2025 INSC 1418

REPORTABLE

IN THE SUPREME COURT OF INDA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs._____ OF 2025
(Arising out of SLP(Crl) Nos. 12376-12377/2023)

CENTRAL BUREAU OF INVESTIGATION …APPELLANT(S)

VERSUS

DAYAMOY MAHATO ETC. …RESPONDENT(S)

WITH

CRIMINAL APPEAL NOs._____ OF 2025
(Arising out of SLP(Crl) Nos. 12656-12657/2023)

AND

CRIMINAL APPEAL NO._____ OF 2025
(Arising out of SLP(Crl) No. 2669/2024)

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SANJAY KAROL, J.

Leave Granted.

THE APPEALS

2. The present Appeals have been preferred by the investigating agency against the judgment(s) and order(s) dated 9th November 2022 passed by the High Court of Calcutta in CRM No. 9431/2019 and CRM No. 407 of 2021 whereby the Respondent(s), six in number came to be released on bail, in connection with CBI Case No. RC4/S/2010[1] – Kol registered at P.S. CBI/SCB/Kolkata on 9th June 2010. Similarly, relying upon the very same order, the High Court vide order dated 28th February

[1] Hereinafter 'Subject FIR'.

2023 released eleven accused on bail in CRM (DB) 382 of 2023 and CRM (DB) 441 of 2023. Thereafter, one more accused came to be released on bail by the High Court vide order dated 13th June 2023 in CRM (DB) 2229 of 2023.

FACTUAL AND LEGAL BACKGROUND

3. The backdrop in which the High Court granted bail to the accused respondents in the lead matter, which is the principal judgment under challenge before us, is narrated succinctly as follows:

3.1 The subject FIR came to be registered on 9th June 2010 against unknown persons relating to the unfortunate derailment of Train No. 2102, Jnaneshwari Express, on 28th May 2010 while passing between Khemasuli and Sardiha railway stations, resulting in the untimely death of 148 persons and injury to 170 persons. The motive behind the crime allegedly stemmed from the deployment of a joint force of State Police and Central Paramilitary Force in the jurisdiction of Jhargram Police Station to combat the capture of Rasua village by the Maoists.

3.2 As per the chargesheet, police investigation revealed that the accused persons with the common intention to pressurize the Government to withdraw the Joint Forces from the Jhargram Police Station area and create terror, hatched a criminal conspiracy and in furtherance thereof, caused damage to the railway tracks near Rajabandh. The conspiracy was carried

out on the intervening night of 27th-28th May 2010 by the accused persons. The pandral clips of the railway tracks were removed, with the knowledge and intention that grievous hurt would be caused to the passengers of a train. This action caused the derailment of the train, which thereafter collided with an oncoming goods train from the opposite direction, causing widespread loss to life.

3.3 Along with loss of life and grievous injuries to persons, a loss of 25 crores approx was caused to the Government due to the destruction of property. The investigation revealed the role of the accused persons who have been enlarged on bail, as follows:

Accused Person	Role
Dayamoy Mahato	A railway employee who was receiving and making calls to the accused persons, leading up to the incident.
Mantu Mahato	Investigation of his mobile records revealed that he was constantly in touch with the co-accused persons on the intervening night of the incident.
Laxman Mahato	Telephonic conversations revealed he was at the spot of the damaged railway tracks, before the incident. Upon search of his house, his mobile records revealed that he was constantly in touch with the main accused, Manoj

	Mahato, and other accused persons on the intervening night of 27th May 2010-28th May 2010.
Sanjoy Mahato	Investigation revealed that on 27th May 2010 he was contacted by the main accused Manoj Mahato, to make arrangements for the implementation of the plan. Thereafter, he was constantly in touch with other accused persons for carrying out of the conspiracy.
Tapan Mahato	On 27th May 2010, he was involved in a telephonic conversation with other accused persons for mobilizing the extremist movement. The conversation was recorded. His call records revealed that he was in touch with the main accused, Manoj Mahato, for carrying out of the conspiracy.
Bablu Rana	Investigation of his mobile records revealed that he was using constantly in touch with the co-accused persons on the intervening night of the incident.

3.4 The role ascribed to the co-accused in the connected matters is, more or less same. Trial commenced against all the Accused. Charges were brought under Sections 120B, 302, 307, 323, 325, 326, 440, 212 of the Indian Penal Code,

1860[2]; Sections 150/151 of the Indian Railways Act, 1989, and Sections 16/18 of the Unlawful Activities (Prevention) Act, 1967[3]. As on date, 176 out of 204 witnesses stand examined by the Trial Court.

3.5 Record reveals that the accused respondents (in the lead matters) had earlier applied for regular bail in the year 2016 which was disposed of on 30th March of that year rejecting their prayer, but at the same time directing that the examination of the remaining witnesses should be completed within a year and that all steps needed to be taken by the Trial Court to ensure the same. The same could not be achieved, hence, the respondent accused filed for bail before the High Court. The date of the impugned order is 9th November 2022, on that day the order records, 68 witnesses remained to be examined. Even now, 28 witnesses still remain to be examined.

3.6 The Appellant - investigating authority, aggrieved by the order(s) granting bail, filed these appeals by special leave, thereagainst.

[2] Hereinafter referred to as 'IPC'.
[3] Hereinafter referred to as 'UAPA'.

ARGUMENTS AND ANALYSIS

4. We have heard the parties at length. Mr. K.M. Natraj, learned Additional Solicitor General of India, and Mr. Shailesh Madiyal, learned Senior Counsel, who appeared for the Appellant. The Respondent(s), accused persons, were heard through Mr. Archit Krishna, Advocate, and Mr. N. Sai Vinod, Advocate-on-Record.

5. The learned Senior Counsel for the Appellant have prayed for the bail granted by the High Court to be set aside on the ground that the High Court has erroneously interpreted Section 436-A of the Criminal Procedure Code, 1973[4], which cannot be applied uniformly to heinous offences and offences which are punishable by death. Meanwhile, the Respondent(s) submits that the High Court rightly granted bail, upon consideration of the indefeasible right to life, enshrined under Article 21 of the Constitution. Section 436-A of the CrPC will not stand in the way of granting bail to the accused persons, in view of the prolonged incarceration suffered by them.

6. In these facts, four vital aspects warrant consideration of this Court. Firstly, whether in view of Section 436-A of the CrPC, the Respondents ought to have been released on bail? Secondly, in any event, did the prolonged incarceration of the Respondent-accused warrant their release on bail, in view of Article 21 of the Constitution? Connected with the second question is a third to the effect that in cases arising out of statutes that impose a reverse burden of proof, whether the safeguards already in

[4] Hereinafter referred to as 'CrPC'.

place, are made sufficiently available and effectively feasible, giving the accused persons a chance at establishing innocence? Fourthly, whether interference with the liberty of the accused, in the facts and circumstances, at this stage, would be justified?

APPLICABILITY OF SECTION 436-A CRPC

7. We proceed to examine the first issue. At the outset, we find it appropriate to reproduce Section 436A of the CrPC for ready reference. It reads as follows:

> "**436-A**. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:
>
> Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:
>
> Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.
>
> Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."
>
> (emphasis supplied)

8. The above section has been included in the Bharatiya Nagarik Suraksha Sanhita, 2023[5] as Section 479, which reads as:

> "479. Maximum period for which undertrial prisoner can be detained.-
>
> (1)Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail;
>
> Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law;
>
> Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond;
>
> Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.
>
> Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.
>
> (2)Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or

[5] Hereinafter 'BNSS'.

> trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.
>
> (3)The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."
>
> (emphasis supplied)

9. A perusal of Section 436A extracted above, reveals the following aspects:

9.1 For this section to apply, the accused must necessarily be an undertrial, in judicial custody;

9.2 Excluded from the application of this section are those offences in which death is one of the possible punishments prescribed;

9.3 The accused must have spent at least half of the maximum possible punishment for the offence for which he is being tried. When calculating the time spent in prison, any remission or set off granted to the accused, is excluded;

9.4 The use of the word 'shall' indicates a right bestowed upon the accused - an entitlement to be set at liberty and an obligation on part of the State to comply therewith;

9.5 This right, however is not unbridled, and the court may impose reasonable conditions such as a personal bond or sureties. At the same time, it is also permissible that this right or entitlement may be given a go-by, if the Court concerned

after hearing the prosecutor, records reasons, for continued detention beyond the half of the prescribed period;

9.6 This section also guarantees that in no circumstance can the detention of an undertrial exceed the maximum prescribed sentence for the offence for which he is being tried.

10. While considering the nature of relief under Section 436-A, this Court in ***Vijay Madanlal Choudhary v. Union of India***[6] had observed:

> **"324.** Section 436-A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436-A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436-A of the 1973 Code, however, the court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.
>
> **325.** However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners [Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731 : 1995 SCC (Cri) 39] , to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If Parliament/legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to

[6] (2023) 12 SCC 1

> ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence concerned by law. [Be it noted, this provision (Section 436-A of the 1973 Code) is not available to the accused who is facing trial for the offences punishable with death sentence.]"
>
> (emphasis supplied)

11. At the cost of repetition, it be stated that all of the accused respondents are being tried for offences such as Section 302 IPC and Section 16 UAPA. For these offences, one of the possible punishments prescribed is death. That, in and of itself, excludes these offences from the ambit of Section 436A-IPC. On that count, the impugned judgments requires interference and are set aside to that extent.

ARTICLE 21- LIBERTY AS A SOLE CONSIDERATION?

12. The next ground considered by the High Court was the application of Article 21 of the Constitution of India. By merely referring and relying upon the decisions rendered by this Court in ***Hussainara Khatoon & Ors (IV) v. Home Secretary, State of Bihar***[7]***; Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr.***[8] and ***Satinder Kumar Antil v. CBI & Anr.***[9]***,*** the High Court invoking Article 21 let loose the accused. The approach adopted by the High Court is fallacious, and the impugned orders

[7] (1980) 1 SCC 98
[8] (1992) 1 SCC 225
[9] (2022) 10 SCC 51

would, to that extent warrant interference. However, given that, proceed to examine the issue independently.

13. The rights enshrined under Article 21 and their application to undertrials has often been the subject of consideration before this Court and, in one voice it has been held that the rights of fairness, dignity and liberty apply to each and every prisoner, irrespective of the nature of offence that they stand charged for. If this is not maintained then essentially, it would render a difference between an undertrial and a convict, obsolete to a certain extent. We say, to a certain extent because certain facets of Article 21 apply even to those who have been convicted under law. In the case of the former, should these rights not be granted to them or be available to them in their full extent, it would in a sense render them guilty without it being so. To state the obvious, such a position is wholly impermissible.

14. The jurisprudence of Article 21 has, as it develops, recognised various facets to be intrinsic to the right to life and liberty such as speedy trial, timely completion of investigation, fair trial etc. Unduly long incarceration especially as a undertrial when, the crucial aspect of guilt is yet to be decided, is particularly offensive to this sacrosanct right, if not sustainable as per procedure established by law. Circumspection in granting the relief of bail in heinous offences and more so offences that shock the conscience of the society such as in this case, stems from a place of concern, understandably legitimate at that, about public order, societal security, overall peace and the general deterrent force in criminal law. The scales of Lady Justice must balance on the one hand-the constitutionally

consecrated and jealously guarded right under Article 21 and on the other, the recognition that individual liberty is not absolute and is subject to just exceptions i.e. the paramount considerations of national interest, sovereignty and integrity of the nation.

15. In this case, the loss of lives and public property has been immense and there is grave impact upon the lives of the people connected to those who have died as a consequence or have been injured because of the ulterior motives in carrying out this alleged offence against the State. It is this grave and serious impact that has to be balanced against the guarantees of Article 21- for these offences by whomsoever committed strike at the nation's security and are an effort to undermine its sovereign authority. The Courts are duty bound to scrutinise claims for bails in such cases with heightened but fair-minded vigilance. This Court has rich jurisprudence of displaying this fine act of balancing. Below are a few instances:

15.1 In the context of Maharashtra Control of Organised Crime Act, 1999 this Court in terms of a three-judge bench in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***[10]**,:**

> **"35.** Presumption of innocence is a human right. (See *Narendra Singh* v. *State of M.P.* [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , SCC para 31.) Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable

[10] (2005) 5 SCC 294

restriction but clause (*b*) of sub-section (4) of Section 21 must be given a proper meaning."

15.2 In an economic offence wherein the appellant herein was also the party while releasing the accused on bail, a co-ordinate bench of this Court observed in ***Sanjay Chandra v. CBI***[11]:

> "**22.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
> **23.** Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.
> **24.** In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the

[11] (2012) 1 SCC 40

> Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice"."

15.3 In ***Umarmia v. State of Gujarat***[12]**,** while dealing with a case arising out of Terrorist and Disruptive Activities (Prevention) Act, 1987 wherein the accused had played an important role in securing the delivery of highly explosive material such as RDX to a certain district in Maharashtra, this Court granted bail on account of him having spent more than 12 years in custody but imposed certain justified conditions such as surrendering the passport, restricting movement to one particular district and daily reporting to the concerned police station etc.

15.4 Writing for a bench of three judges, Surya Kant, J. (as the present Chief Justice of India, then was) in ***Union of India v. K.A. Najeeb***[13] observed in a case involving various sections of the IPC as also the UAPA as under:

> "**12.** Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh* v. *State (NCT of Delhi)* [*Paramjit Singh* v. *State (NCT of Delhi)*, (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] , *Babba* v. *State of Maharashtra* [*Babba* v. *State of Maharashtra*, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and *Umarmia* v. *State of Gujarat* [*Umarmia* v. *State of Gujarat*, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] 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

[12] (2017) 2 SCC 731
[13] (2021) 3 SCC 713

harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

13. We may also refer to the orders enlarging similarly-situated accused under UAPA passed by this Court in *Angela Harish Sontakke* v. *State of Maharashtra* [*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 UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UAPA. Similarly, in *Sagar Tatyaram Gorkhe* v. *State of Maharashtra* [*Sagar Tatyaram Gorkhe* v. *State of Maharashtra*, (2021) 3 SCC 725] , an accused under UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

…

15. This Court has clarified in numerous judgments that the liberty guaranteed by 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. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* v. *Union of India* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* v. *Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. 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."

15.5 While dealing with a case under UAPA and ultimately releasing the accused on bail, it was held by this Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra***[14] as under:

> **"16.** Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.
>
> **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."

16. There can be no manner of doubt on the proposition that Article 21 rights are placed on a pedestal, and rightly so, at the same time, though, the individual cannot always be the centre of attention. Certain cases such as the instant one demand, by their very nature and effect that the issue presented is looked at from a much wider point of view i.e., national security. We observe, therefore, that while Article 21 rights must always be protected, but however, in cases where the security or integrity of the

[14] (2024) 9 SCC 813

nation is called into question, that cannot be the sole ground of consideration. The act of the accused persons must be looked at, on the whole, and all relevant factors must be given due consideration while granting or denying bail. Needless to add, any Court seized of bail application(s) arising out of such offences must record, in their order the reasons and factors that weighed with them in the ultimate outcome. The second question arising in these appeals, is thus answered.

REVERSE BURDEN OF PROOF

17. Moving on to the third question, a reverse burden of proof essentially means that at the outset of trial, the prosecution is only required to establish certain foundational facts. Once these foundational facts are established, the presumption of guilt kicks in and the accused then is to dispel/rebut the presumption in order to establish innocence, as opposed to the ordinary standards where a prosecution is to establish its case beyond reasonable doubt and accused is only to poke sufficient holes therein, to bring in the possibility of him not having committed the act in question. One of the main charges against the accused persons is under the UAPA for having committed a terrorist act. A terrorist act is an act done with intent or likely intent to threaten the unity, integrity, security, economic security or sovereignty of India. Such an act when done with explosives, firearms, toxic chemicals, biological, radioactive or nuclear substances, or any hazardous means, thereby causing death, injury, destruction of property, disruption to monetary stability etc. qualifies so.

Since this legislation provides for the procedure to deal with, and consequences of such act, it imposes a reverse burden for poof on the accused as per Section 43E thereof.

18. It is a well-recognised position that given the nature of the offence involved, that is, offences against the state and society, bail is a slightly difficult relief to obtain. A necessary consequence thereof, an undertrial in custody faces several difficulties in rebutting the presumption drawn by law, against them. An incarcerated accused would have severely limited access to evidence, witnesses and investigative material. This becomes all the more pronounced because the opposite party is the State which has all the means and resources at its disposal. Prolonged incarceration in cases where the accused is socio-economically disadvantaged, amplifies the inequalities for it becomes exceedingly difficult to forward legal/financial/expert assistance that is required to dispel the presumption. There is nearly complete dependence on an otherwise overburdened legal-aid system which struggles with delays, inadequate resources and inconsistent quality. In these cases, true it is that the burden of proving innocence is on the accused, as already discussed, a burden is also on the Courts to make it possible for them to do so. It is here that the role of the judiciary becomes significant. A constitutional democracy does not legitimise burdens by simply declaring them; it must ensure that those burdened are meaningfully equipped to bear them, even those who are accused of the worst offences imaginable. If the State, in spite of all its might presumes guilt, then the same State must also, with the employment of all the resources at its command, create pathways through which the

accused can reclaim their innocence. Needless to say, procedural formalities do not suffice. If it is only those, it falls grossly short of the grandeur of a constitutional democracy. It demands a justice system that is alive to human vulnerability, that recognises that liberty is not a privilege for the powerful but a right inherent in every individual.

Delay is an un-ignorable reality of the Indian criminal adjudication system which on its own raises significant issues, but when this delay is in cases such as the UAPA, where a reverse burden of proof is in place, it acquires a qualitatively different, and more insidious, character. Courts, bound by legislative intent and statutory language, ask for, even before the trial begins, the accused to be able to establish preliminarily, that they will be able to rebut the presumption against them. This doctrinal inversion becomes all the more pernicious on account of procedural delays and very liberty of a person becomes hostage to clogged dockets, overworked judges, a lax prosecution, repeated adjournments by members of the bar and much more.

19. The institutions of justice must, therefore, act not as passive observers but as active guarantors of fairness: ensuring real access to counsel, enabling effective preparation of defence, and preventing the presumption from hardening into an irreversible verdict long before the trial ends. For if the system imposes an extraordinary burden yet denies the tools to discharge it, the promise of constitutionalism fades into symbolism. Ultimately, a democracy is judged not by how it treats the unquestionably innocent, but by how it safeguards the rights of those it suspects. In that moral balance, the justice system must ensure that even

under a reverse burden regime, the accused is not abandoned to the weight of presumptive guilt but supported in the pursuit of truth and justice. The third issue does not lend itself to a direct 'answer' as such for it is a question to be ascertained at the ground level. As such, in the concluding paragraphs of this judgment, we have issued certain directions.

CURTAILING LIBERTY- JUSTIFIED?

20. We now proceed to examine the fourth issue. The appellant filed the challenge to the grant of bail on 10th July 2023. It is not a cancellation of bail. Before appreciating the merits of these grounds, let us look to the parameters of considering an SLP against grant of bail by way of a brief foray into past precedents.

20.1 ***Prasanta Kumar Sarkar v. Ashis Chatterjee***[15]**:**

> **"9.** We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;
> (*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;

[15] (2010) 14 SCC 496

(*vi*) likelihood of the offence being repeated;
(*vii*) reasonable apprehension of the witnesses being influenced; and
(*viii*) danger, of course, of justice being thwarted by grant of bail.
[See *State of U.P.* v. *Amarmani Tripathi* [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), *Prahlad Singh Bhati* v. *NCT of Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and *Ram Govind Upadhyay* v. *Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]"

Similar factors as above, have been held to be applicable in cases arising out of UAPA in ***NIA v. Zahoor Ahmad Shah Watali***[16], which was a case involving allegations of terror funding, waging war against the State and damaging security establishments.

20.2 In ***Meena Devi v. State of U.P.***[17]**,** while referring to ***Prasanta Kumar Sarkar*** (supra) it was observed that the factors laid down above have been consistently followed in a number of judgments as follows**:**

"25. The aforesaid principles have been underscored in several decisions rendered by this Court including *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , *Narendra K. Amin* v. *State of Gujarat* [*Narendra K. Amin* v. *State of Gujarat*, (2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , *Dipak Shubhashchandra Mehta* v. *CBI* [*Dipak Shubhashchandra Mehta* v. *CBI*, (2012) 4 SCC 134 : (2012) 2 SCC (Cri) 350] , *Abdul Basit* v. *Mohd. Abdul Kadir Chaudhary* [*Abdul Basit* v. *Mohd. Abdul Kadir Chaudhary*, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257] , *Neeru Yadav* v. *State of U.P.* [*Neeru Yadav* v. *State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , *Anil Kumar Yadav* v. *State (NCT of Delhi)* [*Anil Kumar*

[16] (2019) 5 SCC 1
[17] (2022) 14 SCC 368

Yadav v. *State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425], *Mahipal* v. *Rajesh Kumar* [*Mahipal* v. *Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , and as recently as in *Jagjeet Singh* v. *Ashish Mishra* [*Jagjeet Singh* v. *Ashish Mishra*, (2022) 9 SCC 321 : (2022) 3 SCC (Cri) 560] , *Y* v. *State of Rajasthan* [*Y* v. *State of Rajasthan*, (2022) 9 SCC 269] and *P.* v. *State of M.P.* [*P.* v. *State of M.P.*, (2022) 15 SCC 211 : 2022 SCC OnLine SC 552]

26. At the cost of repetition, it may be highlighted that the considerations that weigh with the appellate court when called upon to examine the correctness of an order granting bail is not on the same footing when it comes to examining an application moved for cancellation of bail. The yardstick for testing the correctness of an order granting bail is whether the court below has exercised its discretion in an improper or arbitrary manner thereby vitiating the said order. When it comes to assessing an application seeking cancellation of bail, the appellate court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief."

20.3 Recently, this Court (through one of us, Sanjay Karol J.), held as under in ***Ashok Dhankad v. State (NCT of Delhi)***[18]:

"**2.** The grant of bail constitutes a discretionary judicial remedy that necessitates a delicate and context-sensitive balancing of competing legal and societal interests. On one hand lies the imperative to uphold the personal liberty of the accused-an entrenched constitutional value reinforced by the presumption of innocence, which remains a cardinal principle of criminal jurisprudence. On the other hand, the court must remain equally mindful of the gravity of the alleged offence, the broader societal implications of the accused's release, and the need to preserve the integrity and fairness of the investigative and trial processes. <u>While liberty is sacrosanct, particularly in a constitutional democracy governed by the rule of law, it cannot be construed in a manner that dilutes the seriousness of heinous or grave offences or undermines public confidence in the administration of justice. The exercise of judicial discretion</u>

[18] 2025 SCC OnLine SC 1690

> in bail matters, therefore, must be informed by a calibrated assessment of the nature and seriousness of the charge, the strength of the prima facie case, the likelihood of the accused fleeing justice or tampering with evidence or witnesses, and the overarching interest of ensuring that the trial proceeds without obstruction or prejudice.
>
> xxx
>
> **19.** The principles which emerge as a result of the above discussion are as follows:
>
> *(i)* An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;
>
> *(ii)* The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;
>
> *(iii)* An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: *Y* v. *State of Rajasthan* (Supra); *Jaibunisha* v. *Meherban*[9] and *Bhagwan Singh* v. *Dilip Kumar @ Deepu*[10]]
>
> *(iv)* An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;
>
> *(v)* However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and
>
> *(vi)* An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.
>
> (emphasis supplied)

21. The law being well-settled as above, we now examine the grounds. The grounds that have been urged in this challenge total to nine but can be

divided with fair ease into three heads, *one*- heinousness of the offence/ large loss of life; *two*- the possibility of absconding to evade the trial process; *three*-ancillary grounds such as failure to consider totality of circumstances and advanced stage of trial.

21.1 Examined independently, the catastrophic consequences of the act i.e., the loss of almost a hundred and fifty lives while they were undertaking, what can be considered one of the most common activities of life in our country, a train journey, the damage to public property as also the alleged ulterior motive for doing so - not only an act against the deployment of a joint force in the nearby area, but to strike fear in the society at large, in our view is a compelling indicator against them being released on bail.

21.2 However, it is settled law that circumstances for or against a particular outcome are not to be weighed or assessed in isolation, but on the whole. The second ground, urged in challenging the bail granted was the possibility of absconding to evade trial. The lapse of time has itself extinguished this ground. It is true that the appellant filed the special leave petition within a few months of the High Court order, but on account of systematic delays, the matter could only be heard in 2025 substantially. Neither during the course of arguments nor in the written submissions has the appellant averred that in more than three years that the respondent-accused have been out on bail, they have misused the liberty granted by the

High Court, that they have attempted to influence or intimidate witnesses, nor has it been brought on record that trial has been delayed on their account- otherwise be it for whatever reason.

21.3 Lastly, when it comes to the sum total of circumstances not being considered, we are not particularly impressed by that ground. It is a matter of record that an earlier application for bail, about a decade ago in the year 2016, had been rejected with the High Court recording that examination of the remaining witnesses should be completed within a year. If in 2022, the Court finds that despite such direction and also the passage of nearly six years, the same could not be achieved, it cannot be said to have not considered the case in its proper light. Second, the trial being at an advanced stage is also not something that can be, in this case, a ground to send the respondent-accused behind bars. The trial is of the year 2010, and as we stand at the end of 2025, still 28 witnesses are to be examined. We may note the glacial pace at which the trial has proceeded cannot justify the incarceration of the accused, particularly when they have already been in prison for a dozen years, and once out, have not given the authorities reason to seek urgent cancellation, or even stay on the impugned judgment when this Court issued notice, or even anytime thereafter.

22. In spite of these grave circumstances as discussed in Para 21.1, the High Court granted bail which, we are of the view, it ought not to have. It is clear that the alleged acts of the accused were to register opposition to the manner in which an internal security situation was dealt with by the forces of the State. While the Constitution permits the members of the public, be at whichever group/section of society they belong to, to oppose, within the permits of the law a stand taken by the State- such acts of barbarity cannot be excused. Even more so when unsuspecting humans are given the most horrific, painful deaths. In view of the discussion made above that the rights of an individual are always subservient to the nation's interest, the High Court fell in error in granting bail. It is a well-established position however that this Court does not interfere against the grant of bail unless circumstances warranting such an exercise of power are plainly present in a given set of circumstances. In view of the discussion made in Paras 21.2 and 21.3 we are of the view that interfering with the liberty of the accused, at this stage, particularly when nothing else holds against them, would not be justified. At the cost of repetition, we may state that the appellant could not bring to our notice subsequent development which would justify this interference as serving any fruitful purpose.

CONCLUSION AND DIRECTIONS

23. Consequently, the criminal appeals are allowed to the aforesaid extent.

24. Before parting with the matter, we may observe that the nature of the offence, its gravity and the loss of life caused thereby has been given due consideration by us. We are also cognizant of the emotions of the families affected by this unfortunate incident and the likes thereof. It is in recognition of these aspects that it is important that the State, while employing the full force of the law against those persons who carry out such acts, also ensures that the process of law against them, starts and concludes with efficacy and expediency, be it investigation or trial. As such, specifically for those cases involving legislations imposing reverse burden of proof, find it fit to issue directions both *in personam* and *in rem*.

Directions *in personam* :

1. The Trial Court shall take stock of the matter and record in its order, the status thereof and the reasons for the trial having remained pending for many years, prior to the matter having been taken up after this judgment.
2. From that day forth, the matter shall be taken up on a day-to-day basis.
3. The granting of adjournments shall be eschewed unless exceptional circumstances are shown.
4. We request the learned Administrative Judge of the High Court, as nominated by the learned Chief Justice, to seek a report, every four weeks, from the Trial Judge and ensure that the directions are being complied with.

Directions *in rem*

The Crimes in India Report, 2023 published by the National Crimes Records Bureau shows total number of cases pending for trial and total number of cases pending for investigation in year 2023 under UAPA to be 3949[19] and 4794[20] respectively. The State Legal Services Authority shall take steps to make aware, each undertrial of his right to representation, either by counsel of their own choice or through a legal aid counsel. For those who choose the latter, assignments to their cases to the counsel should be made expeditiously so that the proceedings can start/continue at the earliest.

The learned Chief Justices of all High Courts are requested:

(a) to examine the number of cases pending within their States under laws such as the UAPA, posing a reverse burden of proof on the accused;

(b) to ascertain the number of special courts designated to try the said offences, and if special courts have not been designated, the number of Sessions courts dealing with matters under these legislations and to take up the matter with the appropriate authority if it is found that they are not sufficient;

(c) to discern, whether posting of judicial officers in these courts as also staffing is sufficient, thereby foreclosing a ground for delay

[19] https://www.ncrb.gov.in/uploads/files/TABLE10A5.pdf
[20] https://www.ncrb.gov.in/uploads/files/TABLE10A3.pdf

and adjournment, and if not, then suitable order for posting be issued expeditiously;

Further, it is hereby directed:

(a) that the list prepared in accordance with (a) shall be organised in order of case registered, to the extent possible and permissible, from the earliest to latest. Requisite directions be issued to the special courts/sessions courts to take up the matters registered earliest, first, unless otherwise warranted.

(b) In consultation with the appropriate authority, the High Court to ascertain the position with respect to appointment/allotment of prosecutors/special public prosecutors, as may be applicable, to ensure that the matters, once taken up, are not further delayed on that count;

(c) For those cases that have been pending for more than five years, the concerned court be directed to take stock of the situation as and when they are taken up, record detailed order taking note of the previous reasons for adjournment if available, refrain from granting adjournments on routine requests and take up the matter on a day-to-day basis.

(d) The High Court concerned will periodically, seek reports from the concerned Courts dealing with these matters and take up issues that may be confronting the said courts, on the administrative side so as to ensure smooth functioning.

25. The Registrar (Judicial) is directed to transmit electronically, a copy of this judgment to the Registrars General of each of the High Courts who shall then place the same before the learned Chief Justices and solicit requisite orders in accordance with the directions issued hereinabove. Let a copy also be sent to the Chief Secretaries of the States for necessary information/compliance and necessary actions.

Pending application(s) if any shall stand disposed of.

……..……..……..J.
(SANJAY KAROL)

……..……..……..J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi
December 11th, 2025