

(2025) 01 MP CK 1681

In the Madhya Pradesh High Court, Jabalpur Bench

Case No : Criminal Appeal No. 5743 OF 2024

Syed Mamoor Ali @ Mamoor Bhai

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 06-01-2025

Acts Referred:

Constitution of India 1950 — Article 226 Waqf Act, 1995 - Section 6(d), 16, 67, 67(6)

Citation : (2025) 01 MP CK 1681

Hon'ble Judges : Pranay Verma, J

Bench : Division Bench

Advocate : Ajay Bagadia, Devansh Awal, Sunil Kumar Jain, Jyoti, Dharmendra Singh Patel, Manya, Mishra, Rishi Shrivastava

Final Decision : Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

Sushrut Arvind Dharmadhikari, J

The instant Criminal Appeal under section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred as Act 2008) has been filed on behalf of the appellant against the order dated 12/04/2024 passed in SC NIA No.02 of 2023; whereby the application filed by the appellant for grant of bail, has been rejected.

2. The appellant has been arrested on 26/05/2023 relating to FIR/Crime No.RC-14/2023/NIA/DLI registered at Police Station NIA, Delhi, regarding commission of offence punishable under Sections 120-B, 153-A, 153-B, 295-A of the Indian Penal Code (hereinafter referred as IPC) and Sections 13, 17, 18, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred as UAPA).

3. Prosecution story in brief is that in compliance of the order of Government of India, Ministry of Home Affairs, dated 24/05/2023, the National Investigation

Agency registered a case bearing No. RC-14/2023/NIA/DLI dated 24/05/2023 under Sections 120-B, 295-A of the IPC and Sections 16, 17, 18, 18(B), 20 of UAPA against present appellant i.e. Syed Mamoor Ali, co-accused Adil Khan and other unknown persons. The NIA took up the investigation wherein it was revealed that during nationwide lockdown in the year 2020, the accused persons started gaining knowledge about comparison of religion through watching the videos of Zakir Naik, an Islamic Preacher, reading Quran and Hadeeth.

(3.1) Further, investigation revealed that co-accused Mohd. Adil Khan got influenced by the thoughts of Zakir Naik and started gaining knowledge about basics of geopolitics (learnt about Syria @ Sham, Israel, America, Saudi Arabia, Khurasan etc.). He also expressed interest towards Jihad and started corroborating Jihad with Quran. He developed radicalized bent of mind and started believing that there must be Shariyat all over the world and no one should follow the man-made laws. The NIA found that the present appellant was also listening and watching Islamic lectures delivered by Islamic orators such as Zakir Naik, Syed Faiz, Dr. Israr Ahmad etc. and was also watching videos of Anwar-Al-Awlaki. He started searching about Jihad and corroborated the same with Quran for developing Jihadis ideology as he wanted to spread Sharia law all over the world.

(3.2) The investigation also revealed that the present appellant started giving Dawah to Hindus and started distribution of pamphlets related to Islam. Further, during the investigation, the NIA also found that other co-accused, namely, Shahid Khan and Kasif Khan were also involved in said unlawful activities. All the accused persons were watching Islamic lectures to provoke Jihad and implement Sharia law all over the world including India. All the accused persons became close friends and started discussing Quran and Hadeeth and Jihad too. They all started sharing radicalized thoughts with each other. They had a common mind of establishing Sharia law in India through violent means. They used to visit Falah Darain Masjid for offering Namaz, where they used to discuss Jihad through violent means and Khilafat based on Shariyat. They also prepared the pamphlets similar to the flags of ISIS and Al- Qaeda. They affixed one of the samples of pamphlets on the wall of nearby Ahle Hadees mosque in order to attract likeminded people, whom they can influence towards ideology of ISIS. The Investigation further shows that in the month of August, 2022, co-accused Kasif Khan created a whatsapp group namely "Pics" and added Mohd. Adil Khan, Shahid Khan and some other persons. After creating said group, co-accused Mohd. Adil Khan started sharing videos, audios, photos, related to ISIS/Jihad/ Shariyat in order to motivate the group members towards the ideology of ISIS. They also started sharing derogatory posts on Hindu deities. In the month of December, 2022, co-accused Kasif Khan added present appellant - Syed Mamoor Ali @ Mamoor Bhai, who changed the name of group as "Fisabilillah" and also changed the Display Picture of the group, which was similar to the flag of ISIS with slight modifications. In the said WhatsApp group, the accused persons started discussing Shariyat, Khilafat and Jihad. In order to escape themselves

from the radar of Investigation Agency, they decided to use code names for ISIS such as "eye S", "eye ass", "eye as", "eye sis", "eye see", "Dhadiwale", "Dawlah", "1515", "15", "Mujahideen" and "Eye s fisabilillah". They also decided that present appellant would be the Ameer of the group.

(3.3) The investigation further revealed that co-accused Adil Khan came in contact with one Faris Nazdi through social media, who provided contents related to ISIS. It is further alleged that co-accused Adil Khan also downloaded several contents related to ISIS. The said contents were also seen by other co-accused persons in laptop of co-accused Shahid Khan. Further, co-accused Adil Khan created a bot channel namely "Dawlah @ baqiyah_bot)" on Telegram. He used to upload links of the Dawlah bot in his Instagram account named as "abdullahadawallah". He also took backup of said data on Mega application. Thereafter, the other co-accused persons also created accounts on Social Media in order to fulfill their motive.

(3.4) The investigation further shows that the present appellant and other co-accused persons conspired to attack Ordnance Factory, Jabalpur, to procure the weapons in large quantity in furtherance of their terror activity. They also decided to blast the Jabalpur Ordnance Factory, if they could not succeed in capturing the Factory. The present appellant also suggested to have three Mujahids behind each security personnel in order to capture the Factory. They wanted to expand their violence to whole India. It is further alleged that the present appellant gave responsibility of technical head to co-accused Mohd. Adil Khan and preparation of explosive to co-accused Mohd. Kasif Khan. In furtherance thereof, co-accused Kasif Khan shared a link of one YouTube video to prepare highly inflammable explosive by using daily used material. The accused persons did not believe in the concept of Nationalism, Democracy, Constitution and Voting system and motivated others too for doing so. They wanted to recruit like-minded people in large number to strengthen their organization. They also decided to make monthly contribution for their cause and they also wanted to raise funds through Bait-ul-mal. During the course of investigation, various audios/videos/PDFs of ISIS publications as well as incriminating handwriting diary, digital devices, literature, pamphlets, mobile phones were seized from possession of the accused persons. The investigating agency also procured CDR between the accused persons. The accused persons got arrested by the investigating agency.

4. It is submitted by the learned Senior counsel for the appellant that the appellant has falsely been implicated in the case. The prosecution case is based on suspicion and indeed, there is nothing on record against the present appellant. No offence, as alleged is made out against him as necessary ingredients to constitute the alleged offence are completely missing. The appellant has no criminal antecedents and if the appellant is kept in jail, it will adversely affect his family and cause irreparable loss. It is also submitted that the appellant is physically handicapped and unable to perform such dangerous/

difficult tasks. Mere exchange of religious beliefs does not constitute any offence. The appellant is not creator of WhatsApp group through which the alleged contents were shared. The material collected by the investigating agency prima facie does not constitute any offence against the present appellant. No weapons have been seized from the possession of the present appellant. It is further submitted that the jail authority is not providing therapy to the appellant for which the appellant had preferred a writ petition before the High Court and inspite of direction given by the High Court, the jail authority is not providing therapy. It is further submitted that investigation is over and charge-sheet has been filed. He has also submitted that while considering the bail application under Section 43(D)(5) of UAPA, the court is duty bound to apply its mind to examine the entire material available on record for the purpose of satisfying itself as to whether prima facie case is made out against the accused or not? The period of custody and probability of conclusion of trial in near future should be considered by the Court. In the present case, the learned trial Court failed to consider the provisions of law in proper manner. Mere association with terrorist organization is not sufficient to attract Section 38 of UAPA and mere support to a terrorist organization is not sufficient to attract Section 39 of UAPA. The association and support have to be with an intention and in furtherance of the activities of the terrorist organization. In addition to above submissions, the learned Senior counsel for the appellant has submitted that the appellant is a permanent resident of District Jabalpur and there is no likelihood of his absconding or tampering with the prosecution evidence. The appellant is ready to furnish adequate surety and shall abide by all the directions and conditions which may be imposed by the Court. In support of his contentions, learned Senior counsel for the appellant placed reliance on the following citations:- (1) Sudesh Kedia Vs. Union of India, 2021 (4) SCC 704 (2) Sheikh Javed Iqbal @ Asfhaq Ansari@Javed Ansari Vs. State of Uttar Pradesh, 2024(8) SCC 293 (3) Jalaluddin Khan Vs. Union of India, 2024 SCC OnLine SC 1945 and (4) Tawaha Fasal Vs. Union of India, (2022) 14 SCC 766. On these grounds, prayer is made to allow the appeal and enlarge the appellant on bail.

5. Per contra, learned counsel appearing for the respondent has vehemently opposed the appeal. He submitted that the offence committed by the appellant is serious in nature and against the integrity and peace of country. The prosecution has collected incriminating material viz. audio clips, video clips, objectionable literatures, pamphlets, handwritten documents from the possession of all the accused persons including present appellant which shows his involvement in the alleged crime. He has further submitted that Section 43 D(5) of UAPA imposes restrictions upon the Court in granting bail to accused person. The statements of witnesses recorded under Sections 161 and 164 of Cr.P.C., clearly establishes the complicity of present appellant in the alleged crime. He further submitted that it is not necessary that every person who are involved in terrorist activities must have criminal antecedents. The appellant was fully aware about the banned terrorist organization ISIS and its activities in India and worldwide. As per

Section 19 of NIA Act, 2008, the trial will be conducted having precedence over other matters and therefore, there is no delay in trial proceedings. If the appellant is released on bail, there is every possibility of his fleeing away. In support of his contentions, learned counsel for the respondent has placed reliance on the following decisions (1) Gurwinder Singh vs. State of Punjab and another, reported in (2024) 5 SCC 403 (2) Jayanta Kumar Ghosh Vs. National Investigation Agency, 2013 (1) Gauhati Law Reports 374 (3) Golan Daulagupu Vs. National Investigation Agency, 2013 (2) Gauhati Law Reports 791.

6. We have heard the submissions advanced by learned counsel for the parties and perused the charge-sheet along with other documents available on record and also the case laws referred by the counsel for the parties.

7. Before examining the facts of the case, we think it appropriate to reiterate the settled legal position laid down by Hon'ble Supreme Court in the case of Zahoor Ahmad Shah Watali, reported in (2019) 5 SCC 1, for deciding an application for bail, which reads that:-.

Before we proceed to analyse the rival submissions, it is apposite to reiterate the settled legal position about matters to be considered for deciding an application for bail, to wit,

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

8. Now, we come to the provisions relating to bail under the UAPA i.e. sub-section 5 of Section 43D, same reads as under:

"43-D. Modified application of certain provisions of the Code

".....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own

bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in Sub-Section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in Sub-Sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

9. In the case of Zahoor Ahmad Shah Watali (supra), the Hon'ble Supreme Court has laid down the principle for considering the bail application under UAPA, the relevant para is quoted as under:

"17. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. 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 concerned accused 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 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 for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act....."

10. Thereafter, in the case of K.A.Najeeb Vs. Union of India, reported in (2021) 3 SCC 713, the Hon'ble Supreme Court distinguishing the law laid down in the case of Zahoor Ahmad Shah Watali (supra) held that Courts are expected to appreciate legislative policy against grant of bail but rigour of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and period of incarceration already undergone has exceeded a substantial part of prescribed sentence. Presence of statutory restrictions like Section 43D(5) of UAPA per se do not oust ability of Constitutional Courts to grant bail on grounds of violation of Part III of Constitution.

11. After considering the decisions passed in the cases of Zahoor Ahmad Shah Watali (supra) and K.A.Najeeb (supra), the Hon'ble Supreme Court in the case of Thwaha Fasal (supra) dealing with the scope of Section 43D(5) of UAPA, held that if Court, after examining material on record, is satisfied that there are no reasonable grounds for believing that accusation against accused is prima facie true, then accused is entitled for bail. The Court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is neither expected to hold a mini trial nor is supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the Court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true or not. While doing so, the Court has to take the material available in the charge-sheet as it is. Mere association with a terrorist organization as a member or otherwise will not be sufficient to attract offence under Section 38 of UAPA unless association is with an intention to further its activities. Stringent restrictions imposed by sub-section (5) of Section 43D of UAPA, do not negate the powers of Constitutional Court to grant bail keeping in mind violation of Part III of the Constitution.

12. The learned counsel for the NIA relied upon a recent decision of Hon'ble Supreme Court passed in the case of Gurwinder Singh (supra) wherein the Hon'ble Supreme Court has considered its earlier decisions including Zahoor Ahmad Shah Watali (supra) as well as K.A.Najeeb (supra) which deal with interpretation of Section 43D(5). In the said case, the Hon'ble Supreme Court dismissed the appeal challenging the dismissal of the bail application by the trial Court and that was upheld by the High Court. Further, the Hon'ble Supreme Court explained in detail the principles governing consideration of bail application in case under the UAPA. Paragraph 20 to 23 of the said decision reads thus:

"20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear

by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail. 21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test :

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself :

2.1 Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'.

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 Cr.P.C. must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

(i) Meaning of 'Prima facie true' [Para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

(ii) Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared [Para 23]: Once charges are framed, it would be safe to

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

(iii) Reasoning, necessary but no detailed evaluation of evidence [Para 24]: The exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

(iv) Record a finding on broad probabilities, not based on proof beyond doubt [Para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

(v) Duration of the limitation under Section 43D(5) [Para 26]: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

(vi) Material on record must be analysed as a 'whole' no piecemeal analysis [Para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

(vii) Contents of documents to be presumed as true [Para 27]: The Court must look at the contents of the document and take such document into account as it is.

(viii) Admissibility of documents relied upon by Prosecution cannot be questioned [Para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

13. Thereafter, the law laid down in the case of Gurwinder Singh (Supra), has been distinguished by the Hon'ble Supreme Court in the case of Sheikh Javed Iqbal (supra) holding that when trial gets prolonged, it is not open to prosecution to oppose bail of accused-under trial on the ground that charges are very serious. Bail cannot be denied only on the ground that charges are very serious

though there is no end in sight for trial to conclude. The Constitutional Court cannot be restrained from granting bail to accused on account of restrictive statutory provisions in a penal statute if it finds that right of accused-under trial under Article 21 of Constitution of India has been infringed. Further, Section 43D(5) of UAPA does not oust ability of Constitutional Courts to grant bail on the ground of violation of Part III of the Constitution.

14. Thereafter, the Hon'ble Supreme Court again reiterated the principle in the case of Jalaluddin Khan (supra) wherein it is held that the Court has to examine the material forming part of the charge-sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are prima facie true. While doing so, the Court must take the charge-sheet as it is. When a case is made out for grant of bail, Courts should not have any hesitation in granting bail. If Courts start denying bail in deserving cases, it will be a violation of rights guaranteed under Article 21 of the Constitution.

15. Recently, The Hon'ble Supreme Court referring the verdict given in Ahmad Shah Watali (supra), K.A.Najeeb (supra), Thwaha Fasal (supra) and Jalaluddin Khan (supra), passed the judgment in the case of Athar Parwez Vs. Union of India, in Criminal Appeal No. 5387 of 2024 [Arising Out Of Slp (Crl) No. 9209 of 2024] decided On 17-12-2024, and again reiterated and clarified the principle regarding deciding the bail application under UAPA holding that the right to a speedy trial under Article 21 of the Constitution is paramount, and prolonged detention without charges is unconstitutional. Giving precedence to the protection of Fundamental Rights and emphasizing upon their primacy over the statutory provisions in case of delayed trial, in the above judgments, the Hon'ble Supreme Court had even gone to the extent of asserting that the seriousness of the crime for which the accused is facing the trial would not be material as an accused is presumed to be innocent until proven guilty.

16. In the light of above referred judgments, we sum-up the legal position by saying that while considering the bail application under UAPA, 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. By its very nature, the expression "prima facie true" would mean that the material/evidence collected by the investigating agency in order to establish the accusation against the accused concerned in the first information report, must prevail until contradicted or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the alleged offence. It must be sufficient on its face to establish the given facts. The restriction on the powers of the Court to grant bail is less stringent and if the Court, having regard to the material brought before it, is satisfied that in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either

directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. The Court must consider the nature and manner in which the accused is alleged to have committed the offence. Further, for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, but the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. While deciding the bail, the Court should not conduct a mini-trial to determine the admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5) UAPA, but it was premature and possibly would have prejudiced the trial itself. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merits of the case and the trial Court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without being prejudiced thereby in any manner.

17. Further, in the referred judgments, the Hon'ble Apex Court has also taken care of the liberty guaranteed by Part III of the Constitution of India which covers not only due procedure and fairness but also access to justice and a speedy trial. The Hon'ble Supreme Court has time and again reiterated that under-trials cannot indefinitely be detained in pending trial even in UAPA. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail. The Hon'ble Supreme Court clarified that the presence of statutory restrictions like Section 43-D(5) of the UAPA per-se do not oust the ability of the constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Whereas, at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigour 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.

18. If the above principal is considered more precisely, there are two conditions for granting bail to accused under trial in UAPA; first, if the Court is satisfied that the entire material collected by the investigation agency do not constitute prima facie case against the accused person and investigation agency has failed to show as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true, and secondly, a timely trial would not be possible and the accused has suffered incarceration for a significant period for a substantial part of prescribed sentence which amounts to violation of his Fundamental Rights.

19. Now adverting to the facts of the case at hand, we are conscious of the fact

that the allegations levelled against the appellant are grave and a serious threat to societal harmony. On perusal of charge-sheet, following allegations have been made against the present appellant -

“(I) He was associated with banned terrorist organization, Islamic State of Iraq and Syria (ISIS) alongwith other co-accused persons.

(II) The present appellant was in possession of several incriminating literatures, pamphlets containing a flag similar to the flag of ISIS.

(III) The present appellant discussed Shariyah, Jihad, Khilafat and ISIS along with other co-accused persons. They also planned to disseminate the ideology of ISIS through Dawah programs and started organizing Dars in Falah Darain Masjid and started radicalizing the persons who came close to them to recruit them in ISIS.

(IV) Present appellant took initiative in offering Dawah (invitation to religious discussion) to people in Penchkari Masjid to spot the radicalized persons to take them into ISIS.

(V) Present appellant was the person who changed the name of WhatsApp group from “Pics” to “Fisabilillah” (“for the sake of Allah” or “in the way Allah”) and changed the Display Picture of the group which was similar to the black flag of ISIS and started discussing Shariyat, Khilafat and Jihad whereupon.

(VI) The present appellant was the Ameer (ruler or commander) of the group.

(VII) Present appellant along with other co-accused persons conspired to attack Ordnance Factory, Jabalpur, to procure weapons in large quantity for furtherance of the activities of ISIS.

(VIII) Present appellant was the person who suggested to have 03 Mujahids behind each security personnel in order to capture the factory. (IX) The present appellant did not have belief in the concepts of Nationalism, Democracy, Principles of Constitution and voting system.

(ix) The present appellant was using the Instagram account namely “fisabilillah_hizbullah” and he used to post various incriminating photos against nationalism. He was constantly searching about ISIS, Jihad, Taliban, Osama Bin Laden, Suicide Bombing etc.”

20. In order to strengthen their case, the NIA got analysed the phone of present appellant wherein they found one magazine/literature namely “Voice of Khurasan” which contains motivational articles for Jihad, martyrdom, propagating ideology of ISIS etc. Another literature related to Dawah to Hindus was also found in the mobile of present appellant. Apart from these, images relating to modified flags of ISIS, photos of Anwar Al Awlaki, Abu Duzana were also recovered from his mobile phone. He used an application namely “Sherddit” to delete the data from his phone regularly. Digital analysis further revealed that present appellant and co-accused Mohd. Adil Khan were discussing about

collection of funds for their Tanzeem, suicide bombing, martyrdom, Istishhadi etc.

21. Further, the investigation agency recorded the statements of various witnesses u/s 161 & 164 of Cr.P.C. denoting them as 'A' to 'H', which indicate entire conspiracy and activities of the present appellant and other accused persons in commission of the alleged crime. The witnesses also stated that the present appellant and other co-accused persons decided to make explosives from household material and subsequently present appellant gave tasks to other co-accused to prepare the same. They wanted to attack Ordnance Factory, Jabalpur. The NIA also procured the CDR report of all the accused persons to show interconnection between them.

22. In view of the above discussion, it is clear that there is sufficient material available in the charge-sheet showing that the appellant has actively participated in and has committed unlawful activities as defined in the UAPA. There is specific material to show that the appellant advocated, abetted, or incited commission of many unlawful activities. A terrorist act is defined in Section 15(1) of UAPA, which inter-alia says that whoever does any act with intent 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 any foreign country by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemical or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause (i) death of, or injuries to, any person or persons, or (ii) loss of, or damage to, or destruction of property, or (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, commits a terrorist act. The material collected by the NIA show that the present appellant was the active member of conspiracy by which, the accused persons were going to attack upon Ordnance Factory, Jabalpur, which is an entity of defence. We find sufficient material to show that there was conspiracy to commit a terrorist act to which the appellant was a party. The NIA produced sufficient material on record to show that the appellant was involved in the alleged terrorist acts and other preparatory activities. The accused persons were not only supporting the activities of terrorist organization but also they wanted to stand their own organization with the intention to ruin the Constitution of India.

23. The learned senior counsel for the appellant has also raised the ground of appellant being physically handicapped and thus unable to carry out such a dangerous act. We would say that the terrorism based upon religion arises from hateful thoughts towards the other religions which comes from mind and is spread by mind; the need of other physical assistance is secondary. This Court

cannot express undue leniency to a person who is facing serious charge of terrorism and unlawful activities. The trial is also set at full motion and there is every possibility of trial being completed in its due course. Therefore, considering the overall facts, at this stage, we are not inclined to grant bail to the appellant.

24. Accordingly, the instant Criminal Appeal is hereby dismissed. The order passed by the learned trial Judge, dated 12/04/2024 in SC NIA No. 02 of 2023 is hereby affirmed.

25. However, we make it clear that the findings recorded in this judgment are only for considering the prayer for bail and the learned trial Court may proceed in the case without being prejudiced from any finding given by this Court.