

(2025) 02 DEL CK 1091

In the Delhi High Court

Case No : Writ Petition (Crl) No. 233 Of 2025

Abdul Rashid Sheikh

APPELLANT

Vs

NIA

RESPONDENT

Date of Decision : 10-02-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 105, 105(1), 105(2), 226
Bhartiya Nagarik Surkasha Sanhita, 2023 — Section 528
Indian Penal Code, 1860 — Section 120B, 121, 121A
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 17, 18, 20, 38, 39, 40
National Investigation Agency Act, 2008 — Section 11

Citation : (2025) 02 DEL CK 1091

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : H. Hariharan, Vikhyat Oberoi, Aditya Wadhwa, Nishita Gupta, Shivam Prakash, Ravi Sharma, Jagriti Pandey, Punya Rekha Angara, Vasundhara, Sana Singh, Aman Akhtar, Vinayak Gautam, Hasain Khwaja, Sidharth Luthra, Akshai Malik, Ayush Agarwal, Khawar Saleem, Udbhav Sinha, Siddhant Gupta, Yatharth Sharma, B.B. Pathak, Anil Kumar, Abhishek Kumar, Kanhaiya Singhal

Final Decision : Disposed Of

Judgement

Vikas Mahajan, J

CRL.M.A. 2972/2025 (by the petitioner under Section 528 of BNSS, 2023 seeking interim bail and in alternative custody parole)

1. The present petitioner was arrested on 09.08.2019 in connection with the case registered by NIA as RC-10/2017/NIA/DLI dated 30.05.2017 under Sections 120B/121/121A IPC and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, 1967.

2. The case of the prosecution is that based on credible information that Hafiz Muhammad Saeed, Amir of Jammāt-ud-Dawah and secessionist and separatist leaders, including members / cadres of the Hurriyat Conference, have been

acting in connivance with active militants of proscribed terrorist organizations viz. Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT), and other terrorist organizations / associations / gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir.

3. The investigation revealed that various terrorist organizations viz. Jammu Kashmir Liberal Front (JKLF), HM, LeT, in connivance with various secessionist groups particularly the APHC / Hurriyat Conference and its constituents funded by Pakistan and its agencies and terror groups have entered into a criminal conspiracy to wage war against the Government of India. Hurriyat leaders and their supporters were and are following the ideology of 'freedom' i.e. secession of the State of Jammu & Kashmir from the Union of India.

4. During the course of investigation, role of the petitioner surfaced and it transpired that he was also involved in the crime and, accordingly, he was arraigned as an accused and arrested.

5. Coming to the present petition, the same has been filed seeking following reliefs:

"A. Issue a writ of mandamus and/or any other appropriate writ, direction or order in the nature thereof, directing the Court of Sh. Chandrajit Singh, Ld. ASJ - 03 Patiala House Courts, New Delhi (special designated NIA court) to expeditiously pronounce the Order on the second regular bail application of the Petitioner dated 20.08.2024 in case bearing NIA No. 2 of 2018, titled as "NIA v. Hafiz Muhammad Saeed & Ors.", arising out of FIR bearing No. RC-10/2017/NIA/DLI dated 30.05.2017 and setting aside the Order dated 23.12.2024 passed by Ld. ASJ;

B. In alternative to Prayer A, treat the instant Petition as the second bail application, and adjudicate and grant regular bail to the Petitioner who has been arraigned as Accused No. 18 in case bearing NIA No. 2 of 2018, titled as "NIA v. Hafiz Muhammad Saeed & Ors.", arising out of FIR bearing No. RC-10/2017/NIA/DLI dated 30.05.2017, on such terms as the Hon'ble Court may direct."

6. The filing of present petition has been necessitated by the fact that although the petitioner's bail application was considered and heard by the learned Special Designated NIA Court but the order thereon was not pronounced by the said court assigning the reason that albeit the court is a Special Designated NIA Court, however, it does not have jurisdiction to try the said criminal case, as it is only the Special Designated Court of MPs/MLAs which has the jurisdiction to try the same.

7. For the sake of completeness, it may be stated that the said Special Designated NIA Court of the learned ASJ-03, Patiala House Courts, New Delhi vide order dated 21.11.2024 had placed the matter before the learned Principal

District and Sessions Judge observing that as per the directions of the Hon'ble Supreme Court in *Ashwini Kumar Upadhyay v. Union of India & Anr.*, [W.P.(C) No. 699/2016], all cases wherein an MP/MLA is made an accused are to be transferred to the Special Court/Designated Court constituted in that regard and since the Court is not a designated MP/MLA Court, therefore, it is deemed appropriate that directions be issued in that behalf.

8. The learned Principal and District Judge vide order dated 19.12.2024 observed that the administrative order on the above aspect, in respect of which issue had been taken up by the respondent/NIA before the High Court of Delhi on the Administrative Side, may be awaited. However, in the meanwhile, the accused persons who are in custody may have redressal mechanism so far as their miscellaneous applications are concerned.

9. Accordingly, vide impugned order dated 23.12.2024 the learned ASJ-03, Patiala House Courts, New Delhi (Special Designated NIA Court) disposed of the application of the petitioner seeking pronouncement of order on his second bail application, observing that he has been directed, in anticipation of the administrative order, to deal only with miscellaneous applications and the regular bail application is not a miscellaneous application.

10. In the wake of aforesaid development, the present petition came to be filed with the prayer as noted above. During the pendency of this petition, the present application has been filed by the applicant/petitioner seeking interim bail, and in the alternative, custody parole to attend the Fourth Parliamentary Session of the 18th Lok Sabha which is being held between 31.01.2025 to 04.04.2025.

11. In the meanwhile, it has transpired that the learned Registrar General of this Court has filed an application in the case of *Ashwini Kumar Upadhyay* (supra) and has sought the following clarification from the Hon'ble Supreme Court, which will put to rest the conundrum articulated in the impugned order, as well as, in the order dated 21.11.2024 of the learned ASJ-03, Patiala House Courts, New Delhi:

"a. Clarify that the High Court may authorise the trial of MPs/MLAs (including Ex-MPs/MLAs) who are facing trial of the scheduled offences prescribed in the Special Acts like NIA Act by the Special Court designated/constituted under Section 11 of the NIA Act instead of by the Special Courts created for the trial of MPs/MLAs and thereby enabling the High Court to issue necessary notification/office order in this regard"

12. Mr. N. Hariharan, learned Senior Counsel for the applicant/petitioner at the outset submits that, for the time being, he is confining his prayer for grant of custody parole to attend the ongoing Parliament session. He submits that the petitioner/applicant has been elected as a Member of Parliament in the 18th Lok Sabha elections representing the Baramulla Constituency. Bringing attention of this court to the summons from the Hon'ble President of India through Mr. Utpal Kumar Singh, the Secretary General, Lok Sabha, he submits that the applicant

has been invited to attend the ongoing Lok Sabha session. He submits that the presence of the applicant has become important to effectively represent and address the concerns of the people of his constituency in the said Lok Sabha session.

13. He submits that due to the operation of the impugned order dated 23.12.2024, the trial in the instant case has come to a standstill and the pronouncement of order on second regular bail application of the applicant has been kept in abeyance for indefinite period. Even the last interim bail application seeking, inter alia, bail for attending Third Parliamentary Session has become infructuous on account of lack of clarity as to competence of the Special NIA Court, not a designated court for MPs/MLAs, to entertain the bail application of the petitioner who is a sitting MP.

14. He submits that the applicant has been rendered remediless as there is no certainty as to the forum where the applicant can apply for his regular bail or an interim bail for attending the Parliamentary sessions.

15. Mr. Hariharan submits that it is settled principle of law that the absence of forum or court for redressal of grievances amounts to violation of the fundamental right guaranteed under Article 21 of the Constitution of India, when the question involved is of personal liberty.

16. He submits that previously also, the applicant had applied for an interim bail seeking permission to attend the Second Parliamentary Session. Although, vide order dated 29.07.2024, the learned Trial Court had rejected the said application, but the circumstances have changed since. Elaborating on his contention, he submits that the applicant was subsequently granted interim bail by the learned Trial Court vide order dated 10.09.2024 wherein the NIA had in fact given a no-objection. Further, during the period of applicant's release on interim bail, he strictly adhered to all directions issued by the learned Trial Court.

17. He submits that there are precedents when custody parole had been granted by this court in cases involving MPs/MLAs on similar grounds permitting them to attend Parliamentary sessions. In this regard, he places reliance on the order dated 27.11.2008 passed by this court in *Rajesh Ranjan @ Pappu Yadav v. Union of India & Ors.*, W.P.(C) No.7548/2008, as well as, order dated 10.02.2009 in *Rajesh Ranjan @ Pappu Yadav v. Union of India & Anr.*, W.P.(C) No.854/2009.

18. He thus, urges that considering that only two days are left in the current session, i.e. 11.02.2025 and 13.02.2025, the applicant may be allowed to attend the Parliament session on the aforesaid dates on custody parole.

19. Per contra, Mr. Sidharth Luthra, learned Senior Counsel, duly assisted by Mr. Akshai Malik, the learned SPP for the respondent/NIA, submits that the plea of the applicant for grant of interim bail/custody parole to participate in the Lok Sabha proceedings has already been rejected twice by the learned Special Court (NIA) vide detailed orders dated 02.07.2024 and 29.07.2024. He submits that

the said orders were never challenged by the applicant and, thus, the decision on the issue has attained finality. Re-agitating the same issue before this court is impermissible.

20. Elaborating further, he submits that Legislators or Parliamentarians have no enforceable right to participate in the Session of the House so long as they are under lawful detention. He submits that although the courts, in various decisions, have held that right to vote and right to contest elections are statutory rights, the prayer of the present applicant to attend Parliament during judicial custody is distinct and is not conferred by a statute. He places reliance on the following decisions wherein similar contentions, as raised by the present applicant, were rejected:

(i) Suresh Kalmadi v. Union of India & Ors. [DB], 2011 SCC OnLine Del 3639.

(ii) Suresh Kalmadi v. Union of India & Ors., ILR 2011 Delhi 795.

(iii) Shekhar Tiwari v. State of UP & Ors., 2009 SCC OnLine ALL 485.

(iv) Raghu Raj Pratap Singh v. State of UP & Ors., 2003 SCC OnLine ALL 265.

(v) Banwari Lal Kushwaha v. State of Rajasthan & Ors., 2015 SCC OnLine RAJ 5461.

(vi) K. Ananda Nambiar & Ors. v. Chief Secretary, Govt. of Madras & Ors., 1965 SCC OnLine SC 74.

21. Mr. Luthra submits that reliance placed by the applicant on the orders of this court in Rajesh Ranjan (supra) is misplaced, inasmuch as the order dated 27.11.2008 was a consent order and the second order dated 10.02.2009 was passed on similar lines.

22. To oppose the prayer of custody parole, Mr. Luthra has also drawn attention of this court to various orders passed by the learned Special Court (NIA). Vide order dated 08.04.2024, the learned Special Court restricted the phone call facilities of the applicant in jail after considering the fact that the said facilities were being misused by the applicant. Further, he submits that the application seeking interim bail/custody parole for filing nomination to contest in General Elections, 2024 was rejected vide order dated 27.04.2024, instead a direction was given to the Jail Superintendent to make necessary arrangements for the filing of nomination of the applicant while he remained in custody. He submits that again an interim bail application was filed by the applicant before the Special Court (NIA), however, the same was dismissed as withdrawn vide order dated 24.12.2024.

23. He submits that the aspect of attending Parliament in custody parole is otherwise, a matter to be dealt with by the jail authorities and the Secretary General, Lok Sabha in view of the security and procedural norms involved.

24. Having heard rival contentions of the learned Senior Counsel for the parties,

the short question which needs to be addressed in the present matter is as to whether the petitioner/applicant is to be granted custody parole to enable him to attend the Parliament session, in the facts and circumstances of the present case.

25. The law is well settled that the Legislators or the Parliamentarians have no statutory right to participate in the session of the House so long as they are under lawful detention. A learned Single Judge of this court in Suresh Kalmadi (supra) relying upon various decisions of the Hon'ble Supreme Court, as well as, of other High Courts, observed that merely because a person is a Parliamentarian does not entitle him to claim any exception from the effect of being in detention and such an exception ought not to be carved in favour of an accused merely because he has to attend the Parliament when fellow prisoners are not provided such respite. The relevant part of the said decision reads thus:

"25. Ld. ASG has also opposed the grant of relief to the petitioner. He has invited attention to the application filed by the petitioner in July, 2011 before the Special Judge in whose judicial custody the petitioner is, where the petitioner has stated that he is sick and infirm, suffering from various ailments resulting inter alia in forgetfulness. It has been suggested that the petitioner in such state of health cannot be expected to make any contribution to the Parliament and is using the excuse of attending Parliament to get away from the rigours of imprisonment after he has been unsuccessful in obtaining bail. Reliance is also placed on Raghu Raj Pratap Singh @ Raja Bhaiya v. State of U.P. where a Division Bench of the Allahabad High Court also held that the Legislators have no enforceable right to participate in the Session of the House so long as they are under detention and carved out a distinction between the right to attend Parliament and the right to vote, right to contest election or right to take oath as a Parliamentarian. It was held that right to vote and right to contest election are statutory rights; while a person in jail can cast his vote and contest election but there is no such provision regarding the right to attend Parliament.

26. I find similar view to have been taken in Kameshwar Baitha v. State of Jharkhand and in Shekhar Tiwari v. State of UP. The Apex Court in Raja Ram Pal (supra) also held that expulsion of a Member from Parliament does not violate the democratic principles and the challenge to expulsion on the ground that the Constituency would go unrepresented in Parliament was not sustained. The same ground urged here to seek a special right in favour of the petitioner, thus has no merit.

27. What thus follows is that merely because the petitioner is a Parliamentarian does not entitle him to claim any exception from the effect of being in detention. Else, the petitioner has not made out any case necessitating him to attend the Parliament. It is not the case that the vote of the petitioner on any aspect is vital or that without such participation the citizens of his Constituency would suffer. Though the need for participation on issues relating to Pune Airport, the local train network and urban development is mentioned but no particulars have been given. It cannot also be lost sight of that the petitioner in the past, as per his

convenience has been missing Sessions of Parliament. It was not the mandate of his electorate that he should take up the Chairmanship of the Organizing Committee for Commonwealth Games or spend time on National Games or participate in the Games at China. When the petitioner could afford to miss Parliament then, his desire/keenness to attend now can only be understood as an attempt for fresh air outside the prison walls. What the American publisher William Randolph Hearst said, "a politician will do anything to keep his job - even become a patriot" seems apposite.

28. Allowing the petitioner to attend the Parliament, even if in judicial custody, would certainly provide the petitioner respite from imprisonment. I see no reason to carve out an exception in favour of the petitioner when his fellow prisoners are not provided such respite. Sophocles said "Nobody has a more sacred obligation to obey the law than those who make the law". The Parliamentary privileges which the Members of Parliament enjoy are intended to facilitate their work as representatives of people and should not be mistaken as indicative of rank or creating a separate class different from the other citizens. The Apex Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226 held that the law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life - every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone."

(emphasis supplied)

26. The aforesaid decision was challenged before the Division Bench of this court. The Division Bench in *Suresh Kalmadi [DB]* (supra), relied upon the decision of the Hon'ble Supreme Court in *K. Ananda Nambiar* (supra) wherein it has been clearly held that if the order of detention validly prevents a member from attending a session of the Parliament, no occasion arises for exercise of the right to freedom of speech and no complaint can be made that the said right has been invalidly invaded. The relevant portion of the finding in *K. Ananda Nambiar* (supra) is as follows:

"17. We are, therefore, satisfied that on a close examination of the articles on which Mr Setalvad has relied, the whole basis of his argument breaks down, because the rights which he calls constitutional rights are rights accruing to the Members of Parliament after they are elected, but they are not constitutional rights in the strict sense, and quite clearly, they are not fundamental rights at all. It may be that sometimes in discussing the significance or importance of the right of freedom of speech guaranteed by Article 105(1) and (2), it may have been described as a fundamental right; but the totality of rights on which Mr Setalvad relies cannot claim the status of fundamental rights at all, and the freedom of speech on which so much reliance is placed is a part of the privileges falling under Article 105, and a plea that a breach has been committed of any of these privileges cannot, of course, be raised in view of the decision of the Committee of Privileges of the House of Commons to which we have just

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

(emphasis supplied)

27. The observations of the Division Bench in Suresh Kalmadi (supra), are also apposite, which reads thus:

"29. As has been stated earlier, in the case at hand, the arrest and incarceration is valid in law and the appellant has not been enlarged on bail. True it is, in the case of K. Ananda Nambiar (supra), the Apex Court was dealing with preventive detention but the present case relates to arrest and custody. When the appellant's custody is valid and the allegations are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him the permission to attend the parliamentary session solely on the foundation that he has the freedom of speech inside the Parliament or on the foundation that he enjoys exclusive privilege in the Parliament as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation...."

28. In view of the authoritative pronouncement of the Hon'ble Supreme Court in K. Ananad Nambiar (supra), as well as, the decisions of this court in Suresh Kalmadi (supra), both of the learned Single Judge, as well as, of the Division Bench, it is luminously clear that the petitioner does not have any enforceable right to attend the Parliament session.

29. At the same time, this court cannot lose sight of the fact that the petitioner's bail application before the learned Special Court (NIA) was argued as early as on 28.08.2024 and the judgment was reserved thereon. The pronouncement of the judgment was thereafter deferred on many occasions and eventually the learned Special Court vide order dated 21.11.2024 placed the matter before the learned Principal District and Sessions Judge for issuance of appropriate directions in light of the fact that the applicant herein is a Member of Parliament from Baramulla and the Special Court had not been designated as MP/MLA court in terms of the mandate of the Hon'ble Supreme Court in Ashwini Kumar Upadhyay (supra).

30. As noted above, the learned Principal and District Judge vide order dated 19.12.2024, observed that since the administrative order on the aspect of jurisdiction is awaited, therefore, only miscellaneous applications of the accused persons who were in custody may be entertained. Accordingly, vide impugned order dated 23.12.2024, the learned Special Court declined to pronounce the judgment on the application of the applicant seeking regular bail, observing that regular bail application is not a miscellaneous application.

31. In the interregnum, the petitioner had also preferred an interim bail application to attend the Third Parliamentary Winter Session, till the pendency of second regular bail of the petitioner. However, the said application was withdrawn on 24.12.2024 as having become infructuous as the same was not decided since the administrative order was still awaited, and in the meanwhile, the Third Parliamentary Winter Session ended on 20.12.2024.

32. It is thus, apparent that since August, 2024 the application(s) of the applicant filed before the learned Special Court (NIA), seeking regular or interim bail, could not be taken to their logical end only for the reason that the administrative order designating the said Special Court (NIA) as MP/MLA court is under consideration.

33. At this stage, apt would it be to refer to the decision of the Hon'ble Supreme Court in *Ashim v. National Investigation Agency* (2022) 1 SCC 695, wherein, it was observed that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. It was further held that deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. Timely delivery of justice is part of human rights and denial of speedy trial is a threat to public confidence in the administration of justice. The relevant extract from the judgment is as under:

"11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice."

34. In *Anita Kushwaha v. Pushap Sudan* (2016) 8 SCC 509 also, it has been held by the Hon'ble Supreme Court that access to justice is a fundamental right guaranteed under Articles 14 and 21 of the Constitution of India. If access to justice is a facet of fundamental rights, then non-availability of forum for disposal of applicant's application for bail, either interim or regular, renders the petitioner remediless for the time being, and concomitantly deprives him of the aforesaid right. This being the position, it is deemed appropriate that in the peculiar facts and circumstances of the present case as noted above and in an attempt to balance the competing interests and rights, this Court would not completely negate petitioner's plea for custody parole to attend the Parliamentary session for the remaining two days on 11.02.2025 and 13.02.2025. However, to allay the apprehensions articulated by the respondent/NIA, appropriate conditions can be imposed.

35. Consequently, custody parole is granted to the petitioner for two days i.e. on 11.02.2025 and 13.02.2025 to attend the ongoing Parliamentary Session. The Director General (Prisons) Delhi, in consultation with the Secretary General, Lok

Sabha, shall make the requisite arrangements for the applicant/petitioner to attend the Parliamentary Sessions on 11.02.2025 and 13.02.2025, subject to the following conditions:

- a. The petitioner is granted custody parole for the duration of the sessions on each of the two days, i.e. 11.02.2025 and 13.02.2025;
- b. In case, the sessions go beyond the official jail hours, the Jail Authorities are directed to allow the petitioner to surrender after such official hours;
- c. On both the days, the petitioner would be in the custody of the Jail Authorities with adequate police security and protection to and from, as well as at the concerned location of the Parliamentary Sessions. Such security and protection shall be ensured by the Director General (Prisons) in consultation with the Secretary General, Lok Sabha, as per the condition(s)/restriction(s) imposed by the Secretary General, Lok Sabha;
- d. The petitioner shall not use any phone, mobile, landline or any other telecommunication devices, nor shall he be allowed to have access to the internet;
- e. The petitioner shall not interact with any person except to his limited responsibility as a Member of Parliament;
- f. The petitioner shall not address the media in any manner whatsoever; and
- g. The Secretary General, Lok Sabha is requested to ensure compliance of the present conditions.

36. Needless to say, that the police official(s) accompanying the petitioner shall remain in plain clothes.

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

38. Respondent/NIA is directed to convey the present order, with regard to the permission granted, as well as, the conditions imposed, to the Secretary General, Lok Sabha and the Director General (Prisons) to enable them to formulate a course and ensure compliance.

39. The application stands disposed of.

40. Order dasti under signatures of the Court Master.

41. Copy of the order be forwarded to the concerned Jail Superintendent for compliance.

42. Order be uploaded on the website of this Court.