

4. Supreme Court On Bail Under UAPA – "Bail Is Rule, Jail the Exception" – Polity

1. Why in News

1. Supreme Court reaffirmed "bail is rule and jail the exception" even under stringent UAPA provisions
2. Judgment while granting bail to Syed Iftikhar Andrabi arrested in 2020 in narco-terror case
3. Court expressed concern about earlier denial of bail to Umar Khalid and Sharjeel Imam appearing inconsistent with larger bench ruling in K.A. Najeeb (2021)
4. Strengthens constitutional protection against arbitrary prolonged detention

2. Background of the Case

Andrabi Narco-Terror Case

1. Judgment arose while granting bail to Syed Iftikhar Andrabi
2. Arrested in 2020 in narco-terror case investigated by National Investigation Agency (NIA)

Charges under UAPA and NDPS

1. Andrabi accused of involvement in cross-border heroin trafficking
2. Allegedly linked with terror organizations – Lashkar-e-Taiba (LeT) and Hizbul Mujahideen
3. Dual charges under UAPA (terrorism) and NDPS Act (narcotics)

Delay in Trial

1. Court noted trial progressing slowly
2. Hundreds of prosecution witnesses yet to be examined
3. Indefinite pre-trial detention without trial completion

Reservations on Umar Khalid Bail Order

1. Court expressed concern about earlier denial of bail to Umar Khalid and Sharjeel Imam
2. Appeared inconsistent with larger bench ruling in Union of India vs K.A. Najeeb (2021)
3. Delhi riots conspiracy case (2020)
4. Highlighting inconsistency in bail jurisprudence application

3. Key Observations of Supreme Court

Bail as Constitutional Principle

1. Supreme Court held bail is constitutional principle flowing from Articles 21 and 22
2. Even in cases involving anti-terror laws like UAPA
3. **Article 21** – Right to life and personal liberty
4. **Article 22** – Protection against arrest and detention (right to be informed, consult lawyer, produced before magistrate within 24 hours)
5. Fundamental right not absolute statutory discretion

Speedy Trial Cannot Be Defeated

1. Court observed prolonged incarceration without timely trial completion violates fundamental right to speedy trial under Article 21
2. Pre-trial detention becoming punishment itself
3. Husainara Khatoon principles (1979) – Speedy trial integral to Article 21
4. Unreasonable delay undermines presumption of innocence

Larger Bench Judgments Are Binding

1. Court stated smaller benches cannot dilute or disregard judgments delivered by larger benches
2. **Doctrine of judicial discipline and stare decisis** –
 1. Stare decisis – Stand by decisions already made
 2. Judicial hierarchy and precedent binding
 3. Larger bench decisions authoritative
3. Ensures consistency, predictability in law
4. Smaller benches (2-3 judges) must follow larger benches (5+ judges)

Prima Facie Case Cannot Justify Endless Detention

1. Court clarified existence of prima facie case alone cannot justify indefinite pre-trial detention under Section 43D (5) of UAPA
2. Prima facie case – Initial evidence suggesting guilt; not conclusive proof
3. Section 43D (5) – Restrictive bail provision requiring court satisfaction that accusation appears prima facie true AND accused not likely to commit offense on bail
4. Cannot be used for indefinite detention defeating constitutional rights
5. Balance between security concerns and personal liberty

4. About Bail

Definition

1. Temporary release of accused person awaiting trial
2. Based on principle – Accused presumed innocent until proven guilty
3. Not acquittal but conditional liberty pending trial
4. Ensures accused's presence at trial

Constitutional and Legal Basis

1. Article 21 – Right to life and personal liberty
2. Article 22 – Protection against arbitrary arrest
3. Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 replacing CrPC provisions
4. Supreme Court jurisprudence establishing bail as rule

Provisions for Bail

Regular Bail

1. Granted under Sections 480 and 483 of BNSS (replaced CrPC Sections 437, 439)
2. Applied for after arrest and custody
3. Court considers nature of offense, evidence, likelihood of absconding, tampering
4. Bailable vs non-bailable offenses distinction

Anticipatory Bail

1. Section 482 BNSS (replaced CrPC Section 438)
2. Protects person from arrest in anticipation of accusation for non-bailable offense
3. Pre-arrest protection
4. Court grants if satisfied person has reason to believe accusation forthcoming and arrest apprehended
5. Gurbaksh Singh Sabbia vs State of Punjab (1980) – Recognized as important protection of personal liberty

Interim Bail

1. Temporary relief for short duration
2. Until final hearing of bail application
3. Court grants when urgent relief needed
4. Example – Medical emergency, family circumstances
5. Not conclusive decision on bail merits

Default Bail

1. Statutory right if investigation not completed within prescribed period
2. **Section 167 BNSS (replaced CrPC Section 167) –**
 1. 60 days for offenses punishable with imprisonment <10 years
 2. 90 days for offenses punishable with imprisonment ≥10 years or death
 3. If chargesheet not filed within period, accused entitled to release on bail (indefeasible right)
3. Ensuring investigation efficiency, preventing indefinite detention

5. Key Concerns Regarding Bail

High Undertrial Prisoners

1. Undertrial prisoners account for nearly 74.2% of India's total prison population
2. Approximately 3.75 lakh individuals in custody awaiting trial
3. Out of total prison population over 5 lakhs
4. Prison overcrowding (occupancy rate ~130%)
5. Prolonged pre-trial detention violating presumption of innocence

Economic and Social Inequality

1. Poor and marginalized persons face difficulty securing legal representation
2. Meeting bail conditions challenging (surety bonds, financial guarantees)
3. State-provided legal aid inadequate
4. Economic status determining liberty
5. Violates Article 14 (equality before law)

Delayed Judicial Process

1. Judicial delays frequently convert pre-trial detention into punitive imprisonment before conviction
2. Average pendency in trial courts ~3-5 years
3. Cases under special laws even longer
4. Bail hearings themselves delayed
5. Undermines "bail is rule" principle

6. Conditions for Denial of Bail

Stringent Special Laws

1. **UAPA (Unlawful Activities Prevention Act, 1967)** – Section 43D(5) restrictive bail
2. **NDPS Act (Narcotic Drugs and Psychotropic Substances Act, 1985)** – Section 37 twin conditions (prima facie case and reasonable grounds believing not guilty)
3. **PMLA (Prevention of Money Laundering Act, 2002)** – Section 45 similar twin conditions
4. Making release difficult despite constitutional protections

Possibility of Absconding

1. Courts reject bail if accused likely to flee justice
2. Considerations – Passport, financial resources, foreign connections, past conduct
3. Flight risk assessment

Risk of Evidence Tampering

1. Bail denied where apprehension of influencing witnesses or destroying evidence
2. Electronic evidence vulnerability
3. Witness intimidation concerns

Repeat Offending

1. Courts consider criminal history and likelihood of repeating offenses
2. Habitual offenders, organized crime links
3. Public safety considerations

Nature and Gravity of Offense

1. Heinous crimes, terrorism, national security cases face stricter scrutiny
2. Victim impact, public interest considerations

7. About Unlawful Activities (Prevention) Act 1967

Definition

1. India's principal anti-terror legislation
2. Aimed at preventing unlawful and terrorist activities
3. Enacted 1967, amended multiple times (major amendments 2004, 2008, 2012, 2019)

Who Can Be Prosecuted?

1. Individuals involved in terrorism, secessionism, activities threatening India's sovereignty
2. Organizations and associations supporting or engaging in unlawful activities
3. Anyone providing support (financial, logistical, ideological) to proscribed organizations

Key Provisions

Declaration of Terrorist Organizations -

1. Government can designate organizations as terrorist organizations under Section 35
2. Membership in proscribed organization punishable
3. Currently 40+ organizations banned (Let, JeM, ISIS, etc.)

Designation of Individuals -

1. 2019 Amendment empowered government to designate individuals as terrorists (Section 35)
2. Without organizational membership
3. Controversial for potential misuse

Stringent Bail Provision -

1. **Section 43D(5)** - Restricts grant of bail if court finds prima facie evidence against accused
2. Court must be satisfied -
 1. Accusation appears prima facie true, AND
 2. Accused not likely to commit offense on bail
3. Twin conditions harder to satisfy than ordinary criminal law

Extended Detention and Investigation -

1. UAPA allows longer detention periods
2. Police custody up to 30 days (ordinary law 15 days)
3. Extended investigation timelines - 180 days (ordinary law 60/90 days)
4. Judicial custody extensions

Other Provisions -

1. Attachment and forfeiture of property used in terrorism
2. Enhanced penalties (death penalty, life imprisonment)
3. Special courts and procedures
4. Broader definition of "terrorist act"

8. Judicial Precedents on Bail

Union of India vs K.A. Najeeb (2021) - Larger Bench

1. Supreme Court held prolonged incarceration and delayed trial can override restrictive bail provisions under UAPA
2. Najeeb in custody since 2016 in ISIS case; trial not concluded
3. Court - "Liberty is sacred; indefinite incarceration unacceptable"
4. Emphasizing speedy trial and personal liberty
5. Landmark precedent establishing bail despite Section 43D(5)

NIA vs Zahoor Ahmad Shah Watali (2019)

1. Court adopted stricter standard for granting bail under UAPA
2. Emphasizing prima facie case test
3. Held - Restrictive bail provisions must be respected
4. Courts should not lightly grant bail in terror cases
5. More restrictive interpretation

Gulfasha Fatima vs State (2026)

1. Supreme Court denied bail to Umar Khalid and Sharjeel Imam
2. While granting relief to some co-accused in Delhi riots conspiracy case (2020)
3. Inconsistency with Najeeb precedent noted in Andrabi case
4. Raises questions about uniform application of bail principles

Gurbaksh Singh Sibbia vs State of Punjab (1980)

1. Supreme Court recognized anticipatory bail as important protection of personal liberty
2. Cannot be denied merely because offense serious
3. Personal liberty fundamental; anticipatory bail serves preventive justice

Other Important Cases

1. **Hussainara Khatoon vs State of Bihar (1979)** – Speedy trial integral to Article 21
2. **Sanjay Chandra vs CBI (2011)** – Bail is rule, jail exception; severity of punishment alone not ground for denial
3. **Arnesh Kumar vs State of Bihar (2014)** – Guidelines against unnecessary arrests

9. Significance of Recent Ruling

Reinforcement of Personal Liberty

1. Judgment strengthens constitutional protection against arbitrary and prolonged detention
2. Reaffirms Article 21 primacy even under stringent laws
3. Liberty not subject to executive or prosecutorial whim

Balancing Security and Rights

1. Ruling attempts to balance national security concerns with civil liberties and due process
2. Recognizes terrorism genuine threat but liberty equally important
3. Not undermining UAPA but preventing misuse

Protection of Judicial Discipline

1. Court reaffirmed smaller benches must follow binding precedents established by larger benches
2. Ensures consistency in bail jurisprudence
3. Najeeb (larger bench) binding on subsequent smaller benches
4. Prevents arbitrary differentiation

Focus on Speedy Justice

1. Decision highlights need for timely trials
2. Prevents misuse of preventive detention provisions
3. Indefinite detention without trial unacceptable
4. Prosecution must expedite trials not rely on prolonged custody

Impact on Undertrial Population

1. Could reduce undertrial population (74.2% of prisoners)
2. Especially those in custody for years without trial completion
3. Particularly under UAPA, NDPS, PMLA cases

10. Way Forward

Expedite Trials Under Special Laws

1. Fast-track courts exclusively for UAPA, NDPS, PMLA cases
2. Time-bound trials (Supreme Court suggested 2 years maximum)
3. Adequate judicial infrastructure and manpower

Strengthen Legal Aid

1. Quality legal representation for poor and marginalized accused
2. Specialized legal aid for complex special law cases
3. Financial support for bail sureties

Revisit Stringent Bail Provisions

1. Parliamentary review of Section 43D (5) UAPA, Section 37 NDPS, Section 45 PMLA
2. Balancing security with liberty
3. International best practices (UK, Canada, Australia terrorism laws have bail provisions)

Judicial Training

1. Training judges on bail jurisprudence balancing liberty and security
2. Uniform application of precedents
3. Awareness of constitutional principles

Bail Application Reforms

1. Simplify bail application procedures

2. Online bail applications
3. Reduce adjournments in bail hearings
4. Time-bound bail decisions (Supreme Court guidelines)

Monitoring Mechanisms

1. Periodic review of undertrial detention beyond prescribed periods
2. Suo motu bail by High Courts for prolonged detention cases
3. Accountability for investigation delays

11. Conclusion

Supreme Court ruling reaffirming "bail is rule, jail exception" even under stringent UAPA provisions strengthens constitutional liberty and judicial discipline. Way forward requires expediting trials, strengthening legal aid, revisiting stringent bail provisions, judicial training, and monitoring mechanisms ensuring speedy justice and preventing indefinite detention protecting fundamental rights under Articles 21 and 22.

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