused Ashraf (A-



44) by the accused Asfak @ Unni (A-43) and the same was recovered vide recovery mahazar (D-74) dated 28.04.2022, based on the disclosure of the accused Ashraf (A-44).

(ix) Firoz @ Thambi (A-20) is also an accused in Crime No. 780/2018 of Palakkad Town North Police Station.

53. Section 43-D of the UA (P) Act deals with modified application of certain provisions of Cr.P.C. (now BNSS). As per sub-section (1) of Section 43-D, notwithstanding anything contained in the Code (now BNSS) or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code (now clause (g) of sub-section (1) of Section 2 of BNSS), and 'cognizable case' as defined in that clause shall be construed accordingly. As per sub-section (4) of Section 43-D, nothing in Section 438 of the Code (now Section 482 of BNSS) shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act. As per sub-section (5) of Section 43-D, which begins with a non-obstante clause, notwithstanding anything contained in the Code (now BNSS), 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. As per the proviso to sub-section (5) of Section 43-D, 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 (now Section 193 of BNSS), is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

54. In **State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21]**, in the context of Section 437 of Cr.P.C., a Two-Judge Bench of the Apex Court reiterated that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered



with; and (viii) danger, of course, of justice being thwarted by grant of bail.

55. In **National Investigation Agency v. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]**, after referring to the law laid down in *Amarmani Tripathi [(2005) 8 SCC 21]*, a Two-Judge Bench of the Apex Court observed that, when it comes to offences punishable under special enactments, such as the UA (P) Act, something more is required to be kept in mind in view of the special provisions contained in Section 43-D of the said Act, inserted by Act 35 of 2008, with effect from 31.12.2008. By virtue of the proviso to sub-section (5) of Section 43-D, it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. The principle underlying the decisions in which the court had occasion to deal with similar special provisions in the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA Act) and the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) may have some bearing while considering the prayer for bail in relation to the offences under the UA (P) Act as



well. Under the special enactments such as the TADA Act, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), the court is required to record its opinion that there are reasonable grounds for believing that the accused is 'not guilty' of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the court that there are reasonable grounds for believing that the accused is 'not guilty' of such offence and the satisfaction to be recorded for the purposes of the UA (P) Act that there are reasonable grounds for believing that the accusation against such person is 'prima facie' true. By its very nature, the expression 'prima facie true' would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report must prevail until contradicted and overcome or disproved by other evidence, and on the face of it shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted.



In one sense, the degree of satisfaction is lighter when the court has to opine that the accusation is 'prima facie true', as compared to the opinion of the accused 'not guilty' of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the court in relation to offences under the UA (P) Act, for opining that there are reasonable grounds for believing that the accusation against the accused is 'prima facie true', is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges.

56. In **Union of India v. K.A. Najeeb [(2021) 3 SCC 713]**, a Three-Judge Bench of the Apex Court noted that, in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1], the Two-Judge Bench intervened and cancelled the bail, since the High Court had re-appreciated the entire evidence on record to overturn the conclusion of the Special Court of there being a prima facie case of conviction and concomitant rejection of bail. The High Court practically conducted a mini-trial and determined the admissibility of certain evidence, thereby exceeding the limited scope of a bail



petition. It was not only beyond the statutory mandate of a *prima facie* assessment under Section 43-D(5) of the UA (P) Act, but also premature, thereby prejudicing the trial itself.

57. In the case at hand, in the impugned order dated 09.09.2025 in Crl.M.P.No.381 of 2025 in S.C.No.2 of 2023, in the context of the proviso to sub-section (5) of Section 43-D of the UA (P) Act, the Special Court found that, apart from the statement of witnesses, there are materials which *prima facie* suggest that the 19th and 20th accused in S.C.No.2 of 2023 had active role in the commission of the offence. The materials placed before the court *prima facie* make out the offence under Chapter IV of the UA (P) Act. After referring to the objections put forward by the prosecution to the grant of bail to the 19th and 20th accused, which we have extracted in paragraphs 51 and 52 hereinbefore, the Special Court observed that there are *prima facie* materials to show the presence of the 19th and 20th accused, who are active members of PFI, at the place of conspiracy and near the scene of crime. There are *prima facie* materials to show the role of the 19th and 20th accused in the commission of the offence.



58. As per the prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to the 19th accused (extracted in paragraph 51 hereinbefore), the 19th accused is allegedly the Area President of PFI, Kongad area of Palakkad and an active cadre of PFI; the 19th accused allegedly attended arms training imparted by PFI at Falah Masjid, Palakkad, as preparation for committing terrorist acts; and the 19th accused allegedly attended the conspiracy meeting held on 15.04.2022 and 16.04.2022 at Palakkad for committing the terrorist act. Those prima facie materials show the alleged movement of the 19th accused from the scene of conspiracy to the scene of crime, along with other assailants, and escaping from the scene of crime, after the alleged commission of the terrorist act of murdering Sreenivasan, and also the alleged destruction of evidence. Similarly, as per the prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to the 20th accused (extracted in paragraph 52 hereinbefore), the 20th accused is allegedly an active cadre of PFI; the 20th accused allegedly attended arms training attended by PFI at Falah Masjid,



Palakkad, as preparation for committing terrorist acts; and the 19th accused allegedly attended the conspiracy meeting held on 16.04.2022 at Palakkad for committing the terrorist act. Those prima facie materials show the alleged movement of the 20th accused from the scene of conspiracy to the scene of crime, along with other assailants, and escaping from the scene of crime, after the alleged commission of the terrorist act of murdering Sreenivasan, and also the alleged destruction of evidence.

59. When the materials placed before the court prima facie make out the offence under Chapter IV of the UA (P) Act, the Special Court cannot be found fault with in arriving at a conclusion that there are materials that prima facie show the involvement of the 19th and 20th accused in the conspiracy and destruction of evidence. The said finding of the Special Court is neither arbitrary nor illegal, warranting any interference in this Crl. Appeal. In such circumstances, the conclusion is irresistible that the proviso to Section 43-D(5) of the UA (P) Act applies to the 19th and 20th accused, and they are not entitled to be released on bail.

60. **Claim for parity in bail:-** In support of the claim for



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parity in bail, it is pointed out by the learned counsel for the appellant-19th and 20th accused that certain other accused, who are alleged to have taken active part in the alleged 'terrorist act' of murdering Sreenivasan on 16.04.2022, have been granted bail by the decision of a Division Bench in **Muhammed Bilal v. Union of India [2025 KHC OnLine 2006]**. Out of 64 accused persons arrested in S.C.No.2 of 2023, 58 have been enlarged on bail either by the High Court or by the Apex Court. The 19th and 20th accused are not alleged to have entered the shop or inflicted injuries on Sreenivasan. The persons alleged to have entered the shop and committed murder are Abdu Rahman @ Adu (A-17), Ummar @ Manu (A-18) and Shamnad E.K. @ Shamnad Ellikkal (A-65). A-17 and A-18 remain in custody. A-65 was arrested on 04.04.2025. The alleged role of the 1st appellant-19th accused is limited to riding a scooter bearing No.KL-09/AK-6726 to the scene of crime with Ummar @ Manu (A-18) as pillion rider.

61. In **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana [(2021) 6 SCC 230]**, after referring to the law laid down in **Neeru Yadav v. State of U.P. [(2014) 16 SCC 508]**



that, while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner, and has to consider the totality of circumstances before granting bail, a Two-Judge Bench of the Apex Court held that, parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, and their position in relation to the incident and the victims, are of utmost importance.

62. In **Tarun Kumar v. Enforcement Directorate [(2024) 13 SCC 788]**, in the context of the commission of the offence of money laundering, as defined under Section 3 of the PML Act, punishable under Section 4 of the said Act, a Two-Judge Bench of the Apex Court held that parity is not the law. While applying the principle of parity, the court is required to focus upon the role attached to the accused whose application is under consideration. The Two-Judge Bench observed that it is axiomatic that the principle of parity is based on the guarantee of positive



equality before law enshrined in Article 14 of the Constitution of India. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. Article 14 of the Constitution is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.

63. In **Muhammed Bilal [2025 KHC OnLine 2006]**, a decision relied on by the learned counsel for the appellants herein-19th and 20th accused, the 22nd and 24th accused in S.C.No.2 of 2023 on the file of the Special Court for NIA Cases, Ernakulam, who are the appellants in Crl.A.No.1248 of 2025, had undergone a pre-trial detention for more than three years and three months, and the 23rd and 60th accused in S.C.No.2 of 2023, who are the



appellants in Crl.A.No.1253 of 2025, had undergone a pre-trial detention for more than two years and eight months and more than two years and three months, respectively. The appellants were allegedly members of the 'Defence Team'. According to the appellants, the members of the 'Assault Team' are the prime accused persons in the case, who were allegedly present at the place of occurrence, armed with weapons, and executed the plan. According to the prosecution, the appellants, the members of the 'Defence Team', did not participate in the crime, but they were watching the activities near the place of occurrence armed with weapons. The appellants, being the members of a terrorist gang, conspired on 15.04.2022 for committing a terrorist act of murdering any available Hindu leader with the intention of creating terror in the minds of the Hindu community and among the public at large. In furtherance of the conspiracy, the appellants prepared for the commission of a terrorist act by imparting/undergoing arms training, collecting the details of targets, conducting recce of the targets to eliminate them and also by committing the terrorist act of murder of Sreenivasan on 16.04.2022 as a part of a larger



conspiracy to establish Islamic Rule in India as per their hidden agenda 'India 2047'.

64. In **Muhammed Bilal [2025 KHC OnLine 2006]**, the appellants were granted bail by a Division Bench of this Court on the ground that they have undergone a pre-trial detention for more than three years and three months/two years and eight months/two years and three months; the trial proceedings in S.C.No.2 of 2023 were stayed pursuant to an order of the Apex Court in SLP(Crl.)No.3658 of 2024; that the final report submitted by the NIA is voluminous, comprising 1688 documents, 1114 witnesses, 696 material objects, and 10 TB of FSL reports; and that the accused with almost similar charges were already released on bail. The Division Bench observed that, considering the magnitude of the prosecution case and the stay on proceedings issued in SLP(Crl.)No.3658 of 2024, which specifically interdicts the framing of charges, there is no foreseeable possibility of the trial commencing or concluding in the near future.

65. In **Muhammed Bilal [2025 KHC OnLine 2006]**, the



Division Bench relied on the decision of a Two-Judge Bench of the Apex Court in **Shaheen Welfare Association v. Union of India [(1996) 2 SCC 616]**.

66. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, for the purpose of grant of bail to the detainee under the TADA Act, the Two-Judge Bench divided the undertrials into four classes, i.e., (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or Section 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4 of the TADA Act, but by virtue of Sections 120-B or 147 of the IPC (now Sections 61(2) or 191(2) of BNS), and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under Section 5 of the TADA Act. Ordinarily, the provisions of sub-sections (8) and (9) of Section 20 of the TADA Act would apply to all the aforesaid classes. But while adopting a



pragmatic and just approach, no one can dispute that all undertrials cannot be dealt with by the same yardstick. Different approaches would be justified based on the gravity of the charges. Adopting such an approach, the Two-Judge Bench opined as follows;

(i) cases of undertrials falling within group (a), i.e., hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular, cannot receive liberal treatment;

(ii) undertrials falling in group (b), i.e., other undertrials whose overt acts or involvement directly attract Sections 3 and/or Section 4 of the TADA Act, would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses;

(iii) cases of undertrials falling in group (c), i.e., undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4 of the TADA Act, but by virtue of Section 120-B or 147 of the IPC, and those falling in group (d), i.e., undertrials who were found possessing incriminating articles in notified areas and are booked under



Section 5 of the TADA Act, can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. (underline supplied)

The Two-Judge Bench opined that those falling in group (b), when released on bail, may be released on bail of not less than Rs.50,000/- with one surety for like amount, and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30,000/- with one surety for like amount, subject to the terms enumerated in sub-paras (1) to (5) of paragraph 14 of the said decision [@ page 623 of SCC].

67. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, the Two-Judge Bench has referred to the observation made by a Constitution Bench in **Kartar Singh v. State of Punjab [(1994) 3 SCC 569]**, while considering the validity of sub-section (8) of Section 20 of the TADA Act, which contained a prohibition in releasing on bail an accused of an offence punishable under the said Act, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, that while liberty of a citizen must be zealously safeguarded by the courts,



nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution.

68. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, the Two-Judge Bench noted that, when the release of undertrials on bail is severely restricted as in the case of the TADA Act, by virtue of the provisions of sub-section (8) of Section 20, it becomes necessary that the trial does proceed and conclude within a reasonable time. Where this is not practical, release on bail, which can be taken to be embedded in the right of a speedy trial, may, in some cases, be necessary to meet the requirements of Article 21 of the Constitution of India. It was on this basis that in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [(1994) 6 SCC 731]**, a Two-Judge Bench considered similar provisions restricting the



grant of bail under the NDPS Act and directed release of undertrials on bail in certain situations and subject to the terms and conditions set out therein. The Two-Judge Bench, while doing so, observed that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt. Therefore, it was felt that, after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21 of the Constitution, which has to be telescoped with the right guaranteed by Article 14, which also promises justness, fairness and reasonableness in procedural matters.

69. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, after referring to the decision in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) [(1994) 6 SCC



731], the Two-Judge Bench found it necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time, without any prospect of the trial being concluded in the near future. The Two-Judge Bench observed that, undoubtedly, the safety of the community and the nation needs to be safeguarded, looking to the nature of the offences the undertrials have been charged with. But the ultimate justification for such deprivation of liberty, pending trial, can only be their being found guilty of the offences for which they have been charged. If such a finding is unlikely to be reached within a reasonable time, some relief becomes necessary.

70. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, the Two-Judge Bench noted that the writ petition filed as a Public Interest Litigation, under Article 32 of the Constitution of India, in which the petitioner has prayed for certain reliefs to undertrial prisoners charged under the TADA Act, poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is



essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact, the protection of innocent civilians depends on such speedy trials and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to the absence of proper evidence at trial, so that the truly guilty may ultimately be acquitted. It also causes irreparable harm to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, yet remain in jail for a long period pending trial because of the stringent bail provisions under the TADA Act. They suffer severe hardship, and their families may be ruined. Bearing in mind the nature of the crime and the need to protect society and the nation, stringent provisions for granting bail have been prescribed in sub-section (8) of Section 20 of the TADA Act. Such stringent provisions can be justified by reference to the nature of the crime, as was held in Kartar Singh [(1994) 3 SCC 569], on the presumption that the trial of the accused will take place without undue delay. No one can justify the gross delay



in the disposal of cases when undertrials are perforce kept in jail, giving rise to situations that may warrant invocation of Article 21 of the Constitution of India. These competing claims can be reconciled by taking a pragmatic approach. The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly insofar as the former class is concerned and liberally in respect of the latter class.

71. Bearing in mind the nature of the crime and the need to protect society and the nation, stringent provisions governing the grant of bail have been prescribed in Section 43-D(5) of the UA (P) Act. As per sub-section (5) of Section 43-D of the UA (P) Act, notwithstanding anything contained in the Code (now BNSS), 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. As per the proviso to sub-section (5) of Section 43-D, 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 (now Section 193 of BNSS), is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

72. The observation made by the Constitution Bench of the Apex Court in **Kartar Singh [(1994) 3 SCC 569]**, in the context of the provisions under sub-section (8) of Section 20 of the TADA Act, that while liberty of a citizen must be zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases under the TADA Act should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation, applies with equal force in cases under the UA (P) Act. Therefore, the courts, while dispensing justice in cases under the UA (P) Act, should keep in mind not only the liberty of the accused but also the interests of the victims and their near and dear ones and above all the collective interests of the community and the safety of the nation.



73. In the instant case, the charge against the appellants-19th and 20th accused in S.C.No.2 of 2023 is that they committed offences punishable under Section 153A of IPC and Sections 13, 16, 18 and 20 of the UA (P) Act along with additional offences under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 read with Section 149 of IPC and Section 3(a)(b)(d) read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 as charge sheeted by the Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station.

74. In the impugned order dated 09.09.2025 in Crl.M.P.No.381 of 2025 in S.C.No.2 of 2023, in the context of the proviso to sub-section (5) of Section 43-D of the UA (P) Act, the Special Court found that, apart from the statement of witnesses, there are materials which prima facie suggest that the 19th and 20th accused in S.C.No.2 of 2023 had active role in the commission of the offence. The materials placed before the court prima facie make out the offence under Chapter IV of the UA (P) Act. After referring to the objections put forward by the prosecution to the



grant of bail to the 19th and 20th accused, which we have extracted in paragraphs 51 and 52 hereinbefore, the Special Court observed in the impugned order dated 09.09.2025 that, there are prima facie materials to show the presence of the 19th and 20th accused, who are active members of PFI, at the place of conspiracy and near the scene of crime. There are prima facie materials to show the role of the 19th and 20th accused in the commission of the offence.

75. As per the prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to the 19th accused (extracted in paragraph 51 hereinbefore), the 19th accused is allegedly the Area President of PFI, Kongad area of Palakkad and an active cadre of PFI; the 19th accused allegedly attended arms training imparted by PFI at Falah Masjid, Palakkad, as preparation for committing terrorist acts; and the 19th accused allegedly attended the conspiracy meeting held on 15.04.2022 and 16.04.2022 at Palakkad for committing the terrorist act. Those prima facie materials show the alleged movement of the 19th accused from the scene of conspiracy to the scene of crime,



along with other assailants, and escaping from the scene of crime, after the alleged commission of the terrorist act of murdering Sreenivasan, and also the alleged destruction of evidence. Similarly, as per the prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to the 20th accused (extracted in paragraph 52 hereinbefore), the 20th accused is allegedly an active cadre of PFI; the 20th accused allegedly attended arms training imparted by PFI at Falah Masjid, Palakkad, as preparation for committing terrorist acts; and the 19th accused allegedly attended the conspiracy meeting held on 16.04.2022 at Palakkad for committing the terrorist act. Those prima facie materials show the alleged movement of the 20th accused from the scene of conspiracy to the scene of crime, along with other assailants, and escaping from the scene of crime, after the alleged commission of the terrorist act of murdering Sreenivasan, and also the alleged destruction of evidence.

76. The prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to Abdul Khader @ Iqbal (A-19) (extracted in paragraph 51 hereinbefore) include



the seized CCTV footages D-45, D-46, D-49, D-50, D-53, D-54, D-203 and D-204, which clearly show the movement of A-19 on the scooter bearing Reg. No. KL-09/AK-6726 (MO-120) with the assailant Shamnad E.K. @ Shamnad Ellikkal (A-20) as pillion rider, and the other assailants on two motorcycles to the scene of crime. Hard Disk (MO-107) seized from NSR/ASR Vegetables shop near scene of crime contains CCTV footage showing A-19 along with the assailants Shamnad E.K. @ Shamnad Ellikkal (A-20), Abdurahman @ Adu (A-17), Ummer T. @ Manu (A-18), Firoz @ Thambi (A-20) and Muhammed Mansoor (A-21) coming to the scene of crime on one scooter and two motorcycles and Abdurahman @ Adu (A-17), Ummer T(A-18) and Shamnad E.K. @ Shamnad Ellikkal (A-20), possessing lethal weapons, criminally trespassing into the shop and committing the terrorist act of murder of Sreenivasan on 16.04.2022. Abdul Khader @ Iqbal (A-19) tampered with evidence by concealing the dress he wore, the helmet, the vehicle and mobile phone he used during the commission of the terrorist act. Based on his disclosure, recovery mahazar (D-78) dated 30.04.2022 has been prepared for the



recovery of the helmet (MO-43), the baniyan (MO-44), the jeans (MO-45) and the mobile phone (MO-42) used by A-19 during the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. DNA of the victim Sreenivasan has been detected from the baniyan (MO-44) and jeans (MO-45) of A-19, vide RFSL, Thrissur report (D-742) dated 17.05.2022. Based on the disclosure of A-19, the scooter (MO-120) used by him and the assailant Shamnad E.K. @ Shamnad Elikkal (A-20) to reach and escape from the scene of crime was seized vide seizure mahazar (D-26) dated 25.04.2022. The report submitted by the scientific officer (D-583) during the pointing-out proceedings for A-19 confirms the presence of blood on the scooter. The RFSL report, Thrissur (D-744) dated 30.06.2022, shows the activa scooter and dresses (MO-44, MO-45) used by A-19 during the murder of Sreenivasan, as seen in the CCTV footage (MO-107), are similar.

77. Similarly, the prima facie materials referred to in the objections put forward by the prosecution to the grant of bail to the 20th accused (extracted in paragraph 52 hereinbefore) include CCTV footages D-20, D-21, D-29, D-30, D-33, D-34, D-63 and D-



64, which clearly show the movement of A-20 with assailant Ummer T @ Manu (A-18) as a pillion rider on motorcycle No.TN-37/BF-4800, along with other assailants on bikes and a car, to BOC Road, where Abdul Rasheed (A-28, absconding) handed over weapons to the assailants from car No.KL-55/D-4700 (MO-122) for committing the murder of Sreenivasan. CW-823 has identified A-20 and other assailants from the CCTV footage. The witnesses CW-1, CW-2, CW-3, CW-4, CW-5, CW-11 and CW-12 stated that they had seen Firoz @ Thambi (A-20), along with assailants coming to the scene on one Scooter and two motorcycles and Abdurahman @ Adru (A-17), Ummar T. (A-18) and Shamnad E.K. @ Shamnad Ellikkal (A-20), possessing lethal weapons, criminally trespassed into the shop and committed the terrorist act by murdering Sreenivasan on 16.04.2022. A-20 tampered with evidence by way of concealing the dress he wore and the vehicle he used during the commission of the terrorist act. Based on his disclosure, recovery mahazars (D-43) dated 27.04.2022 and (D105) dated 09.05.2022 were prepared for the seizure of the T-shirt (MO-24) and the jeans (MO-33) worn by A-20, and a white



plastic cover (MO-34) and motorcycle No.TN-37/BF-4800 used by A-20 and the assailant Ummer T. @ Manu (A-18), for the commission of the terrorist act of murder of Sreenivasan on 16.04.2022. DNA of the victim Sreenivasan has been detected from the T-shirt (MO-24) and jeans (MO-33) of A-20, vide the report of RFSL, Thrissur dated 17.05.2022 (D-742). The scientific officer found blood stains in the seat cover and footrest (MO-35 and MO-36) of the seized motorcycle bearing No.TN-37/BF-4800 and submitted in sealed cover, and the same was seized vide seizure mahazar dated 09.05.2022 (D-106). The RFSL report, Thrissur (D-744) dated 30.06.2022 shows the dress (MO-24 and MO-33) worn by A-20 during the commission of the terrorist act of murder of Sreenivasan on 16.04.2022 and motorcycle No.TN-37/BF-4800, as seen in CCTV footage on the hard disk (MO-107) of the scene of crime, are similar.

78. As held by the Two-Judge Bench of the Apex Court in **Ramesh Bhavan Rathod [(2021) 6 SCC 230]**, parity while granting bail must focus upon the role of the accused. In deciding the aspect of parity, the role attached to the accused and their



position in relation to the incident and the victims are of utmost importance. In **Tarun Kumar [(2024) 13 SCC 788]**, a Two-Judge Bench of the Apex Court reiterated that parity is not the law. While applying that principle, the court is required to focus upon the role attached to the accused whose application is under consideration. The principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution of India. Since Article 14 of the Constitution is not meant to perpetuate the illegality or irregularity, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order.

79. As already noted hereinbefore, in **Muhammed Bilal [2025 KHC OnLine 2006]**, a decision relied on by the learned counsel for the appellants herein-19th and 20th accused in S.C.No.2 of 2023, the 22nd and 24th accused in S.C.No.2 of 2023, who are the appellants in Crl.A.No.1248 of 2025, and the 23rd and 60th



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accused in S.C.No.2 of 2023, who are the appellants in Crl.A.No.1253 of 2025, were members of the 'Defence Team'. According to the prosecution, the appellants, the members of the 'Defence Team', did not participate in the crime, but they were watching the activities near the place of occurrence armed with weapons. Further, the appellants, being the members of a terrorist gang, conspired on 15.04.2022 for committing a terrorist act, and in furtherance of the conspiracy, they prepared for the commission of a terrorist act. The Division Bench granted them bail on the ground that they have undergone a pre-trial detention for more than three years and three months/two years and eight months/two years and three months; the trial proceedings in S.C.No.2 of 2023 were stayed pursuant to an order of the Apex Court in SLP(Crl.)No.3658 of 2024; that the final report submitted by the NIA is voluminous, comprising 1688 documents, 1114 witnesses, 696 material objects, and 10 TB of FSL reports; and that the accused with almost similar charges were already released on bail.

80. The learned counsel for the appellants-19th and 20th



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accused would point out that, in **Muhammed Bilal [2025 KHC OnLine 2006]**, the 2nd appellant in Crl.A.No.1248 of 2025, Riyasudheen, the 24th accused in S.C.No.2 of 2023, who was released on bail by the Division Bench, alleged to have travelled to the scene of crime on 16.04.2022, along with pillion rider Shaheer (A-60) on a motorcycle bearing No.KL-09/AQ-713 arranged by Abbas (A-52) and assisted the assailants for the commission of the terrorist act of murdering Sreenivasan. DNA of the victim Sreenivasan has been detected from the clothes of A-24. On the aforesaid submission by the learned counsel for the appellants-19th and 20th accused, it has to be noted that, as per the objections of the prosecution, which has been referred to in paragraph 24 of the decision in **Muhammed Bilal [2025 KHC OnLine 2006]**, Riyasudheen (A-24), the 2nd appellant in Crl.A.No.1248 of 2025, proceeded as the rider of the motorcycle bearing No.KL-09/AQ-713 (MO-111) along with Saheer K.V. (A-60) as pillion rider to BOC Road, Palakkad, and Saheer K.V. (A-60) received weapons from Abdul Rasheed (A-28) at BOC Road, Palakkad to eliminate those who came to defend the terrorist act



of murdering Sreenivasan. After receipt of the weapons from BOC Road, Palakkad, Riyasudheen (A-24) proceeded as the rider of the motorcycle bearing No.KL-09/AQ-713 to SKS Autos, Melamuri, Palakkad and stood there as a 'Defence Team' to the assailants, when Sreenivasan was hacked to death. It is not discernible from the decision in **Muhammed Bilal [2025 KHC OnLine 2006]** that any material to show the detection of DNA of the victim Sreenivasan from the clothes of A-24 was brought to the notice of the Division Bench, which rendered that decision.

81. The principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution of India. In deciding the aspect of parity, the role attached to the accused and their position in relation to the incident and the victims are of utmost importance. Parity is not the law. While applying that principle, the court is required to focus upon the role attached to the accused whose application is under consideration. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, a decision relied on by the Division Bench in **Muhammed Bilal [2025 KHC OnLine 2006]**, a Two-Judge Bench of the Apex



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Court has made it clear that all undertrials cannot be dealt with by the same yardstick. Different approaches would be justified based on the gravity of the charges. In the impugned order dated 09.09.2025 in CrI.M.P.No.381 of 2025 in S.C.No.2 of 2023, in the context of the proviso to sub-section (5) of Section 43-D of the UA (P) Act, the Special Court found that, apart from the statement of witnesses, there are materials which prima facie suggest that the 19th and 20th accused in S.C.No.2 of 2023 had active role in the commission of the offence under Chapter IV of the UA (P) Act. After referring to the objections put forward by the prosecution to the grant of bail to the 19th and 20th accused, the Special Court observed that there are prima facie materials to show the presence of the 19th and 20th accused, who are active members of PFI, at the place of conspiracy and near the scene of crime. There are prima facie materials to show the role of the 19th and 20th accused in the commission of the offence.

82. As noted hereinbefore, the prima facie materials against the 1st appellant-19th accused Abdul Khader @ Iqbal include the DNA of the victim Sreenivasan alleged to have been



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detected from the baniyan (MO-44) and jeans (MO-45) of A-19,
vide RFSL, Thrissur report (D-742) dated 17.05.2022; and the
prima facie materials against the 2nd appellant-20th accused Firoz
@ Thambi include the DNA of the victim Sreenivasan alleged to
have been detected from the T-shirt (MO-24) and jeans (MO-33)
of A-20, vide the report of RFSL, Thrissur dated 17.05.2022 (D-
742), and also blood stains allegedly found in the seat cover and
footrest (MO-35 and MO-36) of the motorcycle bearing No.TN-
37/BF-4800, seized vide seizure mahazar dated 09.05.2022 (D-
106). Therefore, applying the principle of parity, or placing
reliance on the decision of the Division Bench in **Muhammed Bilal**
[2025 KHC OnLine 2006] granting bail to the 22nd, 23rd, 24th
and 60th accused in S.C.No.2 of 2023, who were allegedly the
members of the 'Defence Team', the appellants herein-19th and
20th accused in S.C.No.2 of 2023, are not entitled to a release on
bail. The contentions to the contra raised by the learned counsel
for the appellants-19th and 20th accused are untenable, and are
rejected as such.



83. **Bail - long incarceration and inordinate delay in completion of the trial:-** The learned counsel for the appellants-19th and 20th pointed out that the 19th accused, who was arrested on 24.04.2022 and the 20th accused, who was arrested on 26.04.2022, have undergone more than 4 years and 1 month of actual custody. There is no possibility that the trial in S.C.No.2 of 2023 would either commence or conclude in the near future. There are 71 accused, 937 witnesses, 60 protected witnesses and 4 approvers (total 1001); 1634 documents and 54 protected documents (total 1688); 692 material objects; and 10 Terabytes (TB) of FSL reports. Out of 71 accused, 4 are absconding, 10 are in judicial custody, 55 are on bail, 4 approvers are on bail, and 1 accused is dead.

84. In **Union of India v. K.A. Najeeb [(2021) 3 SCC 713]**, a Three-Judge Bench of the Apex Court observed that the presence of statutory restrictions like Section 43-D(5) of the UA (P) Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution of India. Indeed, both the restrictions under a statute as well as



the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against the grant of bail, but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UA (P) Act being used as the sole metric for denying bail or for a wholesale breach of the constitutional right to speedy trial.

85. In **K.A. Najeeb [(2021) 3 SCC 713]**, before the Three-Judge Bench, the learned Additional Solicitor General for India, for the appellant, argued that the High Court erred in granting bail without advertting to the statutory rigours of Section 43-D(5) of the UA (P) Act. Relying on the decision of the Two-Judge Bench in *Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]*, it was highlighted that bail proceedings under the special enactment were distinct and that courts are duty-bound to refuse bail where



the suspect is *prima facie* believed to be guilty. Further, in numerous prior rounds before the Special Court and the High Court, sufficient grounds emerged to believe that the respondent was, *prima facie*, guilty of the accusations made against him. The fact that the respondent had absconded for years was pressed into aid as legitimate apprehension of his not returning, if set free. As regards the early conclusion of the trial, NIA has filed an additional affidavit before the Apex Court, suggesting the examination of 276 witnesses on a day-to-day basis and completion within around a year.

86. In **K.A. Najeeb [(2021) 3 SCC 713]**, the Apex Court was dealing with a case in which the respondent, who was facing trial in a crime registered under Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326, 506 Part II, 201, 202, 153-A, 212, 307, 149 of IPC, Section 3 of the Explosive Substances Act and Sections 16, 18, 18-B, 19 and 20 of the UA (P) Act, was in jail for more than 5 years. Before the Three-Judge Bench, the learned Senior Counsel for the respondent highlighted that many of the co-accused had been acquitted. Although a few co-accused had been



convicted, they had been sentenced to not more than eight years. The respondent has already suffered incarceration of almost 5½ years without the trial having even started, which would violate his constitutional liberty and rights to have him serve most of his sentence without any adjudication of guilt by a judicial authority. Once the High Court had exercised discretion to grant bail, the same ought not to be interfered with except in rare circumstances. Relying on Shaheen Welfare Association [(1996) 2 SCC 616] and **Hussain v. Union of India [(2017) 5 SCC 702]**, it was argued that such protracted incarceration violates the right of the respondent to speedy trial and access to justice; in which case, the constitutional courts could exercise their powers to grant bail, regardless of limitations specified under special enactments.

87. In **K.A. Najeeb [(2021) 3 SCC 713]**, the Three-Judge Bench emphasised that there is a vivid distinction between the parameters to be applied while considering a bail application, vis-à-vis those applicable while deciding a petition for its cancellation. The Three-Judge Bench noted the decision in **State of Bihar v. Rajballav Prasad [(2017) 2 SCC 178]**, wherein a



Two-Judge Bench held that, once the discretion is exercised by the High Court on relevant considerations and bail is granted, the Apex Court would normally not interfere with such a discretion, unless it is found that the discretion itself is exercised on extraneous considerations and/or the relevant factors which need to be taken into account while exercising such a discretion are ignored or bypassed.

88. In **K.A. Najeeb [(2021) 3 SCC 713]**, on the facts of the case at hand, the Three-Judge Bench noted that, in the impugned judgment, the High Court has not determined the likelihood of the respondent being guilty or not, or whether the rigours of Section 43-D(5) of the UA (P) Act are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed in the near future. The reasons assigned by the High Court are apparently traceable to Article 21 of the Constitution of India, of course, without addressing the statutory embargo created by Section 43-D(5) of the UA (P) Act. The view taken by the High Court draws support from a batch of



decisions, including the Two-Judge Bench decision in Shaheen Welfare Association [(1996) 2 SCC 616], laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail.

89. In **K.A. Najeeb [(2021) 3 SCC 713]**, the Three-Judge Bench noted that, even in the case of special legislation like the TADA Act and the NDPS Act, which too have somewhat rigorous conditions for the grant of bail, the Court in Paramjit Singh [(1999) 9 SCC 252], **Babba v. State of Maharashtra [(2005) 11 SCC 569]** and **Umarmia v. State of Gujarat [(2017) 2 SCC 731]** enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments has thus been primarily justified on the touchstone of speedy trials to protect innocent civilians. The Three-Judge Bench has also referred to the orders enlarging similarly situated accused under the UA (P) Act in **Angela Harish Sontakke v. State of Maharashtra [(2021)**



3 SCC 723] and in **Sagar Tatyaram Gorkhe v. State of Maharashtra [(2021) 3 SCC 725]**. Paragraph 13 of the decision of the Three-Judge Bench reads thus;

"13. We may also refer to the orders enlarging similarly situated accused under UA (P) Act passed by this Court in Angela Harish Sontakke v. State of Maharashtra [(2021) 3 SCC 723]. That was also a case under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the UA (P) Act. This Court, in its earnest effort to draw a balance between the seriousness of the charges and the period of custody suffered and the likely period within which the trial could be expected to be completed, took note of the 5 years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UA (P) Act. Similarly, in Sagar Tatyaram Gorkhe v. State of Maharashtra [(2021) 3 SCC 725], an accused under the UA (P) Act was enlarged because he had been in jail for 4 years and over 147 witnesses were still unexamined." (underline supplied)

90. In **K.A. Najeeb [(2021) 3 SCC 713]**, on the facts of the case at hand, the Three-Judge Bench noted that the respondent had been in jail for more than 5 years and there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, though two opportunities were



given, the appellant NIA has shown no inclination to screen its endless list of witnesses. Of the 13 co-accused, who have been convicted, none have been sentenced to more than 8 years' rigorous imprisonment. Therefore, it can be legitimately expected that, if found guilty, the respondent would also receive a sentence within the same ballpark. Two-thirds of such incarceration has already been completed, and the respondent has already paid heavily for his acts of fleeing from justice. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) [(1994) 6 SCC 731], a Two-Judge Bench held that undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has been incarcerated for a significant period, the courts would ordinarily be obligated to enlarge them on bail.

91. In **K.A. Najeed [(2021) 3 SCC 713]**, the Three-Judge Bench noted that, in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1], the Two-Judge Bench intervened and cancelled the bail, since the High Court had re-appreciated the entire evidence on record to overturn the conclusion of the Special Court of there



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being a prima facie case of conviction and concomitant rejection of bail. The High Court practically conducted a mini-trial and determined the admissibility of certain evidence, thereby exceeding the limited scope of a bail petition. It was not only beyond the statutory mandate of a *prima facie* assessment under Section 43-D(5) of the UA (P) Act, but also premature, thereby prejudicing the trial itself.

92. In **K.A. Najeeb [(2021) 3 SCC 713]**, on the facts of the case at hand, the Three-Judge Bench noted that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, perhaps the Court would have outrightly turned down the prayer of the respondent. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and to establish the charges beyond any doubt, and simultaneously the respondent's rights guaranteed



under Part III of our Constitution have been well protected. The Three-Judge Bench noted that Section 43-D(5) of the UA (P) Act is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act, where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail, there is no such precondition under the UA (P) Act. Instead, Section 43-D(5) merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations such as the gravity of the offence, the possibility of tampering with evidence, the possibility of influencing witnesses or the chance of the accused evading trial by absconding, etc.

93. In **K.A. Najeer [(2021) 3 SCC 713]**, the Three-Judge Bench though declined interference with the impugned judgment, imposed certain additional conditions, which would serve the best interest of justice and the society at large. Paragraph 20 of the decision reads thus;

"20. In light of the above discussion, we are not inclined to interfere with the impugned order. However, we feel that besides the conditions to be imposed by the trial court while



releasing the respondent, it would serve the best interest of justice and the society at large to impose some additional conditions that the respondent shall mark his presence every week on Monday at 10 a.m. at the local police station and inform in writing that he is not involved in any other new crime. The respondent shall also refrain from participating in any activity which might enrage communal sentiments. In case the respondent is found to have violated any of his bail conditions or attempted to tamper with the evidence, influence witnesses, or hamper the trial in any other way, then the Special Court shall be at liberty to cancel his bail forthwith. The appeal is accordingly dismissed subject to the above-stated directions."

94. In **Athar Parwez v. Union of India [2024 SCC OnLine SC 3762]**, a Two-Judge Bench of the Apex Court was dealing with a case in which Athar Parwez and the co-accused Jalaluddin Khan @ Md. Jalaluddin were arrested on 12.07.2022, and a crime was registered at the Police Station Phulwari Sharif, Patna. The investigation was later taken up by NIA and the case was re-registered. After investigation, a chargesheet against the appellant was filed alleging offences under Sections 121, 121A, 122, 153A and 153B of IPC and Sections 13, 17, 18, 18A, 18B and 20 of the UA (P) Act. The allegation against the appellant was that



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he was an active member of PFI and that he and his associates were planning to cause disturbance during the proposed visit of the Prime Minister to Patna. This led to the raid being conducted on 11.07.2022 at the first floor of Ahmad Palace, Phulwari Sharif, Patna, which was taken on rent by the appellant from the co-accused Md. Jalaluddin. During the raid, certain recoveries were made. Prominent amongst them was a document titled 'India 2047 towards rule of Islam in India', an internal document not for circulation. Assertions were made in the complaint, based on seized documents, that the appellant, along with other members of PFI, aimed to disrupt the sovereignty of India and cause disaffection against the country. The application for bail having been dismissed, he approached the Apex Court seeking bail.

95. In **Athar Parwez [2024 SCC OnLine SC 3762]**, one of the contentions raised before the Apex Court was prolonged incarceration without trial. He had undergone incarceration for 2 Years and 4 months at the time of consideration of the Appeal by the Apex Court. The Two-Judge Bench noted that long incarceration and the unlikely likelihood of the trial being



completed in the near future have also been taken as a ground for exercising its constitutional role by the constitutional courts to grant bail on violation of Article 21 of the Constitution of India, which guarantees that the trial shall be concluded within a reasonable time. Gross delay in conclusion of the trial would justify such invocation, leading to a conclusion of violation of Part III of the Constitution of India, which may be taken as a ground to release an undertrial on bail. A reference in this regard was also made to the decision of the Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713].

96. In **Athar Parwez [2024 SCC OnLine SC 3762]**, the Two-Judge Bench observed that, keeping the statutory provisions of Section 43-D(5) of the UA (P) Act in mind, but with the passage of time, the effect of that statutory provision would in fact have to be diluted, giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. The constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute and cannot be made the sole reason for denial of



bail. The period of incarceration of an accused could also be a relevant consideration for constitutional courts and should not be governed solely by statutory provisions. A reference in this regard was also made to the decisions in **Thwaha Fasal v. Union of India [(2022) 14 SCC 766]** and **Javed Gulam Nabi Shaikh v. State of Maharashtra [(2024) 9 SCC 813]**. The Court gave precedence to the protection of fundamental rights and emphasised its primacy over the statutory provisions in case of delayed trial. The Court even asserted that the seriousness of the crime for which the accused is on trial would not be material, as an accused is presumed innocent until proven guilty.

97. In **Athar Parwez [2024 SCC OnLine SC 3762]**, with the aforesaid basic principles in mind, the Two-Judge Bench proceeded to consider the position with regard to the appeal at hand. The Two-Judge Bench noted that the primary allegation against the appellant was that he is an active member of PFI, which according to the prosecution is an organisation committed to bringing about Islamic rule in India. For the said purpose, disharmony and internal conflicts are sought to be brought about



within the society so that there is discontentment and the peace and calm within the society gets disturbed. The allegation against the appellant was regarding the collection of zakat from people to help PFI or the recruitment of members to PFI. On the day the appellant carried out such activities, PFI was not a banned organisation. None of the witnesses or the protected witnesses stated that the money so collected as zakat was ever misappropriated by the appellant or used in any manner for illegal activities. The statements of the protected witnesses have not mentioned anything specific that could be attributed to the appellant, and that could, prima facie, attract charges under the UA (P) Act. Therefore, it is apparent that the first test as has been laid down by the various judgments on the point stands satisfied relating to Section 43-D(5) of the UA (P) Act. Moreover, the material which has been allegedly recovered from the appellant, especially the documents, which, according to the prosecution, contained incriminating contents as per the seizure memo, was from the second floor. As is apparent from the rent deed, on which the prosecution itself has placed reliance, only the first floor of



Ahmad Palace was rented out to the appellant, and he was in exclusive possession thereof. This also raises doubts regarding the recovery of the material.

98. In **Athar Parwez [2024 SCC OnLine SC 3762]**, the Two-Judge Bench noted that the appellant was arrested on 12.07.2022. He had undergone custody for more than two years and four months. The charge-sheet was filed on 07.01.2023, but till date charges have not been framed, which is an admitted position. The prosecution has cited 40 accused and 354 witnesses for examination. There can be no doubt that the trial is not likely to be completed soon. The appellant cannot be allowed to languish in jail indefinitely and that too without a trial. If such an approach is allowed, Article 21 of the Constitution of India would stand violated. The Two-Judge Bench held that the ratio as laid down in K.A. Najeeb [(2021) 3 SCC 713] as also the ratio in Thwaha Fasal [(2022) 14 SCC 766] and Javed Gulam Nabi Shaikh [(2024) 9 SCC 813] would be applicable to the case at hand and would squarely apply, entitling the appellant to the grant of bail.

99. In **Union of India v. Barakathullah [2024 SCC**



OnLine SC 1019], a Two-Judge Bench of the Apex Court was considering a case in which the respondents-accused were charge-sheeted for the offences under Sections 120B, 121A, 12, 153A, 505(1)(b) and (c), 505(2) of IPC and Sections 13, 18, 18A, 18B of the UA (P) Act, except the 6th accused - S. Khaja Maideen, who has been additionally implicated under Section 38 and 39 of the UA (P) Act. Out of the offences under the UA (P) Act, the offences under Sections 18, 18A and 18B would fall under Chapter-IV, whereas the offences under Section 38 and 39 would fall under Chapter-VI of the said Act. During the course of investigation, the respondents-accused were arrested on 22.09.2022 for the alleged offences. They filed bail applications before the Special Court under the NIA Act (Sessions Court for Exclusive Trial of Bomb Blast Cases). The Special Court, after considering the case diary, the documents and material produced before it, and after having been satisfied about the *prima facie* case made out against the respondents-accused, as also considering the provisions of Section 43-D(5) of the UA (P) Act, in the light of the position of law settled by various decisions, dismissed the said bail



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applications. Being aggrieved by the said orders, the respondents filed Crl.A.Nos.98, 114 and 116 of 2023 before the High Court of Judicature at Madras. Some of the respondents-accused had also filed Crl.M.P.Nos.11595 and 8094 of 2023 seeking interim bail pending the said appeals. During the pendency of the said appeals, the chargesheet came to be filed by NIA against all the respondents along with others, on 17.03.2023 for the offences under Sections 120B, 121A, 122, 153A, 505(1)(b) and (c), 505(2) of IPC and Sections 13, 18, 18A, 18B of the UA (P) Act. The High Court, after taking into consideration the submissions made by the learned Counsel for the parties and materials placed on record, including the chargesheet, allowed the said appeals by a common judgment dated 19.10.2023, releasing the respondents on bail, subject to the conditions mentioned therein. Aggrieved by the said judgment, the Union of India, through NIA, Chennai Branch, filed the appeals.

100. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench noted that, from the statements of witnesses and the incriminating documents collected during the course of



investigation, as referred to in the charge-sheet, PW-A, PW-C, PW-D, PW-E, and the witnesses Syed Abutaheer and Mohammed Satik have stated about the activities of PFI like radicalising youth for recruitment, arms training (knife, sword and use of petrol bombs/inflammable substances) and preparatory acts for the commission of terrorist activities. Similarly, PW-F has stated about PFI's ideal of an Islamic State and about providing support to ISIS. PW-A, PW-B, PW-C, PW-D, PW-H and PW-I have stated about the conspiracy hatched by the members of the PFI and particularly the role of A-8 Yasar Arafat for creating an Islamic State by the year 2047 through an armed struggle against the Government of India. In paragraph 15 of the decision [SCC OnLine], the Two-Judge Bench tabulated the role of each of the respondents-accused, from the relevant extracts of the statements of the protected witnesses and of the listed witnesses.

101. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench noted that, as transpiring from the material on record, PFI was registered under the Societies Registration Act, having an organisational set up as contained in its constitution. All



the respondents-accused were members or office bearers of PFI at the relevant time. As alleged in the chargesheet, though PFI was projecting itself as an organisation fighting for the rights of minorities, dalits and marginalised communities, it was pursuing a covert agenda to radicalise a particular section of society and to work towards undermining the concept of democracy and integrity of India. The investigation disclosed that the activities and undeclared objectives of PFI had a strong communal and anti-national agenda to establish an Islamic rule in India by radicalisation of Muslims and communalization of issues. After recruitment as members of PFI, they were motivated towards violent terrorist activities by providing training through a beginners' course and advanced training courses. During the training courses, physical education classes were conducted in which members were taught to attack, assault, maim and murder with bare hands. The training also covered how to use weapons such as knives and swords, and how to hurl bombs. Within a few days of the arrest of respondents, on 22.09.2022, PFI was declared as an 'unlawful association' and banned by the



Government of India under the UA (P) Act. The Two-Judge Bench noted that there are sufficient materials in the form of statements of witnesses and other incriminating evidence in the form of digital devices, books, photographs, etc., collected during the course of investigation and relied upon by the appellant, as recorded in the charge sheet, to form an opinion that there are reasonable grounds for believing that the accusations against the respondents-accused are *prima facie* true.

102. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench noted that, as stated in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1], the material/evidence collated by the Investigating Agency in reference to the accusation against each of the accused concerned in the chargesheet would prevail until rebutted, contradicted and overcome or disproved by other evidence. The material collated and statements of witnesses recorded also show *prima facie* complicity of the respondents-accused in the commission of the alleged offences, which material/evidence is good and sufficient on its face to establish the facts constituting the alleged offences, till such material/evidence is



rebutted or contradicted. The court, at the stage of considering the bail applications of the respondents-accused, is merely required to record a finding, on broad probabilities, regarding the involvement of the accused in the commission of the alleged offences.

103. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench opined that the High Court has committed gross error in not considering the material/evidence in its right and proper perspective and in recording a perverse finding to the effect that there was no material to suggest the commission of any offence, which falls under Section 15 of the UA (P) Act, and that the prosecution had not produced any material about the involvement of any of the respondents-accused in any terrorist act or as a member of a terrorist gang or organisation or training terrorism. Such perverse findings of the High Court deserve to be strongly deprecated, more particularly when the appellant has not alleged the offence under Section 15 of the UA (P) Act either in the FIR or in the chargesheet against the respondents-accused. The alleged offences are under Sections 18, 18A, 18B, etc. of the



UA (P) Act. For the purpose of considering the offence under Section 18, the commission of a terrorist act, as contemplated in Section 15 of the UA (P) Act, is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual commission of a terrorist act as defined in Section 15 need not be shown. The Two-Judge Bench opined that the High Court, having miserably failed to comprehend the correct import of Section 18, read with the definition of terrorist act as contemplated in Section 15 of the UA (P) Act, has fallen into a patent and manifest error.

104. In **Barakathullah [2024 SCC OnLine SC 1019]**,



before the Two-Judge Bench, it was submitted by the learned counsel for the respondent-accused that the material/evidence collected by the Investigating Agency and statements of witnesses relied upon by the prosecuting agency are not reliable. The Two-Judge Bench found that the said submission cannot be accepted. As held in *Zahoor Ahmad Shah Watali* [(2019) 5 SCC 1], the question of discarding the material or document at the stage of considering the bail application of an accused, on the ground of being not reliable or inadmissible in evidence, is not permissible. The court must look at the contents of the documents and take such documents into account as they are and satisfy itself on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offences for recording whether a *prima facie* case is made out against the accused. No doubt, in *K.A. Najeeb* [(2021) 3 SCC 713], relied on by the learned counsels for the respondents-accused, it has been observed that a Constitutional court is not strictly bound by the prohibitory provisions of grant of bail in the UA (P) Act, and can exercise its constitutional jurisdiction to release the accused on bail who has



been incarcerated for a long period of time relying upon Article 21 of the Constitution of India. The Two-Judge Bench observed that the said observations in K.A. Najeeb [(2021) 3 SCC 713] may not be applicable to the facts of the case at hand. In the said case, the Three-Judge Bench did not interfere with the order passed by the High Court granting bail to the accused, on the ground that the said accused had already spent 5 years and 5 months in custody and the trial was likely to take a long time. So far as the respondents-accused in the appeals at hand are concerned, they have been in custody hardly for one and a half years, apart from the fact that all the respondents-accused are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the charge sheet against the respondents-accused, except accused Nos.1, 4 and 6, who are shown to have been involved in 2 cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, the Two-Judge Bench opined that the High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in



the alleged offences under the UA (P) Act.

105. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench noted that the decision in **Vernon v. State of Maharashtra [2023 SCC OnLine SC 885]**, relied upon by the learned counsel for the respondents-accused also would be of hardly any help in as much in the said case the Court, after considering allegations made against the accused, and long incarceration of five years, did not think it proper to continue further detention of the appellants-accused in that case. In **Shoma Kanti Sen v. State of Maharashtra [(2024) 6 SCC 571]**, the Court had deemed it proper to release the accused involved in the offences under the UA (P) Act on bail, having considered the facts of the case and observing that Section 43-D(5) of the UA (P) Act was not applicable.

106. In **Barakathullah [2024 SCC OnLine SC 1019]**, on the facts of the case at hand, the Two-Judge Bench recorded its satisfaction from the charge sheet as also the other materials/ documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the



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respondents-accused are *prima facie* true and that the mandate contained in the proviso to Section 43(D)(5) of the UA (P) Act would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents-accused, as mentioned in the charge sheet, the period of custody undergone by the accused being hardly one and a half years, the severity of punishment prescribed for the alleged offences and *prima facie* material collected during the course of investigation, the Two-Judge Bench concluded that the impugned judgment of the High Court cannot be sustained.

107. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench observed that it is conscious of the legal position that the Court should be slow in interfering with the order when bail has been granted by the High Court. However, it is equally well settled that if such an order of granting bail is found to be illegal and perverse, it must be set aside. The Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the



victims and compelling interest of the State. It cannot be denied that national security is always of paramount importance and any act in aid of any terrorist act, violent or non-violent, is liable to be restricted. The UA (P) Act is one such Act that has been enacted to provide for effective prevention of certain unlawful activities by individuals and associations, to deal with terrorist activities, and to impose reasonable restrictions on the civil liberties of persons in the interest of the sovereignty and integrity of India. In that view of the matter, the Two-Judge Bench set aside the judgment of the High Court. The respondents-accused were directed forthwith to surrender themselves before the appellant-NIA. Since the charge sheet has already been submitted, the Special Court was directed to proceed with the trial, as expeditiously as possible, in accordance with law, without being influenced by any of the observations contained in the judgment of the Apex Court.

108. In **Syed Iftikhar Andrabi v. National Investigation Agency [2026 SCC OnLine SC 881]**, a Two-Judge Bench of the Apex Court was dealing with a case in which the appellant was arrested in a crime registered under Sections 17, 38 and 40 of the



UA (P) Act, read with Sections 8, 21, 25 and 29 of the NDPS Act. He was arrested on 11.06.2020 and had been in custody for more than 5 years and 11 months. The Two-Judge Bench noted that, regarding the stringent conditions to be met under Section 43D(5) of the UA (P) Act before an accused can be granted bail, a Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713] held as follows at paragraph 17;

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UA (P) Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at the commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail, but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UA (P) Act being used as the sole metric for the denial of bail or for wholesale breach of the constitutional right to speedy trial.”

(underline supplied)



It is crystal clear that the above was not an equitable exception laid down only with reference to the facts of that case, but was an authoritative declaration of a constitutional limitation on the operation of the statutory embargo of Section 43-D(5) itself. While noting that the charges levelled against the respondent were grave and a serious threat to societal harmony, the Three-Judge Bench observed that, had it been a case at the threshold, perhaps the Court would have rejected the prayer for bail. However, keeping in mind the length of the period spent in custody and the unlikelihood of the trial being completed anytime soon, the bail granted by the High Court was not interfered with. In paragraph 18 of the decision, the Three-Judge Bench held as follows;

"18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt, and



simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

(underline supplied)

109. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in **Javed Gulam Nabi Shaikh v. State of Maharashtra [(2024) 9 SCC 813]**, the Apex Court was examining the legality and validity of an order passed by the High Court of Judicature at Bombay by which the High Court declined to release the appellant on bail in connection with his prosecution under the provisions of the UA (P) Act. While reiterating the principle declared by the Court in one judgment after the other that the right to speedy trial of an offender facing criminal charges is implicit in the broad sweep and content of Article 21 of the Constitution of India, the Two-Judge Bench noted that the provisions of Section 19 of the National Investigation Agency Act mandate that trial under the said Act by a Special Court shall be held on a day to day basis on all working days and should have precedence over the trial of any other case. In this regard, Special Courts are to be designated for such offences by the Central Government in consultation with the Chief Justice of



the High Court as contemplated under Section 11 of the said Act.

110. In **Javed Gulam Nabi Shaikh [(2024) 9 SCC 813]**, the Two-Judge Bench referred to the decision in **Satender Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]**, wherein it was held that the general principle engrafted in Section 436A of Cr.P.C. (now Section 479 BNSS) which requires *inter alia* the accused to be enlarged on bail if the trial is not concluded within the specified period would apply to the special enactments as well, for example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as liberty of a person is concerned. The Two-Judge Bench emphasised that the more the rigour, the quicker the adjudication ought to be. Observing that the appellant in that case was still an accused and not a convict, the Bench held that the overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent a penal law may be. In paragraph 17 of the decision, the Two-Judge Bench held as follows;

“17. If the State or any prosecuting agency, including the court concerned, has no wherewithal to provide or protect



the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime." (underline supplied)

111. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in the case of **Sheikh Javed Iqbal v. State of Uttar Pradesh [(2024) 8 SCC 293]**, the Court considered the order of the High Court of Judicature at Allahabad, Lucknow Bench rejecting the bail application of the appellant, who was facing trial under various provisions of IPC as well as the provisions of the UA (P) Act. The Bench noted that the appellant had been in custody for more than 9 years. The evidence of only two witnesses had been recorded at that point of time. Therefore, the Court was of the opinion that a reasonable view could be taken that the trial was likely to take considerable time. As regards the right of an accused to speedy trial, the Two-Judge Bench underscored that such a need is an essential facet of Article 21 of the Constitution of India. If the alleged offence is serious, it is all the more necessary for the prosecution to ensure



that the trial is concluded expeditiously. Bail cannot be denied only on the ground that the charges are very serious, though there is no end in sight for the trial to conclude. In paragraph 24 of the decision, the Two-Judge Bench held as follows;

“24. It is trite law that an accused is entitled to a speedy trial. This Court, in a catena of judgments, has held that an accused or an undertrial has a fundamental right to a speedy trial, which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.”

(underline supplied)

112. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in Sheikh Javed Iqbal [(2024) 8 SCC 293], while agreeing with the reasoning given in K.A. Najeeb [(2021) 3 SCC 713] *qua* the decision in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1], it was observed that Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] has to be read and



understood in the context in which it was rendered and not as a precedent to deny bail to an accused undertrial suffering long incarceration with no end in sight of the criminal trial. As to the restrictions imposed on granting bail to an accused under the stringent provisions of the UA (P) Act, it was declared that such statutory restrictions would not come in the way of a constitutional court from granting bail to an accused if it finds that the right of the accused under Article 21 of the Constitution of India has been infringed. In Sheikh Javed Iqbal [(2024) 8 SCC 293], the Bench reiterated that the decision in K.A. Najeeb [(2021) 3 SCC 713] was rendered by a Three-Judge Bench and, therefore, would be binding on a Bench of Two Judges. In the facts and circumstances of the case at hand, the Two-Judge Bench held that continued incarceration of the appellant would not be justified and therefore granted bail to the appellant.

113. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in **Arvind Dham v. Directorate of Enforcement [2026 SCC OnLine SC 30]**, the appellant was granted bail, albeit in a case of economic offence



under the PML Act. Section 45 of the PML Act lays down stringent and restrictive conditions for the grant of bail. In that case, the appellant was arrested on 09.07.2024. The cognisance of the prosecution's complaint was yet to be taken. A total of 208 prosecution witnesses were cited. It was in that context the Court reiterated the declaration of law made in Javed Gulam Nabi Shaikh [(2024) 9 SCC 813] that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime. This Court emphasised that the right to speedy trial is not eclipsed by the nature of the offence. Prolonged incarceration of an under-trial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pre-trial detention into punishment. In the facts of the case at hand, the Two-Judge Bench directed the release of the appellant



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on bail during pendency of the trial.

114. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in **Chintan Rajubhai Panseriya v. State of Maharashtra [2026 SCC OnLine SC 924]**, where the petitioner-accused was arrested under Sections 8(b), 22(c), 25, 27A and 29 of the NDPS Act, it was noted that though the charge against the accused involves seizure of Mephedrone to the extent of 2428 kilograms, the accused had suffered custody of more than 3½ years. Though the charge sheet was submitted, the charges were yet to be framed. As many as 159 witnesses were cited. While granting bail to the petitioner-accused, in paragraph 5 of the order, the Two-Judge Bench observed as follows;

"5. We do not undermine the seriousness of the alleged crime. We are mindful of the fact that the prosecution is for the offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985. At the same time, we should not overlook the fact that the petitioner is in judicial custody as an under-trial prisoner for the past 3 years and 6 months and the prosecution intends to examine as many as 159 witnesses. Examination of 159 witnesses, or even 50% of them, is going to take a pretty long time. At times,



we wonder why the prosecution wants to examine so many witnesses, thereby prolonging the trial and delaying the same. We have observed in a number of orders that the prosecution should examine important witnesses and try to establish its case. There is no point in multiplying the witnesses on one and the same issue.”

115. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in **Gurwinder Singh v. State of Punjab [(2024) 5 SCC 403]** and **Gulfisha Fatima v. State (Govt. of NCT of Delhi) [2026 SCC OnLine SC 10]**, the Two-Judge Bench has taken a somewhat divergent view from the clear distinctive trajectory taken by the Court *qua* grant of bail even under the special enactments like TADA Act, the UA (P) Act and the NDPS Act.

116. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in **Gurwinder Singh [(2024) 5 SCC 403]**, the appellant was charged under various provisions of IPC as well as under the UA (P) Act and the Arms Act. The appellant’s prayer for bail was rejected by the Special Court, and the High Court of Punjab and Haryana upheld the rejection. The matter was taken up before the Apex Court. The



appellant was in jail for about 5 years and relied upon K.A. Najeeb [(2021) 3 SCC 713] for bail. A Two-Judge Bench, while rejecting the prayer for bail, distinguished K.A. Najeeb [(2021) 3 SCC 713], at paragraph 45, in the following manner;

"45. In K.A. Najeeb [(2021) 3 SCC 713], this Court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this Court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment, i.e., more than five years, this Court took it as a factor influencing its assessment to grant bail. Further, in K.A. Najeeb [(2021) 3 SCC 713], the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this Court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already underway, and 22 witnesses, including the protected witnesses, have been examined."

In Gurwinder Singh [(2024) 5 SCC 403], the Two-Judge Bench



held that, Section 43-D(5) of the UA (P) Act creates a standalone and rigorous limitation upon the ordinary power of courts to grant bail and observed that, unlike the conventional approach under criminal law where 'bail is the rule and jail the exception,' the legislative intent underlying the UA (P) Act was the reverse, namely that 'bail must be rejected as a rule', and that the courts must give full effect thereto. The judgment formulated instead what it described as a 'twin-prong test' of bail under the UA (P) Act. Interpreting K.A. Najeeb [(2021) 3 SCC 713], the Court observed that the decision could not be read as mandating bail solely on account of prolonged incarceration.

117. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench viewed that the decision in Gurwinder Singh [(2024) 5 SCC 403], inasmuch as it refuses to be bound by K.A. Najeeb [(2021) 3 SCC 713], is difficult to be followed as a matter of precedent. It is plain that a judgment rendered by a Bench of lesser strength is bound by the law declared by a Bench of greater strength. Judicial discipline mandates that such binding precedent must either be followed or, in case of doubt, be referred



to a larger Bench. A smaller Bench cannot dilute, circumvent, or disregard the ratio of a larger Bench. The reliance placed by Gurwinder Singh [(2024) 5 SCC 403] on Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] is difficult to justify in light of the subsequent treatment of Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] by the Court, firstly, by a Bench of a higher strength in K.A. Najeeb [(2021) 3 SCC 713], and secondly, by a coordinate bench in Sheikh Javed Iqbal [(2024) 8 SCC 293]. In K.A. Najeeb [(2021) 3 SCC 713], the Three-Judge Bench clarified that Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] arose in a very specific factual context where the High Court had effectively conducted a mini-trial by reappreciating evidence and determining admissibility issues at the stage of bail and, therefore, this Court had to step in to cancel the bail granted by the High Court to the accused therein. The larger Bench in K.A. Najeeb [(2021) 3 SCC 713], therefore, confined Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] to the impropriety of undertaking extensive evidentiary evaluation at the bail stage by the High Court. Importantly, K.A. Najeeb [(2021) 3 SCC 713] did not treat Zahoor Ahmad Shah



Watali [(2019) 5 SCC 1] as establishing a general rule of near-automatic denial of bail under the UA (P) Act. This view was followed even more explicitly in Sheikh Javed Iqbal [(2024) 8 SCC 293], where the Two-Judge Bench observed that the decision in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial. The position of law emerging from K.A. Najeer [(2021) 3 SCC 713] and Sheikh Javed Iqbal [(2024) 8 SCC 293] is therefore clear: Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] cannot be invoked to justify indefinite incarceration of the accused under the UA (P) Act. For the aforesaid reasons, the Two-Judge Bench in Syed Iftikhar Andrabi [2026 SCC OnLine SC 881] found that the attempt in Gurwinder Singh [(2024) 5 SCC 403] to read Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] as laying down a general rule of denial of bail, notwithstanding the period of incarceration, is difficult to reconcile with the Court's own subsequent clarification of what the ratio in Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] actually



meant.

118. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that the Two-Judge Bench in *Gurwinder Singh* [(2024) 5 SCC 403] formulated the so-called 'twin-prong test' governing grant of bail under the UA (P) Act. It held that the inquiry under Section 43-D(5) of the UA (P) Act must proceed in two sequential stages: first, whether the accusation is *prima facie* true; and second, only if the first question is answered in favour of the accused, whether ordinary bail considerations, such as flight risk, tampering with evidence, or influencing witnesses, justify release. If the first stage of this twin-prong test is satisfied against the accused, bail becomes absolutely impermissible. This test flows neither from the text of Section 43-D(5) of the UA (P) Act nor from *K.A. Najeed* [(2021) 3 SCC 713]. In fact, on the contrary, it is in teeth of *K.A. Najeed* [(2021) 3 SCC 713] which categorically stated that Section 43-D(5) of the UA (P) Act provides no more than another possible ground, namely, that the accusations against the accused are *prima facie* true, for the competent court to refuse bail, in



addition to the well-settled considerations like possibility of tampering with evidence, influencing the witnesses, or the accused evading the trial by absconding, etc. If this twin-prong test is accepted, the State need only satisfy a low *prima facie* threshold while the trial may continue for years, with the result that pre-trial incarceration begins to acquire a post-trial punitive character, and even then, no court could ever grant bail no matter the length of the period of such incarceration because the case stood *prima facie* made out against the accused. A plain reading of K.A. Najeeb [(2021) 3 SCC 713] will show that it was trying to prevent precisely this possibility from arising when it cautioned that Section 43-D(5) of the UA (P) Act must not become 'the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial'. Therefore, the caution of K.A. Najeeb [(2021) 3 SCC 713] is that continued incarceration cannot go unabated by a mere discharge by the State of the *prima facie* standard under Section 43-D(5) of the UA (P) Act. The judgment explicitly held that Section 43-D(5) will 'melt down' where prolonged incarceration and delayed trial produce a



violation of Article 21. The constitutional inquiry in K.A. Najeeb [(2021) 3 SCC 713] therefore operated independent of, and notwithstanding, the statutory embargo of Section 43-D(5) in the realm of constitutional principles. That being the case, the formulation of Gurwinder Singh [(2024) 5 SCC 403] becomes difficult to follow. Once the three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713] recognised that constitutional courts retain the authority to intervene despite the existence of a *prima facie* case against the accused where prolonged incarceration and delayed trial would breach Article 21, the statutory embargo of Section 43-D(5) could no longer be treated as the gateway through which the prayer of bail must first pass.

119. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench observed that, as a matter of law, nothing further need be said except that in any case, constitutional courts can always intervene to grant bail despite satisfaction of *prima facie* threshold under Section 43-D(5) of the UA (P) Act, and the said Section need not control the grant of bail if the accused person's liberty is infringed for a prolonged period of time.



The power of the constitutional court to grant such a prayer cannot be diminished by exercise of legislative power. The holding in K.A. Najeeb [(2021) 3 SCC 713] was never that mere passage of time automatically entitles the accused to bail. Instead, the larger Bench recognised that where incarceration becomes unduly prolonged, and the trial is unlikely to conclude within a reasonable time, the continued application of Section 43-D(5) of the UA (P) Act becomes constitutionally suspect given the mandate of Article 21. In that sense, K.A. Najeeb [(2021) 3 SCC 713] articulated a constitutional limitation on the operation of the statutory embargo of Section 43-D(5).

120. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that, in Gulfisha Fatima [2026 SCC OnLine SC 10], the appellants in a batch of appeals, who had been charged for committing various offences, including the offences under Sections 13, 16, 17 and 18 of the UA (P) Act, were arrested on various dates in the year 2020, and have been in custody since the respective dates of their arrest. By a common judgment, the High Court of Delhi affirmed the Special Court's



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order rejecting their bail applications. Before a Two-Judge Bench, it was argued on behalf of the appellants that prolonged incarceration, coupled with the absence of any realistic prospect of early conclusion of trial, rendered their continued detention constitutionally impermissible. In that context, the Two-Judge Bench posed the question: when can delay and prolonged incarceration be invoked as grounds for bail in prosecutions under the UA (P) Act, and what should be the principled approach of a constitutional court to examine such a plea? The Two-Judge Bench referred to Article 21 of the Constitution of India and the right to speedy trial of an accused, but observed that the constitutional promise under Article 21 is not that liberty will be unregulated, but that deprivation of liberty will not be arbitrary, unconscionable or unfair. Thereafter, the Two-Judge Bench referred to K.A. Najeeb [(2021) 3 SCC 713] and observed that this decision operates as a protection against unconscionable detention. However, the Bench put in a caveat that the decision in K.A. Najeeb [(2021) 3 SCC 713] does not indicate a laying down of a mechanical rule under which the mere passage of time becomes determinative in every



case arising under a special statute. Such a construction whereby delay simpliciter eclipses a statutory regime enacted by the Parliament to address offences of a special category cannot be supported. It has been observed that the constitutional inquiry into delay is contextual, which includes the nature of the allegation, the statutory field, the stage of the proceedings, realistic trajectory of the trial, causes contributing to delay and the risk attendant upon release; delay cannot be detached from these considerations and treated as a solitary determinant.

121. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, it was noted that, in *Gulfisha Fatima* [2026 SCC OnLine SC 10], on the facts of the case at hand, the Two-Judge Bench held that while the constitutional concern arising from prolonged custody is acknowledged, it does not translate into a finding that continued detention has become punitive or unconscionable solely by reason of delay. The prolonged custody, though a matter of concern, does not operate as an automatic ground for grant of bail where the statutory threshold continues to be attracted. At such a stage, the court is required to examine whether, notwithstanding



delay, continued detention remains constitutionally justified, having regard to the statutory context and the facts of the case. Such considerations would include the gravity of the alleged offence in its statutory setting, the role attributed to the accused, the *prima facie* strength of the accusation, the integrity of the trial process, the risks associated with release, etc. The Two-Judge Bench, thereafter, held that K.A. Najeeb [(2021) 3 SCC 713] must be understood as a principled safeguard against unconscionable detention. Prolonged incarceration is a serious constitutional concern and carries great weight. However, it is not the sole determinant. The court must consider in totality whether continued detention has become constitutionally unjustifiable, having regard to the role attributed, the statutory context, the limited *prima facie* material, the trajectory of the trial, the causes of delay and the availability of intermediate remedies. The Bench further held that to read K.A. Najeeb [(2021) 3 SCC 713] as mandating bail solely on account of prolonged incarceration, irrespective of the statutory context or the nature of the allegations, would be to attribute to the decision a consequence it



neither intended nor supports. Therefore, K.A. Najeeb [(2021) 3 SCC 713] cannot be used as a mathematical formula of universal application. In the facts and circumstances of the case at hand, the Two-Judge Bench granted bail to five of the seven appellants, but denied the same to two of the appellants, taking the view that while the period of incarceration undergone by the two appellants is substantial, on the present record, their continued detention has not crossed the threshold of constitutional impermissibility so as to override the statutory embargo of Section 43D(5) of the UA (P) Act. Underlying that the Court is mindful that pre-trial detention, even when justified by the statute, cannot be permitted to continue without regard to the progress of the trial, the Two-Judge Bench opined that on a completion of the examination of the protected witnesses relied upon by the prosecution or upon expiry of the period of one year from the date of the said order, whichever is earlier, the two appellants would be at liberty to renew their prayer for bail before the jurisdictional court.

122. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench expressed its reservations on various



aspects of the earlier coordinate bench decision in Gulfisha Fatima [2026 SCC OnLine SC 10], including foreclosing the right of the two appellants to seek bail for a period of one year, and that the import of the observations in K.A. Najeeb [(2021) 3 SCC 713] is only a narrow and exceptional departure from Section 43-D(5) of the UA (P) Act, justified in extreme factual situations.

123. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that no reading of K.A. Najeeb [(2021) 3 SCC 713] suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release. The real concern addressed in K.A. Najeeb [(2021) 3 SCC 713] lies elsewhere. The Three-Judge Bench was concerned with the manner in which Section 43-D(5) of the UA (P) Act was, in practice, being deployed as an almost conclusive basis for denial of bail, notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that the Three-Judge Bench observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of



incarceration undergone has already exceeded a substantial part of the prescribed sentence. The Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713] cautioned that such an approach was necessary to prevent provisions like Section 43-D(5) of the UA (P) Act from being used as 'the sole metric for denial of bail or for wholesale breach of the constitutional right to speedy trial'. The Three-Judge Bench was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period, the courts would ordinarily be obligated to enlarge the accused on bail.

124. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench extracted at paragraph 21.3 [SCC OnLine], paragraph 17 of the judgment of the Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713], where it has been clearly stated that the presence of statutory restrictions like Section 43-D(5) of the UA (P) Act *per se* does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas, at the commencement of the proceedings, the courts are expected to appreciate the legislative



policy against grant of bail, but the rigours of such provisions will 'melt down' where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of the case at hand, the Three-Judge Bench observed that it was conscious that the charges levelled against the accused were grave and posed a serious threat to societal harmony, and had it been the case at the threshold, the Court would perhaps have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

125. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that the reasoning first in Gurwinder Singh [(2024) 5 SCC 403] and then in Gulfisha Fatima [2026 SCC OnLine SC 10], appears to proceed against something invented and then destroyed. K.A. Najeeb [(2021) 3 SCC 713] was not warning courts against treating incarceration as the sole factor favouring bail. Instead, it warned against treating the statutory



embargo as the sole factor justifying continued detention by ignoring constitutional principles. Therefore, the subsequent reading that K.A. Najeeb [(2021) 3 SCC 713] does not create an automatic entitlement to bail on account of delay answers a proposition that K.A. Najeeb [(2021) 3 SCC 713] itself never advanced. The emphasis in K.A. Najeeb [(2021) 3 SCC 713] was constitutional in nature: it was directed towards preventing Section 43-D(5) of the UA (P) Act from overpowering Article 21 considerations in cases of gross delay and prolonged incarceration. The constitutional force of K.A. Najeeb [(2021) 3 SCC 713] lies in its restoration of the hierarchy between a statute, i.e., the UA (P) Act, and the Constitution. Section 43-D(5) of the UA (P) Act remains subordinate to Article 21 of the Constitution at all times, and a constitutional court need not hold back bail to the accused in the garb of Section 43-D(5). As held in Sheikh Javed Iqbal [(2024) 8 SCC 293], once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period, the courts would ordinarily be obligated to enlarge them on bail.



126. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that the decision of the coordinate bench in **Jalaluddin Khan v. Union of India [(2024) 10 SCC 574]** is a timely warning to the courts. It says that when a case is made out for the grant of bail, the courts should have no hesitation in granting bail. The allegation of the prosecution may be very serious; but the duty of the courts is to consider a case for grant of bail in accordance with law. 'Bail is the rule and jail is the exception' is a settled law. The Bench cautioned that if the courts start denying bail in deserving cases, it will violate the rights guaranteed under Article 21 of the Constitution of India.

127. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench observed that the often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from Cr.P.C. as Gurwinder Singh [(2024) 5 SCC 403] has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution of India and the presumption of innocence, which is the cornerstone of any



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civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UA (P) Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) of the UA (P) Act must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, the Two-Judge Bench concluded that even under the UA (P) Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.

128. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that several subsequent decisions rendered after Gurwinder Singh [(2024) 5 SCC 403] have continued to apply the approach articulated in K.A. Najeeb [(2021) 3 SCC 713] in granting bail under the UA (P) Act on grounds of prolonged incarceration, gross delay in conclusion of trial, and the absence of any realistic possibility of the trial



concluding in the near future. The logic underlying all these judgments traces back to K.A. Najeeb [(2021) 3 SCC 713], which now governs the law of the land on the grant of bail under the UA (P) Act in a situation of prolonged detention. While Gulfisha Fatima [2026 SCC OnLine SC 10] relied on Gurwinder Singh [(2024) 5 SCC 403] to adopt a narrower reading of K.A. Najeeb [(2021) 3 SCC 713], neither Gulfisha Fatima [2026 SCC OnLine SC 10] nor Gurwinder Singh [(2024) 5 SCC 403] engage with this subsequent line of authority of case law. Thus, it is clear beyond doubt that the preference for bail, or the often invoked principle 'bail is the rule and jail is the exception' flows from the constitutional primacy of personal liberty under Article 21 and, therefore, cannot be displaced by legislation. The Two-Judge Bench made it clear that K.A. Najeeb [(2021) 3 SCC 713] is binding law entitled to the protection of *stare decisis*. It cannot be diluted, circumvented, or disregarded by the trial courts, the High Courts or even by the benches of lower strength of the Apex Court. The Two-Judge Bench noted that, as per the data compiled by the National Crime Records Bureau (NCRB), the countrywide conviction rate under



the UA (P) Act for the 5 years from 2019 to 2023 hovers between 2% and 6%.

129. As already noted hereinbefore, Section 15 of the UA (P) Act deals with a terrorist act, punishable under Section 16, whereas Section 18 deals with punishment for conspiracy, etc. As observed by the Two-Judge Bench in **Barakathullah [2024 SCC OnLine SC 1019]**, for the purpose of considering the offence under Section 18 of the UA (P) Act, the commission of a terrorist act, as contemplated in Section 15, is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual



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commission of a terrorist act as defined in Section 15 need not be shown.

130. While considering the prayer for bail in relation to the offences under the UA (P) Act, the satisfaction to be recorded by the court for the purpose of the said Act is that there are reasonable grounds for believing that the accusation against such person is 'prima facie' true, which would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report must prevail until contradicted and overcome or disproved by other evidence, and on the face of it shows the complicity of such accused in the commission of the stated offence. The degree of satisfaction to be recorded by the court in relation to offences under the UA (P) Act, for opining that there are reasonable grounds for believing that the accusation against the accused is 'prima facie true', is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges.

131. As held by the Two-Judge Bench in **Shaheen Welfare**



Association [(1996) 2 SCC 616], while adopting a pragmatic and just approach in the context of bail to the detainee under the TADA Act, all undertrials cannot be dealt with by the same yardstick. Different approaches would be justified based on the gravity of the charges. In the said decision, the Two-Judge Bench has referred to the observation made by a Constitution Bench in **Kartar Singh [(1994) 3 SCC 569]**, while considering the validity of sub-section (8) of Section 20 of the TADA Act, that while liberty of a citizen must be zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution.

132. In **Shaheen Welfare Association [(1996) 2 SCC 616]**, the Two-Judge Bench referred to the decision of a coordinate bench in **Supreme Court Legal Aid Committee**



(Representing Undertrial Prisoners) [(1994) 6 SCC 731], in the context of the provisions under the NDPS Act restricting the grant of bail, wherein it was observed that, though deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution, some amount of deprivation of personal liberty cannot be avoided in such cases. But if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt. Therefore, it was felt that, after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21 of the Constitution, which has to be telescoped with the right guaranteed by Article 14, which also promises justness, fairness and reasonableness in procedural matters.

133. As already noted in paragraphs 71 and 72 hereinbefore, bearing in mind the nature of the crime and the need to protect society and the nation, stringent provisions governing



the grant of bail have been prescribed in Section 43-D(5) of the UA (P) Act. As per the proviso to sub-section (5) of Section 43-D, person accused of an offence punishable under Chapters IV and VI of the said Act 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 (now Section 193 of BNSS), is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. The observation made by the Constitution Bench of the Apex Court in **Kartar Singh [(1994) 3 SCC 569]** that while liberty of a citizen must be zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases under the TADA Act should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation, applies with equal force in cases under the UA (P) Act. Therefore, the courts, while dispensing justice in cases under the UA (P) Act, should keep in mind not only the liberty of the accused but also the interests of the victims and their near and dear ones



and, above all, the collective interests of the community and the safety of the nation.

134. In view of the law laid down by the Three-Judge Bench in **K.A. Najeed [(2021) 3 SCC 713]**, the presence of statutory restrictions like Section 43-D(5) of the UA (P) Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution of India. At the commencement of proceedings, the courts are expected to appreciate the legislative policy against the grant of bail, but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UA (P) Act being used as the sole metric for denying bail or for a wholesale breach of the constitutional right to speedy trial.

135. As already noted in paragraph 86 hereinbefore, in **K.A. Najeed [(2021) 3 SCC 713]**, before the Three-Judge Bench, the



learned Senior Counsel for the respondent highlighted that many of the co-accused had been acquitted. Although a few co-accused had been convicted, they had been sentenced to not more than eight years. The respondent has already suffered incarceration of almost 5½ years without the trial having even started, which would violate his constitutional liberty and rights to have him serve most of his sentence without any adjudication of guilt by a judicial authority. The learned Senior Counsel further highlighted that once the High Court had exercised discretion to grant bail, the same ought not to be interfered with by the Apex Court except in rare circumstances.

136. The Three-Judge Bench in **K.A. Najeer [(2021) 3 SCC 713]** emphasised that there is a vivid distinction between the parameters to be applied while considering a bail application, vis-à-vis those applicable while deciding a petition for its cancellation. On the facts of the case at hand, the Three-Judge Bench noted that the respondent had been in jail for more than 5 years and there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, though two opportunities



were given, the appellant NIA has shown no inclination to screen its endless list of witnesses. Of the 13 co-accused, who have been convicted, none have been sentenced to more than 8 years' rigorous imprisonment. Therefore, it can be legitimately expected that, if found guilty, the respondent would also receive a sentence within the same ballpark. Two-thirds of such incarceration has already been completed, and the respondent has already paid heavily for his acts of fleeing from justice. As held by a Two-Judge Bench in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) [(1994) 6 SCC 731], undertrials cannot be detained indefinitely pending trial. Once it is obvious that a timely trial would not be possible and the accused has been incarcerated for a significant period, the courts would ordinarily be obligated to enlarge them on bail. Though the Three-Judge Bench declined interference with the impugned judgment, it imposed certain additional conditions, as noted in paragraph 93 hereinbefore, to serve the best interest of justice and the society at large.

137. As already noted in paragraph 123 hereinbefore, in **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-



Judge Bench noted that no reading of the decision of the Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713] suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release. The Three-Judge Bench was concerned with the manner in which Section 43-D(5) of the UA (P) Act was, in practice, being deployed as an almost conclusive basis for denial of bail, notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that the Three-Judge Bench observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence. The Two-Judge Bench noted that, in K.A. Najeeb [(2021) 3 SCC 713], the Three-Judge Bench cautioned that such an approach was necessary to prevent provisions like Section 43-D(5) of the UA (P) Act from being used as 'the sole metric for denial of bail or for wholesale breach of the constitutional right to speedy trial'. The Three-Judge Bench was clear and unequivocal in



holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period, the courts would ordinarily be obligated to enlarge the accused on bail.

138. As already noted in paragraph 125 hereinbefore, in **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that the constitutional force of K.A. Najeeb [(2021) 3 SCC 713] lies in its restoration of the hierarchy between a statute, i.e., the UA (P) Act, and the Constitution. Section 43-D(5) of the UA (P) Act remains subordinate to Article 21 of the Constitution at all times, and a constitutional court need not hold back bail to the accused in the garb of Section 43-D(5). As held in Sheikh Javed Iqbal [(2024) 8 SCC 293], once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period, the courts would ordinarily be obligated to enlarge them on bail.

139. As observed by the Two-Judge Bench in **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, statutes may undoubtedly calibrate the manner in which the principle 'bail is the rule and jail



is the exception' is applied, particularly in cases involving national security or terrorist offences for which the UA (P) Act is meant.

But those statutes cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) of the UA (P) Act must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, the Two-Judge Bench concluded that even under the UA (P) Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.

140. As already noted in paragraph 103 hereinbefore, in **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench of the Apex Court observed that, for the purpose of considering the offence under Section 18 of the UA (P) Act, the commission of a terrorist act, as contemplated in Section 15 of the UA (P) Act, is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory



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to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual commission of a terrorist act as defined in Section 15 need not be shown.

141. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench noted that in K.A. Najeeb [(2021) 3 SCC 713], relied on by the learned counsels for the respondents-accused, it has been observed that a Constitutional court is not strictly bound by the prohibitory provisions of grant of bail in the UA (P) Act, and can exercise its constitutional jurisdiction to release the accused on bail who has been incarcerated for a long period of time relying upon Article 21 of the Constitution of India. In the said case, the Three-Judge Bench did not interfere with the order passed by the High Court granting bail to the accused, on the ground that the said accused had already spent 5 years and 5 months in custody



and the trial was likely to take a long time. On the other hand, so far as the respondents-accused in the appeals at hand are concerned, they have been in custody hardly for one and a half years, apart from the fact that all the respondents-accused are shown to have been involved in previous cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, the Two-Judge Bench opined that the High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UA (P) Act.

142. During the course of argument, the learned Special Public Prosecutor for NIA argued that in murder cases involving PFI cadres, including the one in Crime No.318/2022 of Palakkad Town South Police Station, none of the accused had any personal enmity with the deceased. The victims have been selected solely because of their leadership/membership in a particular community and were killed to create terror in the society.

143. As already noticed hereinbefore, in the impugned order dated 09.09.2025 in CrI.M.P.No.381 of 2025 in S.C.No.2 of 2023,



in the context of the proviso to sub-section (5) of Section 43-D of the UA (P) Act, the Special Court found that, apart from the statement of witnesses, there are materials which prima facie suggest that the 19th and 20th accused in S.C.No.2 of 2023 had active role in the commission of the offence under Chapter IV of the UA (P) Act. After referring to the objections put forward by the prosecution to the grant of bail to the 19th and 20th accused, the Special Court observed that there are prima facie materials to show the presence of the 19th and 20th accused, who are active members of PFI, at the place of conspiracy and near the scene of crime. There are prima facie materials to show the role of the 19th and 20th accused in the commission of the offence.

144. As noted hereinbefore, the prima facie materials against the 1st appellant-19th accused Abdul Khader @ Iqbal include the DNA of the victim Sreenivasan alleged to have been detected from the baniyan (MO-44) and jeans (MO-45) of A-19, vide RFSL, Thrissur report (D-742) dated 17.05.2022; and the prima facie materials against the 2nd appellant-20th accused Firoz @ Thambi include the DNA of the victim Sreenivasan alleged to



have been detected from the T-shirt (MO-24) and jeans (MO-33) of A-20, vide the report of RFSL, Thrissur dated 17.05.2022 (D-742), and also blood stains allegedly found in the seat cover and footrest (MO-35 and MO-36) of the seized motorcycle bearing No.TN-37/BF-4800, seized vide seizure mahazar dated 09.05.2022 (D-106).

145. In the impugned order dated 09.09.2025, the Special Court noted that 19th accused in S.C.No.2 of 2023, Abdul Khader @ Iqbal, is also involved in Crime No.353/2020 of Palakkad Town North Police Station, Crime No.267/2026 of Kongad Police Station, Crime No.50/2020 of Kalladikkode Police Station, Crime No.933/2018 of Hemambika Nagar Police Station and Crime No.908/2020 of Palakkad Town North Police Station. Similarly, the 20th accused in S.C.No.2 of 2023, Firoz @ Thambi (A-20), is also an accused in Crime No.780/2018 of Palakkad Town North Police Station. The allegations and materials against the 19th and 20th accused in S.C.No.2 of 2023, taken note of by the Special Court in the impugned order dated 09.09.2025, in the context of the proviso to sub-section (5) of Section 43-D of the UA (P) Act, have



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already been referred to in paragraphs 51 and 52 hereinbefore.

146. The learned counsel for the appellants-19th and 20th accused argued that there is no possibility that the trial in S.C.No.2 of 2023 would either commence or conclude in the near future. There are 71 accused, 937 witnesses, 60 protected witnesses and 4 approvers (total 1001); 1634 documents and 54 protected documents (total 1688); 692 material objects; and 10 Terabytes (TB) of FSL reports. Out of 71 accused, 4 are absconding, 10 are in judicial custody, 55 are on bail, 4 approvers are on bail, and 1 accused is dead. Further investigation is still ongoing *qua* A64 and A70. A64 surrendered on 23.02.2026, and A70 was arrested by NIA on 17.02.2026 and remanded to judicial custody. An application filed by the Public Prosecutor under Section 43-D(2)(b) of the UA (P) Act for extending the period of judicial custody was allowed by the Special Court for a period of 180 days, vide the order dated 15.05.2026 in CrI.M.P.No.16 of 2026 in RC No.2 of 2022/NIA. Further investigation *qua* A28, who was arrested on 30.04.2026, is still ongoing. For judicial remand of A28, NIA has already moved an application dated 01.06.2026.



In the challenge made to the power of NIA to register a fresh FIR and the subsequent transfer of the case to NIA, the Apex Court granted an interim order in SLP(Crl.)Nos.3658 of 2024 and 4384 of 2024, ordering that charge shall not be framed in S.C.No.2 of 2023. The said interim order was vacated by the order dated 19.05.2026, whereby NIA is given liberty to proceed with the trial, in accordance with law, without prejudice to the rights of the petitioners therein, subject to the final outcome of the Crl.Appeals pending before the Apex Court. The fact that the Apex Court granted a stay of the proceedings in S.C.No.2 of 2023 cannot be held against the appellants-19th and 20th accused on their claim for bail on the ground of prolonged incarceration, as observed by the Apex Court in the order dated 19.05.2025 in Crl.A.No.2717 of 2025.

147. The learned Special Public Prosecutor for NIA argued that prolonged incarceration is not the sole determinant for granting bail. The gravity of the offence, the legislative context, and the prima facie material on record cannot be eclipsed merely because the trial has taken time. The hearing on the charge in



S.C.No.2 of 2023 in R.C.No.2 of 2022 on behalf of the prosecution was completed before the Special Court on 12.10.2023. Upon hearing the submission of the prosecution, the defence counsel for the accused Muhammed Mubarak (A-15) filed a discharge petition before the Special Court, which was dismissed as withdrawn only on 03.02.2025. In SLP(Crl.) Nos.3658 of 2024 and 4384 of 2024, the Apex Court stayed the framing of charges in S.C.No.2 of 2023, vide the order dated 06.05.2024. The said interim order restraining the framing of charges was vacated by the Apex Court only on 19.05.2026, and ordered that NIA would be at liberty to proceed with the trial in accordance with law. Hence, there is no delay on the part of the prosecution in commencing the trial. The learned Special Public Prosecutor pointed out that, in compliance with the order of the Apex Court dated 08.05.2026 in Suo Moto Writ Petition (Crl.)No.1 of 2026, the Government of Kerala accorded sanction for the establishment of two exclusive NIA Special Courts in Ernakulam. Hence, there will be a speedy trial of the case.

148. The 1st appellant-19th accused was arrested on



24.04.2022, and the 2nd appellant-20th accused was arrested on 26.04.2022. Therefore, as on date, they have undergone 4 years and 4 months of actual custody. The final report in S.C.No.2 of 2023, along with the evidence collected, discloses a prima facie case for commission of offences by the 19th and 20th accused, punishable under Sections 153A of IPC and Sections 13, 16, 18 and 20 of the UA (P) Act along with additional offences under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 read with Section 149 of IPC and Section 3(a)(b)(d) read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 as charge sheeted by the Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station. As per Section 302 IPC, whoever commits murder shall be punishable with death or imprisonment for life and shall also be liable to fine. The offences under the UA (P) Act include Section 16. As per sub-section (1) of Section 16, whoever commits a terrorist act shall, (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine.



149. The law laid down by the Three-Judge Bench in **K.A. Najeed [(2021) 3 SCC 713]** is that the presence of statutory restrictions like Section 43-D(5) of the UA (P) Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution of India. At the commencement of proceedings, the courts are expected to appreciate the legislative policy against the grant of bail, but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UA (P) Act being used as the sole metric for denying bail or for a wholesale breach of the constitutional right to speedy trial.

150. In **K.A. Najeed [(2021) 3 SCC 713]**, on the facts of the case at hand, the Three-Judge Bench noted that the respondent had been in jail for more than 5 years and there are 276 witnesses left to be examined. Charges have been framed



only on 27.11.2020. Still further, though two opportunities were given, the appellant NIA has shown no inclination to screen its endless list of witnesses. Of the 13 co-accused, who have been convicted, none have been sentenced to more than 8 years' rigorous imprisonment. Therefore, it can be legitimately expected that, if found guilty, the respondent would also receive a sentence within the same ballpark. Two-thirds of such incarceration has already been completed, and the respondent has already paid heavily for his acts of fleeing from justice.

151. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench noted that no reading of the decision of the Three-Judge Bench in K.A. Najeeb [(2021) 3 SCC 713] suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release. The Three-Judge Bench was concerned with the manner in which Section 43-D(5) of the UA (P) Act was, in practice, being deployed as an almost conclusive basis for denial of bail, notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that the Three-Judge



Bench observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence.

152. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench observed that statutes may undoubtedly calibrate the manner in which the principle 'bail is the rule and jail is the exception' is applied, particularly in cases involving national security or terrorist offences for which the UA (P) Act is meant. But those statutes cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) of the UA (P) Act must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, the Two-Judge Bench concluded that even under the UA (P) Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.



153. In **K.A. Najeeb [(2021) 3 SCC 713]**, the respondent, who was facing trial in a crime registered under Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326, 506 Part II, 201, 202, 153-A, 212, 307, 149 of IPC, Section 3 of the Explosive Substances Act and Sections 16, 18, 18-B, 19 and 20 of the UA (P) Act, was in jail for more than 5 years. In **Syed Iftikhar Andrabi [2026 SCC OnLine SC 881]**, the Two-Judge Bench was dealing with a case in which the appellant was arrested in a crime registered under Sections 17, 38 and 40 of the UA (P) Act, read with Sections 8, 21, 25 and 29 of the NDPS Act. He was arrested on 11.06.2020 and had been in custody for more than 5 years and 11 months. In **Sheikh Javed Iqbal [(2024) 8 SCC 293]**, a decision referred to by the Two-Judge Bench in Syed Iftikhar Andrabi [2026 SCC OnLine SC 881], the appellant, who was facing trial in a crime registered under Sections 489-B and 489-C of IPC and Section 16 of the UA (P) Act, had been in custody for more than 9 years.

154. In **Barakathullah [2024 SCC OnLine SC 1019]**, the Two-Judge Bench was dealing with a case in which the respondents therein and other members and office bearers of PFI



were facing trial in a crime registered under Sections 120B, 153A, 153AA of IPC and Section 13, 17, 18, 18-B, 38 and 39 of the UA (P) Act. The Two-Judge Bench noted that in K.A. Najeeb [(2021) 3 SCC 713], the Three-Judge Bench did not interfere with the order passed by the High Court granting bail to the accused, on the ground that the said accused had already spent 5 years and 5 months in custody and the trial was likely to take a long time. On the other hand, so far as the respondents-accused in the appeals before the Two-Judge Bench are concerned, they have been in custody hardly for one and a half years. Apart from that, all the respondents-accused are shown to have been involved in previous cases. Considering the nature and gravity of the alleged offences and considering their criminal antecedents, the Two-Judge Bench opined that the High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UA (P) Act.

155. In the instant case, as already noted hereinbefore, the final report in S.C.No.2 of 2023, along with the evidence collected,



discloses a prima facie case for commission of offences by the 19th and 20th accused, punishable under Sections 153A of IPC and Sections 13, 16, 18 and 20 of the UA (P) Act along with additional offences under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 read with Section 149 of IPC and Section 3(a)(b)(d) read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 as charge sheeted by the Kerala Police in connected offence in Crime No.318/2022 of Palakkad Town South Police Station. As per Section 302 IPC, whoever commits murder shall be punishable with death or imprisonment for life and shall also be liable to fine. The offences under the UA (P) Act include Section 16. As per sub-section (1) of Section 16, whoever commits a terrorist act shall, (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine. The 1st appellant-19th accused was arrested on 24.04.2022, and the 2nd appellant-20th accused was arrested on 26.04.2022. Therefore, as on date, they have undergone 4 years and 4 months of actual custody. Considering the prescribed punishment under Section



302 IPC and Section 16(1)(a) of the UA (P) Act, it cannot be contended that the period of incarceration undergone by the appellant-19th and 20th accused in S.C.No.2 of 2023 has already exceeded a substantial part of the prescribed sentence, so as to enlarge them on bail on the ground of any delay in the trial of S.C.No.2 of 2023 before the Special Court. Therefore, we find absolutely no merits in the contention of the learned counsel for the appellants-19th and 20th accused that the 19th and 20th accused are entitled to be enlarged on bail on grounds of violation of Part III of the Constitution of India.

156. We note the submission made by the learned Special Public Prosecutor for NIA, that, in compliance with the order of the Apex Court dated 08.05.2026 in Suo Moto Writ Petition (Crl.)No.1 of 2026, the Government of Kerala accorded sanction for the establishment of two exclusive NIA Special Courts in Ernakulam. Hence, there will be a speedy trial of the case.

157. In the above circumstances, we hold that the appellants-19th and 20th accused in S.C.No.2 of 2023 on the file of the Special Court for the Trial of NIA Cases, Ernakulam, are not



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entitled to be enlarged on bail on the ground of prolonged incarceration or on account of any delay in the trial of S.C.No.2 of 2023 before the Special Court. In that view of the matter, no interference is warranted with the impugned order dated 09.09.2025 of the Special Court, whereby the bail application filed by the 19th and 20th accused in S.C.No.2 of 2023 stands dismissed.

In the result, this criminal appeal fails and the same is accordingly dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

Bkn/Av/MINU



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APPENDIX OF CRL.A NO. 1749 OF 2025

PETITIONER ANNEXURES

Annexure A1	THE TRUE COPY OF THE RELEVANT PAGES OF FINAL REPORT IN SC NO.2/2023 ON THE FILES OF SPECIAL COURT FOR NIA CASES, ERNAKULAM
Annexure A2	THE TRUE COPY OF THE RELEVANT PORTION OF FINAL REPORT DATED 13.07.2022 IN CRIME NO. 318 OF 2022 OF PALAKKAD TOWN SOUTH POLICE STATION
Annexure A3	THE TRUE COPY OF THE ORDER DATED 19.05.2025 IN CRL. APPEAL NO.2717/2025 OF HON'BLE SUPREME COURT OF INDIA
Annexure A4	THE TRUE COPY OF THE ORDER DATED 21.05.2025 IN CRL. APPEAL NO.2744/2025 AND CRL. APPEAL NO. 2745/2025 OF HON'BLE SUPREME COURT OF INDIA
Annexure A5	THE TRUE COPY OF THE ORDER DATED 14.08.2025 IN SLP (CRL.) DIARY NO.38992/2025 OF HON'BLE SUPREME COURT OF INDIA
Annexure A6	THE TRUE COPY OF THE ORDER DATED 29.08.2025 IN SLP (CRL.) DIARY NO.38993/2025 OF HON'BLE SUPREME COURT OF INDIA
Annexure A7	THE TRUE COPY OF THE ORDER DATED 04.09.2025 IN SLP (CRL.) DIARY NO.38997/2025 OF HON'BLE SUPREME COURT OF INDIA
Annexure A8	THE TRUE COPY OF THE COMMON JUDGMENT DATED 19.08.2025 IN CRL. APPEAL NO.1248/2025 AND CRL. APPEAL NO. 1253/2025 OF THIS HON'BLE COURT
Annexure A9	THE TRUE COPY OF THE OBJECTION DATED 02.09.2025 FILED BY THE RESPONDENT IN CRL. MP NO. 381 OF 2025 IN SC NO.2/2023/NIA ON THE FILES OF THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM
Annexure A10	THE ACCUSED COPY OF THE ORDER DATED 09.09.2025 IN CRL. MP NO. 381 OF 2025 IN SC NO.2/2023/NIA ON THE FILES OF THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM
Annexure A11	A TRUE COPY OF THE ORDER DATED 03.11.2022 IN CRL.M.P. NO. 3725 OF 2022 IN SC. NO. 982 OF 2022 ON THE FILES OF THE SESSIONS COURT, PALAKKAD



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Annexure A12	TRUE COPY OF THE LEGAL OPINION DATED 14.12.2022 SUBMITTED BY THE LD. ADDL. DIRECTOR GENERAL OF PROSECUTION PALAKKAD
Annexure A13	A TRUE COPY OF THE COMMON ORDER IN CRL. A. NO. 1035 OF 2023 DATED 14.07.2023 OF THIS HON'BLE COURT.
Annexure A14	TRUE COPY OF THE ARREST MEMO DATED 24.04.2022 ALONG WITH INSPECTION MEMO OF THE 1ST APPELLANT.
Annexure A15	TRUE COPY OF THE ARREST MEMO DATED 26.04.2022 ALONG WITH INSPECTION MEMO OF THE 2ND APPELLANT.
Annexure A16	TRUE COPY OF THE APPLICATION DATED 08.02.2023 FILED BY THE RESPONDENT IN CRL. M.P. NO. 85/2023 IN RC/02/2022/NIA/KOC
Annexure A17	TRUE COPY OF THE ORDER DATED 10.02.2023 IN CRL. M.P. NO. 90/2023 IN RC/02/2022/NIA/KOC
Annexure A18	TRUE COPY OF THE ARREST MEMO DATED 10.02.2023 ALONG WITH PERSONAL SEARCH MEMO OF THE 1ST APPELLANT
Annexure A19	TRUE COPY OF THE ARREST MEMO DATED 10.02.2023 ALONG WITH PERSONAL SEARCH MEMO OF THE 2ND APPELLANT
Annexure A20	A TRUE COPY OF THE REPORT IN CMP NO. 16 OF 2026 FILED BY THE NATIONAL INVESTIGATION AGENCY
Annexure A21	THE TRUE COPY OF THE ORDER DATED 15.05.2026 IN CMP 16 OF 2026 ISSUED BY THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM
Annexure A22	THE TRUE COPY OF THE APPLICATION FOR REMANDING ACCUSED NO. 28 IN CMP 20 OF 2026 FILED BY THE NATIONAL INVESTIGATION AGENCY
Annexure A23	THE TRUE COPY OF THE ORDER DATED 19.05.2026 IN S.L.P. NO. 3658 OF 2024