2024:DHC:7110-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 28th August, 2024***

***Pronounced on: 18th September, 2024***

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**CRL.A. 493/2023 & CRL.M.A.16870/2023**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG with Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

WITH

\+ **CRL.A. 538/2023 & CRL.M.A. 17982/2023**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

WITH

\+ **CRL.A. 539/2023 & CRL.M.A. 17983/2023**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

WITH

\+ **CRL.A. 540/2023 & CRL.M.A. 17984/2023**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

WITH

\+ **CRL.A. 541/2023 & CRL.M.A. 17985/2023**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

WITH

2024:DHC:7110-DB

+ **CRL.A. 569/2024**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

AND

+ **CRL.A. 577/2024**

JAGTAR SINGH JOHAL @ JAGGI .....Appellant

Through: Mr. Paramjeet Singh, Advocate.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. S.V. Raju, ASG, Ms. Shilpa Singh, Spl. PP N.I.A with Ms. Zeena Malick, PP, Mr. Nishchay Johri, Adv., Mr. Ram Gopal. Dy. SP N.I.A, Mr. Pawan Singh Rana, Consultant & Mr. Manoj Kumar Yadav, Insp. N.I.A.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**
**JUSTICE AMIT SHARMA**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been held through hybrid mode.

2. The present batch of seven appeals filed by the Appellant-Jagtar Singh Johal @ Jaggi, arise out of five impugned orders dated 7th September 2022 and two impugned orders dated 25th April, 2024, in separate cases, passed by

the N.I.A Special Court respectively. By the said impugned orders, the applications of the Appellant seeking bail in all seven matters have been rejected.

**BACKGROUND:**

3. The present appeals arise from a series of connected murders and attempt to murders that took place during the latter half of 2010 in Ludhiana and Jalandhar districts of Punjab. Following these incidents, the Punjab police filed ten First Information Reports (hereinafter '*FIRs*') against various persons including the Appellant. The State, upon identifying these murders and attempt to murders to be a part of a transnational conspiracy that intended to destabilise the law and order situation in Punjab, transferred a batch of connected FIRs to National Investigation Agency (hereinafter '*N.I.A*').

4. The N.I.A then re-registered the transferred FIRs. Upon investigation, charge sheets were filed in the respective cases before the N.I.A Special Court and the trials are now in progress. Meanwhile, applications for bail were made by the Appellant/Accused No.6. The same were rejected by the Special Court in seven cases *vide* the orders dated 7th September 2022 and 25th April, 2024. The details of the said cases and the relevant orders are set out in the table below:

| **S. No** | **RC and FIR No.** | **Provisions in RC** | **Impugned order and Status of Trial** | **Appeal** |
|---|---|---|---|---|
| 1. | RC No. 27/2017/N.I.A /DLI | • *Sec. 120-B, 302, 34. 379. 416 IPC,*<br>• *Sec. 16, 17, 18, 18A, 18B, 20, 21* | **Order dated 25.04.2024** by Chander Jit Singh, ASJ-3, Patiala House Court, Delhi | *Crl.A. 569/2024* |

| | | | | |
|---|---|---|---|---|
| | FIR No 06/2017 – PS Division 8 Ludhiana Punjab | *and 23 of UAPA, 1967*<br>• *S.25 & 27 of the Arms Act, 1959* | 8.in **SC No. N.I.A/07/2022.** Prosecution examination in progress | |
| 2. | RC No. 07/2019/N.I.A /DLI<br><br>FIR No 113/2017 PS Division – 04, Jalandhar District Punjab | • *Sec. 120-B, 302, 34, 379, 416 of IPC*<br>• *Sec. 16, 17, 18, 18A, 18B, 20, 21 and 23 of UAPA.*<br>• *Sec. 25 & 27 of the Arms Act, 1959* | **Order dated 25.04.2024** by Chander Jit Singh, ASJ-3, Patiala House Court, Delhi in **SC No. N.I.A/07/2022.** Prosecution examination in progress | *Crl.A. 577/2024* |
| 3. | N.I.A RC No.18/2017/N .I.A/DLI<br><br>FIR No. 442/2017 PS Salem Tabri district Ludhiana Punjab | • *Sec.120B/ 302/ 34/ 379/ 416 IPC, R/W.*<br>• *Sec.16/ 17/ 18/ 18A/ 18B/ 20/ 21 & 23 UAPA &*<br>• *Sec.25/27 Arms Act* | **Order dated 07.09.2022** by the Special Judge, Parveen Singh ASJ-3, Patiala House Court. Prosecution examination in progress | *Crl.A. 493/2023* |
| 4. | RC 22/2017/N.I.A /DLI<br><br>FIR No 218/2017 PS Salem Tabri district Ludhiana Punjab | • *Sec.120B/302/34/379/416 IPC, R/W.*<br>• *Sec.16/ 17 /18/ 18A/ 18B/ 20/ 21 & 23 Of UAPA &*<br>• *S.25/27 of the Arms Act* | **Order dated 07.09.2022** by the Special Judge, Parveen Singh ASJ-3, Patiala House Court. Prosecution examination in progress | *Crl.A. 538/2023* |

| | | | | |
|---|---|---|---|---|
| 5. | RC-26/2017/N.I.A/DLI.<br><br>FIR No 7/2016<br>PS Division-2, Ludhiana, Punjab | • *Sec.120B/302/34/379/416 IPC, R/w.*<br>• *Sec.16/17 /18/18A/18B/20/21 & 23 Of UAPA &*<br>• *Sec.25/27 of the Arms Act* | **Order dated 07.09.2022** by the Special Judge, Parveen Singh ASJ-3, Patiala House Court. Prosecution examination in progress | *Crl.A. 539/2023* |
| 6. | RC-23/2017/N.I.A/DLI<br><br>FIR No 13/2017<br>PS Maloud District, Khanna Punjab | • *Sec.120B/302/34/379/416 IPC, R/w*<br>• *Sec.16/17 /18/18A/18B/20/21 & 23 Of UAPA &*<br>• *Sec.25/27 of the Arms Act* | **Order dated 07.09.2022** by the Special Judge, Parveen Singh ASJ - 3, Patiala House Court. Prosecution examination in progress | *Crl.A. 540/2023* |
| 7. | RC-25/2017/N.I.A/DLI<br><br>FIR No 119/2016<br>PS City Khanna Punjab | • *Sec.120B/302/34/379/416 IPC, R/w.*<br>• *Sec.16/17 /18/18A/18B/20/21 & 23 of UAPA &*<br>• *Sec.25/27 of the Arms Act* | **Order dated 07.09.2022** by the Special Judge, Parveen Singh ASJ-3, Patiala House Court. Prosecution examination in progress | *Crl.A. 541/2023* |

5. Though these seven appeals arise from similar facts and a common conspiracy, the five appeals that arise from the impugned orders dated 7th September 2022 are filed with a delay of 158 days and two appeals that arise

from the impugned orders dated 25th April 2024 do not have any delay. Therefore, the present batch of appeals are being considered in two categories:

(i) In five appeals, firstly on the question of condonation of delay; and if required on merits,

(ii) In two appeals, on merits;

## JUDGEMENT ON CONDONATION OF DELAY

6. In five appeals namely ***Crl.As.493/2023, 538/2023, 539/2023, 540/2023, 541/2023***, a preliminary objection of the appeals being barred by delay has been raised by the Respondent-N.I.A. Applications for condonation of delay have been filed by the Appellant and replies have been filed by the Respondent. Broadly, the facts relating to delay are as under:

7. Under Section 21(5) of the N.I.A Act of 2008, the limitation for filing an appeal is 30 days. The same is, however, extendible for further 30 days if the Court is satisfied that the Appellant had sufficient cause for not preferring the appeal. The outer limit mentioned under Section 21(5) is 90 days from the date of order.

8. The impugned orders in these five appeals, were passed on **7th September, 2022.** The appeals were filed on **9th December, 2022** (**93 days** after the pronouncement of the impugned order. Defects were marked in the appeals on **12th December, 2022.** After taking back the appeals with defects, the same were **re-filed with defects only on 20th May 2023 in three appeals** *(i.e., Crl.A.493/2023, 540/2023 and Crl.A.541/2023***) and on 1st June 2023 in two appeals** *(i.e., Crl.A.538/2023 and Crl.A.539/2023)* which were returned. Again refiling took place on subsequent dates and finally the appeals were filed without defects on **3rd June 2023 in case of Crl.A.493/2023** and on **11th**

**July, 2023 in case of four appeals namely, Crl.A.538/2023, 539/2023, 540/2023 and Crl.A.541/2023,** and were subsequently registered.

**APPELLANT'S SUBMISSIONS ON CONDONATION OF DELAY:**

9. The case of the Appellant is that the appeals were filed within the prescribed period of 90 days as the certified copy was applied for in September, 2022 and was prepared for collection on **10th November, 2022** but collected by the Appellant **on 14th November 2022**. According to the Appellant, he is entitled to the **benefit of 64 days** during which the certified copy was yet to be issued. The appeals were filed on **9th December 2022**. However, after 12th December, 2022, the re-filing was done only in May and June, 2023. The appeals were registered and listed in July 2023. The Appellant relies upon various decisions to argue that the condonation of delay in case of refiling cannot be equated with delay in filing and that condonation of delay in refiling is within the discretion of the Court.

**RESPONDENT'S SUBMISSIONS ON CONDONATION OF DELAY:**

10. On behalf of the N.I.A, Mr. S. V. Raju, ld. ASG along with Ms. Shilpa Singh has raised the preliminary objection to maintainability of the appeals in view of Section 21 of the N.I.A Act. According to ld. ASG, the delay in filing and re-filing cannot be distinguished in these appeals. After the initial filing on 9th of December, when the matters were returned on defects for curing, the next filing was only in May and June 2023, i.e., after a delay of more than 6 months. In such circumstances, the filing cannot be construed as a re-filing. Thus, the filing of these appeals is beyond the period provided in the statute.

11. It was further submitted that the question as to whether Section 5 of Limitation Act, 1963 can be read with section 21 of N.I.A Act, 2008 was

decided in the affirmative by the ld. Division Bench of this Court in ***Farhan Sheikh v. State (National Investigation Agency)***[1]**,** but the said decision has been stayed by the Supreme Court in ***Crl.A. 1824/2019 - 1826/2019*** *vide* order dated 2nd December, 2019. Various other orders of the Hon'ble Supreme Court are also relied upon to argue that the question whether power under section 5 of the Limitation Act of 1963 can be exercised or not, being pending adjudication in the Supreme Court, the delay would not be liable to be condoned. Various other decisions of High Courts are also relied upon by the N.I.A.

## ANALYSIS

12. The N.I.A Act is a Special Act, which provides for filing of appeals under Section 21. The said provision reads as under:

> *"Section 21: Appeals.*
> *(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.*
> *(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*
> *(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.*
> *(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.*

[1] SCC OnLine DEL 9158.

*(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:*

*Provided that the High Court may entertain an appeal* ***after the expiry of the said period of thirty days*** *if it is satisfied that the Appellant had sufficient cause for not preferring the appeal within the period of thirty days:*

*Provided further that* ***no appeal shall be entertained after the expiry of period of ninety days.****"*

13. The Court had called for reports from the Registry. A perusal of the applications, the report of the Registry including the certified copies reveals the following timeline of events:

| **DATES** | **EVENTS** |
|---|---|
| 7th September 2022 | Bail applications by the Appellant in N.I.A RC No.18/2017, 22/2017, 23/2017, 25/2017, 26/2017 was rejected on the grounds that twin conditions under S.43(D)(5) are not met. |
| 14th September 2022 | Certified copy of the impugned orders were **applied** for by the Appellant. |
| 10th November 2022 | Certified copy of orders were prepared for collection. |
| 14th November 2022 | Certified copy of the orders **were received** by the Appellant. |

| | |
|---|---|
| 9th December 2022 | All five appeals i.e., Crl.A. 493/2023, 538/2023, 539/2023, 540/2023, 541/2023 were filed.<br>● 29 days from 10th November 2022.<br>● 93 days from the date of pronouncement i.e., 7th September 2022.<br>At this stage, the appeals are within limitation. |
| 12th December 2022 | All the appeals are returned on defects. |

After the appeals were returned under defects the following is the chronology of re-filing:

**Crl.A.493/2023**

| | |
|---|---|
| 20th May 2023 | Appeal in Crl.A.493/2023 is re-filed, and returned again for defects. |
| 2nd June 2023 | Appeal in Crl.A.538/2023 is re-filed without defects. |
| 3rd June 2023 | Registry takes the appeal on record. |

**Crl.A.538/2023 and Crl.A.539/2023**

| | |
|---|---|
| 1st June 2023 | Appeals in Crl.A.538/2023, 539/2023 are re-filed and returned again for defects. |
| June-July 2023 | Appeals are re-filed with defects and Returned few times. |
| 11th July 2023 | Appeals filed without defects. |
| 13th July 2023 | Registry takes the appeal on record. |

**Crl.A.540/2023 and Crl.A.541/2023**

| | |
|---|---|
| 20th May 2023 | Appeals in 540/2023, 541/2023, re-filed, but returned again for defects. |
| June-July 2023 | Appeals are re-filed with defects and Returned few times. |
| 11th July 2023 | Appeals filed without defects. |
| 13th July 2023 | Registry takes the appeal on record. |

14. Under Section 21 of N.I.A Act, the outer limit for filing of the appeal is 90 days from the date of the order. However, the settled position in law is that the time consumed in issuance of the certified copy is always excluded from calculating the period of limitation. Thus, **in the present case, the period between 14th September, 2022 and 10th November 2022 deserves to be excluded. The initial filing of the appeals on 9th December, 2022 was thus within the prescribed 30 days period.**

15. However, the issue would not end here. Once the defects were marked in the appeals and were returned, the refiling took place only in the months of May and June 2023. As per Rule 5 of Chapter 1(Judicial Business), Volume V of the Delhi High Court (Original Side) Rules, 2021; if any appeal or petition is returned under objections, the refiling has to take place within 7 days at the time and 30 days in aggregate. The said Rule reads as under:

> *"5(1) The Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment* ***and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him****, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code*"

16. In addition, Rule 5 (3) and the Explanation thereto also provides that if an appeal is filed beyond the time allowed, it would be considered as fresh filing. The said Rule reads as under:

> *"5(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under sub-rule (1) it shall be considered* ***as a fresh institution.***
>
> *Explanation : The period of seven days or thirty days mentioned above shall commence from the date the objections are put on the notice board*."

17. In the present case after the initial filing, clearly there has been a delay beyond 30 days in refiling. Therefore as per the above mentioned Rule, the filing of the appeals deserves to be treated as fresh filing.

18. Usually re-filing is condoned by the Courts without hesitation. However, if it is beyond the prescribed period of 30 days the registry cannot condone the delay and the Court condones the same under Limitation Act of 1963. But the Court is here dealing with a special statute prescribing a mandatory outer period of 90 days under Section 21 of N.I.A Act of 2008. In the said context, the question then is whether the delay in re-filing of an appeal

under S.21 of N.I.A Act is condonable under section 5 of the Limitation Act of 1963. The stand of the Appellant is that it is within the discretion of this Court to condone the delay in refiling.

19. In ***Indian Statistical Institute v. Associated Builders & Ors***[2]**,** the Supreme Court observed that delay in refiling is to be treated on a different plank from delay in filing. The observations of the Supreme Court are as under.

> *"10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively.* ***The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the Petitioner satisfies the Court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under section 5 of the Limitation Act.*** *The application filed before the High Court for condonation of the delay in preferring the objections and the order of the Court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return of the Registrar did not even specify the*

[2] (1978) 1 SCC 483

*time within which the petition will have to be re-presented."*

20. In ***S.R. Kulkarni v. Birla VXL Limited***[3]**,** where there was a delay of 200 days in re-filing due to the casual approach of the advocate, the ld. Division Bench of this Court observed that the delay in refiling can be condoned on payment of costs, for doing justice. The observations of the Court on refiling is as under:

> *"8. Notwithstanding which of the aforesaid Rules are applicable, the question of condensation of delay in refiling of an application has to be considered from a different angle and viewpoint as compared to consideration of condensation of delay in initial filing. The delay in refiling is not subject to the rigorous tests which are usually applied in excusing the delay in a petition filed under Section 5 of the Limitation Act (See Indian Statistical Institute Vs. M/s. Associated Builders and others MANU/SC/0014/197; AIR 1978 S C 335. In the present case, the initial delay of 7 days in filing the application for leave to defend stood condoned and that has not been challenged by any of the parties. It is no doubt true that the counsel for the Appellant had not been very diligent after filing of application for leave to defend on 19th August, 1995 as counsel did not check whether the application was lying in the Registry with any objection or not. Considering however, the nature of the objections, it was a matter of removal of the objections by the counsel and on the facts of the present case, it is difficult in this case to attribute any negligence to the party."*

[3] (1998) SCC OnLine Del 1018

21. In ***Delhi Development Authority v. Durga Construction***[4], while dismissing the appeal under Section 34 of Arbitration and Reconciliation Act with a re-filing delay of 166 days, again the observations of the Court are as under:

> *"17.* ***The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in Courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies.*** *However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in* ***Ashok Kumar Parmar v. D.C. Sankhla: 1995 RLR 85****, whereby a Single Judge of this Court held as under:-*
>
> > *"Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of*

[4] 2013 SCC OnLine Del 4451

*presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit."*

*A Division Bench of this Court upheld the aforesaid view in* ***D.C. Sankhla v. Ashok Kumar Parmar: 1995 (1) AD (Delhi) 753*** *and while dismissing the appeal preferred against decision of the Single Judge observed as under:-*

*"5. ..... In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules,1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act."*

*18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the Court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application.* ***The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which***

***prevent re-filing the petition/application within time.***

*19. The Supreme Court in the case of* ***Union of India v. Popular Construction Company: (2001) 8 SCC 470*** *has held that the time limit prescribed under section 34 of the Act to challenge an award is not extendable by the Court under section 5 of the Limitation Act, 1963 in view of the express language of section 34(3) of the Act.* ***However, this decision would not be applicable in cases where the application under section 34 of the Act has been filed within the extended time prescribed, and there is a delay in re-presentation of the application after curing the defects that may have been pointed out. This is so because section 5 of the Limitation Act, 1963 would not be applicable in such cases.*** *Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation in certain cases where the Court is satisfied that the Appellant/applicant had sufficient cause for not preferring an appeal or making an application within the specified period. In cases where the application/appeal is filed in time, section 5 would have no application. The Supreme Court in the case of* ***Indian Statistical Institute v. Associated Builders: (1978) 1 SCC 483 considered the applicability of section 5 of the Limitation Act, 1963 where the objection to an award under the provisions of the Arbitration Act, 1940 was filed in time but there was substantial delay in re-filing the same. The High Court in that case held that there was a delay in filing the objections for setting aside the award and consequently, rejected the application for condonation of delay. An appeal against the decision of the High Court was allowed and the Supreme Court rejected the contention that there was any delay in filing objections for setting aside the award.*** *……*

> *XXX*
> *20.* ***It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in refiling, it cannot be accepted that the Courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.***

However, after holding that delay can be condoned, the Court in the said case dismissed the appeal on merits.

22. In ***Farhan Sheikh v. State (National Investigation Agency)***[5], the ld. Division Bench of this Court was considering an appeal where condonation was sought of 314 days in filing and 44 days in refiling on the ground of the convict's poor mental health and inaccessibility of necessary paperwork. The Court applied Section 5 of the Limitation Act of 1963 in the context of Section 21 of the N.I.A Act to hold the grounds to be a sufficient cause for delay. wherein it was observed as under:

> *"91. Reference to Section 34 of the POTA, and its comparison with Section 21(5) of the N.I.A Act, in our view, is of no avail. We have to construe Section 21(5) on its own terms and in the context in which the same is framed, keeping in view the nature of the statutory right of appeal conferred on the accused/convict. Thus, we reject the objection of Mr. Sharma to the maintainability of the aforesaid two applications under Section 5 of the limitation*

[5] 2019 SCC OnLine Del 9158

*Act.* ***We hold that these applications are maintainable and application of Section 5 of the limitation Act is not excluded - either expressly or by necessary implication, to the N.I.A Act.***

***92. Having held that the applications moved by the Appellant to seek condonation of delay are maintainable****, we now proceed to consider the same on merits. The Appellant seeks condonation of 314 days delay in filing the appeal. The Appellant seeks further delay of 44 days in re-filing the appeal. The appeal, itself, is directed against the order on sentence. Pertinently, the Appellant was incarcerated when he was sentenced by the Special N.I.A Court. In that situation, he was heavily dependent on his family and friends to file his appeal. The Appellant has explained that when he learnt of the sentence pronounced against him, he went into depression for about 6 months. Thereafter, he started exploring avenues available to him. He states that he attempted to consult a lawyer but he did not have the relevant documents. He was confined in high security section of the jail and, consequently, it was difficult for him to arrange the documents. Then his uncle from Maharashtra assured him of help. His uncle contacted an NGO who, in turn, put him in touch with Mr. Aditya Wadhwa, Advocate. He also explains that, in the meantime, the special N.I.A Court was shifted, which also delayed the procurement of documents.*

*93. To explain the delay in re-filing, he states that when he initially filed the appeal on 30.05.2018, he did not have in his possession the complete papers relating to the case. The same led to delay in re-filing.*

*94. We ask ourselves, what is the advantage to be gained by the Appellant in delaying the filing of the*

> *appeal? At the same time, what is the prejudice suffered by the State on account of this delayed filing of the appeal? The answer to both these questions is "None". The delay in filing the appeal is not so grave that the respondents could claim that it has destroyed its record. That is not even a plea taken by the respondent. It is the Appellant, who continues to suffer incarceration. Therefore, it is he, who has suffered prejudice on account of his own delay. The respondent has not suffered any prejudice due to the said delay.*
> *95. It is not difficult to imagine the difficulty that a person, who is incarcerated in a high security prison, faces in either communicating with the outside world or in being able to arrange the necessary documents so that his appeal could be prepared and filed in time. He is wholly dependent on his friends and family and if they take matters lightly, it is he who suffers."*

23. The Jammu & Kashmir High Court, in ***N.I.A v. 3rd Additional Sessions Judge District Court, Jammu***[6] also followed the decision in ***Farhan Sheikh (supra)*** and observed as under:

> *"35. We have already held that the* ***provisions of second proviso to sub-section 5 of Section 21 of the Act are directory in nature and, therefore, an application for condonation of delay under Section 5 of the Limitation Act is maintainable."***

24. The Bombay High Court in ***Faizal Hasamili Mirza @ Kasib v. State of Maharashtra***[7], also observed that Section 21(5) proviso 2 cannot be held to be mandatory. They The said observations read as under:

[6] Crl.A(D) No.46/2022, decided on 12th December, 2022
[7] Crl.A (STAMP) No.11931/2022, decided on 14th September, 2023

*"47 Having regard to the discussions as stated aforesaid,* ***we are firmly of the opinion that the 2nd proviso to sub-section (5) of Section 21 of the N.I.A Act, will have to be read down, so as to read 'shall' as 'may', and as such directory, so as to vest discretion in the Appellate Court, to condone delay, beyond the 90 days period on sufficient cause being shown. If the provision were to be held mandatory, despite sufficient cause being shown by accused, the doors of justice will be shut, leading to travesty of justice, which cannot be permitted by Courts of Law.***

*48. It is perplexing to note, the stand of the N.I.A. As noted earlier, Mr. Patil, learned Spl.P.P vehemently opposed the delay condonation application, on the premise that the 2nd proviso to sub-section (5) of Section 21 was mandatory and that no appeal beyond 90 days can be entertained, in view of the statutory bar. The contradiction in the stand taken by the N.I.A, is apparent. It is pertinent to note, that in the appeal filed by the N.I.A before the Jammu & Kashmir and Ladakh High Court in* ***National Investigation Agency Through its Chief Investigating Officer v. 3rd Additional Sessions Judge, District Court Jammu (Supra)****, the N.I.A had filed a delay condonation application, there being a delay of 40 days. The N.I.A urged before the said Court that the 2nd proviso to Section 21(5) of the N.I.A Act was directory. The Jammu & Kashmir and Ladakh High Court, relying on the Delhi High Court judgment in* ***Farhan Sheikh (Supra)****, held that the 2nd proviso to Section 21(5) was directory and as such, condoned the said delay of 40 days (beyond the 90 days prescribed) caused in filing the appeal by the N.I.A and consequently, allowed the N.I.A's appeal. Similarly, in* ***State of Chhattisgarh (Supra)*** *before the Chhattisgarh High Court, N.I.A had filed an appeal against acquittal along with an*

*application seeking condonation of delay of 228 days. N.I.A, whilst seeking to condone the delay of 228 days, had urged that the provision in question i.e. 2nd proviso to Section 21(5) of the N.I.A Act, was directory. The Chhattisgarh High Court accepted the submission of the N.I.A that 2nd proviso to Section 21(5) of the N.I.A Act was directory in nature and accordingly, condoned the delay caused in filing the appeal against acquittal. N.I.A being a Central Investigating Agency, is expected to take one stand, either ways, for or against. The stand cannot change to suit its needs. We are unable to see any merit/reason, in the contradictory stand taken by the N.I.A before different High Courts. Infact, reliance placed by Mr. Patil, learned Special P.P for N.I.A on* ***Hukumdev Narain Yadav (Supra)****, and the full bench judgment of this Court in* ***Anjana Yashawantrao (Supra)*** *are clearly misplaced, inasmuch as, the said cases are clearly distinguishable.*

*49 Accordingly, for the reasons set-out in detail herein- above, we hold -*

*(i)* ***that the Appellate Courts have the power to condone delay beyond the 90 days period, despite the language of the 2nd proviso to Section 21(5) of the N.I.A Act and that this can be done by virtue of Section 5 of the Limitation Act, 1963, the applicability of which is not excluded under the provisions of the N.I.A Act.*** *Thus, an application seeking to condone delay beyond 90 days in filing an appeal against the judgment, sentence, order, not being an interlocutory order, passed by a Special Court is maintainable, on sufficient cause being shown;*

*(ii)* ***that the word 'shall' in the 2nd proviso to sub-section (5) of Section 21, be read down, to read as 'may', and hence, directory in nature."***

25. On behalf of the N.I.A, Mr. S. V. Raju, ld. ASG along with Ms. Singh has raised the preliminary objection to maintainability of the appeals in view of Section 21 of the N.I.A Act. They relied upon the judgment in ***Singh Enterprises v. CCE***[8] to argue that under special statutes if the language clearly bars the Appellant authority from entertaining appeals beyond a particular period, the appeal cannot be filed and even delay in refiling cannot be condoned. Reliance is placed upon para 8 of the said judgment.

> *"8.* ***The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay.*** *T****he first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30***

[8] (2008) 3 SCC 70

***days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.*"**

26. In ***V. Nagarajan v. SKS Ispat and Power Ltd. & Ors.***[9]**,** dismissing an appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, filed with a substantial delay on the grounds delayed issuance of certified copy and the pandemic, the Supreme Court observed as under:

> *"32.....However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this Court, even after factoring in a permissible fifteen days of condonation under Section 61(2).* ***The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation****"*

27. Similarly, in ***M.K Suri v. Directorate of Enforcement***[10] the Court was considering the provisions of FERA where the outer limit of 90 days was provided and observed as under:

> *"13. Under Section 52 of the FERA, it is clear that the outer limit for filing an appeal is 90 days; beyond the period of 90 days the Court has no power to condone the delay. The Appellate Tribunal on 26.3.2005, had rightly dismissed the appeal on this ground by invoking Section 52 (2) of the FERA*

[9] (2022) 2 SCC 244
[10] 2010 (114) DRJ 140

> *holding that the* ***delay of 118 days*** *could not be condoned; the outer limit being 90 days. The said order calls for no interference.*
>
> *14. In* ***(2008) 3 SCC 70 Singh Enterprises v. Commissioner of Central Excise Jamshedpur & Ors.*** *while considering the provisions of Section 35 of the Central Excise Act 1944 it held been held that the said provision of law stipulates a period of 60 days for filing an appeal; under the proviso another 30 days can be added to this period; the delay in filing the appeal can be condoned after the expiry of the 60 days yet the period the delay could not be condoned beyond 90 days.* ***While considering the provisions of the aforestated statute it had been held that in this special statute there is a complete exclusion of Section 5 of the Limitation Act.***
>
> ***15. In the instant case also the provisions of Section 52(2) read with the provisions of the FERA which is also a legislation dealing with economic offences, clearly stipulates that any person aggrieved by an order of the Adjudicating Authority may appeal to the Appellate Board within a period of 45 days; the Appellate Board may entertain the appeal after the expiry of 45 days but not beyond 90 days. This is the outer limit and a mandate. Application of Section 5 of the Limitation Act is excluded.*****"**

28. In ***Omaxe Buildhome Limited v. Union of India & Anr.***[11], dealing with Section 68-O, of the Narcotic Drugs Psychotropic Substances Act of 1985, the Court held the right to appeal is a creature of statute and not a substantive right thus abrogable by a special legislation. The relevant paragraphs are as under:

[11] 2019 SCC OnLine Del 7344

*"7. At the outset, it will be relevant to refer to Sub-Section (1) of Section 68-O of the NDPS Act which reads as under: -*

***68-O. Appeals***

*(1) Any person aggrieved by an order of the competent authority made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L,* ***may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:***

***Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time."***

*8. The plain reading of the proviso to Sub-section (1) of Section 68-O of the NDPS Act indicates that the Appellate Tribunal has no jurisdiction to entertain an appeal which is filed beyond a period of sixty days from the date on which the order passed by the Competent Authority is served on the Appellant. An appeal under Sub-section (1) of Section 68-O of the NDPS Act can be filed only within a period of 45 days from the date on which the order is served. However, the Appellate Tribunal can entertain an appeal even beyond the said period of 45 days if it is satisfied that the Appellant was prevented by sufficient cause from filing the said appeal. However, this power is not available to entertain an appeal beyond a period of 60 days.*

***9. Mr. Mir, the learned counsel appearing for the petitioner, has submitted that the right of appeal is an inherent right and the same could not be taken away on the grounds of delay.*** *He submitted that the question of filing an appeal within the*

> *prescribed period was a matter of procedure and such procedural matters could not affect the petitioner's substantive right of appeal and the same being an inherent right could not be taken away.*
> *10.* ***The aforesaid contentions are unmerited. First of all, the contention that the petitioner has any inherent right to file an appeal against the order of the Competent Authority, is flawed. It is well settled that an appeal is a creature of statute and there is no inherent right of appeal."***

29. In ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement & Anr.***[12], the Supreme Court reaffirmed that the right to appeal is a creature of statute and thus can be subjected to conditions by the statute itself. The relevant paragraphs are as under:

> "*29. By referring to the aforesaid schemes under different statutes, this Court wants to underline that the* ***right of appeal, being always a creature of a statute, its nature, ambit and width has to be determined from the statute itself.*** *When the language of the statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same.* "

30. Above all, the N.I.A has also relied upon the orders in the following cases to argue that the entire issue is now pending before the Supreme Court.

**a.** ***State (National Investigation Agency) v. Farhan Sheikh - Crl.A.No 1824 - 1826/2019 order dated 2nd December 2019***

> *"List the appeal in the first five matters, subject to overnight part-heard matter, in the second week of February, 2020 on a non-miscella.neous day.*

[12] (2010) 4 SCC 772

***In the meantime, the operation of the impugned judgment shall remain stayed****"*

**b. *State of U.P. v. Sarfaraz SLP Criminal Dairy No 5217/2024***

*"3.* ***There is a divergence of views between different High Courts. While the High Courts of Allahabad, Bombay, Jammu & Kashmir & Laddakh and Delhi have held that the 90 day time limit is directory, a contrary view has been taken by the High Courts of Calcutta and Kerala.***

*4. Notice has been issued by this Court from the judgment of the High Court of Delhi which held that the 90 day period in Section 21(5) is directory.*

*…*

*6. Moreover, bearing in mind that notice has been issued by this Court already in one case, we issue notice and direct that the present Special Leave Petition be tagged with SLP (C) D No 41439 of 2019. [State (National Investigation Agency) v. Farhan Sheikh (presently* ***Crl.A.No 1824 - 1826/2019****)]"*

**c. LIST OF TAGGED MATTERS BEFORE SUPREME COURT**

The following are the further list of matters tagged by the Supreme Court for adjudication on the same question of law relating to condonation of delay under Section 21 of the N.I.A Act.

**i.** *State (National Investigation Agency) v. Farhan Sheikh* - Crl.A.No 1824 - 1826/2019;
ii. Osman Shareef and Anr. v. Union of India, Petition to Special Leave to Appeal Criminal No. 9840 of 2021;
iii. Sushila Devi v. Union of India, Petition to Special Leave to Appeal Criminal 1742 of 2024;
iv. N.I.A v. Faizal Hasamali Mirza @Kasib SLP Criminal Dairy No 8582/2024;
v. State of U.P v. Sarfaraz Ali Jafri SLP Criminal Dairy No 5217/2024

31. A perusal of the above decisions would show that there is a clear divergence of opinions between various High Courts and the question as to whether delay in filing as also delay in re-filing would be liable to be condoned or not, is pending final adjudication in the Supreme Court. The leading judgment in ***Farhan Sheikh(Supra)*** arising out of the decision of ld. the Division Bench of this Court has been stayed by the Supreme Court.

32. In light of the above, this Court is of the opinion that, as per Section 21(5) of the N.I.A Act, read with the rule 5 of Delhi High Court Rules, though the initial filing was within time, the re-filing of the five appeals in May and June 2023 has to be construed as a fresh institution as the same is beyond the 30 days aggregate period of delay permissible under the Rules. Some of the decisions above hold that discretion can be exercised under Section 5 of the Limitation Act of 1963, by the Court for condoning delay in re-filing and some decisions hold that Section 5 would not apply. Either way, in order to exercise discretion to condone delay, it needs to be noted that the N.I.A Act is a special statute which prescribes an outer limit of 90 days under Sec. 21. Under such circumstances, this Court, is of the opinion that even delay in refiling, which is beyond the 30 days permissible limit under Rule 5 of the DHC Rules, would not be liable to be condoned without power being exercised under Section 5 of the Limitation Act of 1963. The said question whether power under Section 5 of the Limitation Act of 1963 can be exercised for condoning delay under Section of the N.I.A Act, 2008, is pending before the Supreme Court. Considering the period of delay in re-filing is more than the aggregate period permitted under the Delhi High Court Rules, the applications for condonation of delay are not liable to be allowed. The same are accordingly dismissed. This would, however, be subject to decision,

which may be rendered by the Supreme Court in ***Farhan Sheikh(supra)*** and the connected matters.

33. The applications seeking condonation of delay being ***Crl.A 493/2023, 538/2023, 539/2023, 540/2023, 541/2023*** are accordingly, dismissed. Consequently, the appeals are also dismissed.

## JUDGEMENT ON MERITS IN TWO APPEALS.

### BRIEF FACTS IN *Crl. A. 569/2024*

34. This appeal arises from **FIR No. 6/2017** which relates to the alleged killing of one Mr. Amit Sharma by two unknown motorcyclists. The FIR was registered on 15th January 2017 by PS Division Number 08 Ludhiana District, Punjab under Section 302/34 Indian Penal Code, 1860 (hereinafter '*IPC*') read with Section 25, 27, of the Arms Act 1956.

35. The deceased (late.) Mr.Amit Sharma, was the president of Shri Hindu Takhat, Ludhiana unit and an active member of the said organization and was 35 years of age. As per the N.I.A's report, he was murdered by 2 persons, who were on a motorcycle, by use of firearms between 8:30 pm and 8:45 pm on 14th, January, 2017 while he was in front of his house in Ludhiana, speaking on his mobile phone.

36. The killing of the deceased was identified to be a part of a larger transnational conspiracy involving a series of eight incidents intended to destabilize the law and order situation in Punjab. Considering the gravity of the offence this FIR was transferred from Punjab Police to the N.I.A on 10th December, 2017 and was re-registered as **RC.No. 27/2017/N.I.A/DLI.** There are a total of eighteen accused including the Appellant (i.e., A-6)**.** The Appellant was booked under Sections 120-B, 302, 34. 379 416 of IPC of 1860,

Sections 16, 17, 18, 18A, 18B, 20, 21 and 23 of Unlawful Activities (Prevention) Act of 1967 (hereinafter 'the Act') and Sections 25 & 27 of the Arms Act of 1959.

**BRIEF FACTS IN CRL.A.577/2024**

37. This appeal arises from **FIR No. 113/2017** which initially related to the alleged attempted murder of one Mr. Jagdish Kumar Gagneja by two unknown motorcyclists. who were on a motorcycle, by use of firearms around 8 pm on 6th August 2016. He was travelling with his wife in his 'Swift' car and had stopped at the road crossing behind the Jyoti Chowk Market, Jalandhar to attend nature's call when he was shot. He was stated to be the then Vice President of RSS for the State of Punjab and an active member of the said organization.

38. The said FIR was registered by PS Division Number 04 District Jalandhar, Punjab under Section 307, 34 IPC of 1860 read with 25, 27, 54, and 59 of the Arms Act 1956.

39. The attempt to kill the deceased Mr. Jagdish Kumar Gagneja was subsequently identified to be a part of a larger transnational conspiracy involving a series of eight incidents intended to destabilize the law and order situation in Punjab. Considering the gravity of the offence, this FIR was transferred to Central Bureau of Investigation (hereinafter *'CBI'*) on 7th September 2016 and was re-registered as RC-10(S)/2016/SCU.V/SC-II/CBI/New Delhi. The victim succumbed to the injuries on 20th September 2016.

40. Subsequently, this FIR was again transferred to the N.I.A on 8th March, 2019 and was re-registered as **RC Number 07/2019/N.I.A/DLI.** There are a

total of twenty persons who are accused in this case. The Appellant is one of the accused. The Appellant was booked under Section 120-B of the IPC of 1860 and Sections 16 17, 18 of the Act.

**COMMON FACTS AS PER THE N.I.A REPORTS**

41. The actual shooters in both the incidents were allegedly Hardeep Singh (1) and Ramandeep Singh (A-2) in both cases. The allegation is that they carried out a series of targeted killings during the period 2016-2017 in Ludhiana and Jalandhar Districts of Punjab. As per the reports of the N.I.A, the killing of the deceased by the masked youths is established by independent witnesses. On the basis of the investigation and the information received, A-1- Hardeep Singh and A-2- Ramandeep Singh were both arrested on 21st December 2017. In their interrogation, it is claimed that they gave details of the eight incidents, in which they were involved.

42. According to the N.I.A, the eight incidents in which they were involved were specifically for creating a law and order situation in Punjab. There was no previous animosity between the deceased victims and the shooters. The case of the N.I.A was that the accused persons are part of a conspiracy hatched by the Khalistan Liberation Force (*hereinafter 'KLF')* of which the Appellant is also a member.

43. As per the Reports one of the shooters A-1 - Hardeep Singh used to live with his paternal uncle (*Tayaji*) and his wife in Italy. A-3 - Harminder Singh @ Mintoo, one of the self-acclaimed leaders of Khalistan Liberation Force, had stayed as a guest in their house in Italy and during his interaction with Hardeep Singh, he started motivating him for committing violence in the name of Khalistan. It was during his stay there that he received 3000 GBP from the Appellant - Jagtar Singh Johal (A-6). It is claimed in the N.I.A's

report that the Appellant is a close confidant of A-14-Harmeet Singh @ PhD and A-16-Gursharan Singh @ Gursharanveer and that the Appellant had delivered the said 3000 GBP to A-3-Harminder Singh on behalf of A-16. It is further alleged in the report that Appellant is a member of the *KLF*, who had complete knowledge of the conspiracy. The remaining portions of the report are not relevant for the present purposes.

**SUBMISSIONS OF THE APPELLANT**

44. The two main grounds urged on behalf of the Appellant are –

a. That the Appellant has a limited role to play and

b. Secondly that the Appellant has been incarcerated for a long period on unsubstantiated allegations.

45. Mr. Paramjeet Singh, ld. Counsel for the Appellant submits that the entire charge-sheet mentions the Appellant only in two paragraphs. The relevant portions of the charge-sheet are set out below:

> *"17.27 In between his stay at Daljit Singh's house, Gurjinder Singh@ Shastri (A-15), Harminder Singh @ Mintoo (A-5) and Hardeep Singh (A-1) took a tour of France and Germany by road.* ***When they were in Paris, France, Harminder Singh @ Mintoo (A-5) and Gurjinder Singh @ Shastri (A-6) went to Paris airport and received Jagtar Singh Johal (A-6), who had arrived from the U.K. Jagtar Singh Johal (A-6), (a U.K. national) had been sent to France from the U.K. by Gursharan Singh (A-16) (a U.K. national) to deliver GBP 3000 to Harminder Singh@ Mintoo (A-5). A part of this money (about GBP 300) was given by Harrninder Singh@ Mintoo (A-5) to Hardeep Singh (A-1) to motivate him to join the KLF and recruit him for executing the conspiracy:***

***17.28 It has been established that Jagtar Singh Johal (A-6) is a close confidante of Harmeet Singh@ PhD (A-14) and Gursharanbir Singh (A-16). The statement of witnesses has established that Jagtar Singh Johal (A-5) is a member of the KLF; had complete knowledge of the conspiracy and had actively participated in the conspiracy.*** *"*

46. He submits that certain statements of protected witnesses are claimed to have been recorded by the N.I.A that the Appellant is a member of the *KLF* and that he was well aware of and actively participated in the conspiracy. On the contrary, the learned Counsel for the Appellant submits, even as per the case of the prosecution was at best that the Appellant was merely a courier or messenger and it was only A-16- Gurusharanbir Singh @ Gurusharan Singh, who had sent the Appellant to deliver 3000 GBP to A-5-Harminder Singh @ Mintoo. A-5 who, thereafter, had given the money to A-1-Hardeep Singh to motivate him to join the *KLF*.

47. It is submitted that a total of 172 witnesses have been cited by the prosecution and only ten witnesses have been examined till date which shows that the N.I.A is not serious about the prosecution of the Appellant and that the only intention is to keep him in custody. The Appellant has been in custody since 22nd December 2017 (as of 2nd September 2024 – about 6 years and 8 months). Moreover, if there is any allegation that there is likelihood of tampering of witnesses or influencing of witnesses, the said protected witnesses could have been examined early. However, the N.I.A has chosen not to do so. The recent decision of the Hon'ble Supreme Court in ***Sheikh Javen Iqbal v. State of U.P[13].,*** has been relied on to emphasise the need for

[13] ***2024 SCC Online SC 1755***

speedy trial. It was also submitted that, in this judgement the Court has distinguished the earlier decision in ***Gurwinder Singh V. State of Punjab***[14]**,** and reiterated the importance of speedy trial.

48. According to the Appellant, all the allegations against him are based on the statement of the (i) A-3-Dharminder Singh @ Guguni, (ii) A-5-Harminder Singh @ Mintoo and (iii) two protected witnesses. It is his submission that none of the statements of the protected witnesses have been provided to the Appellant. He also pointed out that only the redacted statements of the protected witness nos. P8 and P9 have been provided to the Court. He relies upon the decision in ***National Investigation Agency v. Zahoor Ahmad Shah Watali***[15] to argue that if the statements of the witnesses are not given to the accused, the same cannot even be considered for the purposes of evidence.

49. He further submits that the primary accused A-1-Hardeep Singh's statement does not say he has received any money from the Appellant. According to the Appellant, the Respondent's case against the Appellant is based merely on the statements of A-3-Dharminder Singh @ Guguni, A-5-Harminder Singh @ Mintoo which implicate the Appellant in the conspiracy and two protected witnesses which contain narration of alleged Extra Judicial Confessions made by the Appellant to them, which shall not be admissible.

50. It is further submitted that, on the same facts (i.e., in RC.No 24/2017) the Appellant has already been granted bail by the Punjab & Haryana High Court in CRA-D 405/2020 *vide* the order dated 15th march 2023 and that SLP (crl.) no. 6717/2022 which was filed against the said order stands dismissed *vide* the order dated 8th August 2023.

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[14] ***(2024) 5 SCC 403***
[15] ***(2019) 5 SCC 1***

51. He finally submits in sum and substance that, considering

- the large number of witnesses remaining to be examined,
- the long period of incarceration
- the allegations being based merely on inadmissible, circumstantial evidence and
- the fact that High Court of Punjab has released him on bail on a similar case

the present appeals are liable to be allowed and the Appellant deserves to be released on bail.

**SUBMISSIONS OF THE N.I.A**

52. On merits, the learned ASG S.V. Raju appearing on behalf on the Respondent submits that the Appellant is an active member of KLF and has a prominent role in the conspiracy. According to the N.I.A, the funds made available by the Appellant were used for procurement of arms and weapons by both shooters, A-1 & A-2. As per the charge sheet filed in RC.no 25/2017/N.I.A/DLI, the Appellant was the one of the first persons to be arrested in 2017. According to the N.I.A, it was the statement of the Appellant in FIR.No 193/2016 dated 7th November 2017, which led to the subsequent arrest of both the shooters, A-1 and A-2. Thus, he is said to have played an intrinsic role in the entire conspiracy. To this effect the Respondents handed over -

a) Statements of A-5-Harminder Singh @ Mintoo and A-3- Dharminder @ Gugni recorded under S.164 of Criminal Procedure Code.
b) Statements of two protected witnesses recorded under Section 161 of Criminal Procedure Code.

**a. i) Statement of A.3-Harminder Singh @ Mintoo under Section 164 Cr.P.C. dated 22nd March 2018 in RC.No 26/2017/N.I.A/DLI**

53. He has stated that from 2007-08, he was part of the *KLF* movement and lived abroad from 2008 to 2014. He was deported from Thailand in 2014. He stated that in June, 2013 he had gone to Italy and he met Diljeet Singh. In Diljeet Singh's house, he met A-1-Hardeep Singh. It is stated that A-1 and A-3-Harminder Singh had travelled from Italy to France. There he met the Appellant at the Paris airport and received 3000 GBPs. The said amount was sent by A-16-Gursharan Singh, who was the friend of the Appellant. This is the limited role ascribed by Harminder Singh to the Appellant.

**a. ii) Statement of Dharminder @ Guguni under Section 164 Cr.P.C dated 08th February 2018 .**

54. He was the person who had provided weapons, which were used in the killings. In his statement, though he admits to the fact of receiving funds from London, he does not name the Appellant directly.

55. The statements of protected witnesses cited as proposed PW-49 and PW-50 in the produced before us are recorded under Section 161 of Criminal Procedure Code. These witnesses state that the present Appellant had made certain claims regarding his involvement in the present conspiracy to each of them separately. These Statements show that the Appellant was not merely a courier boy but was an integral part of this conspiracy.

56. The Learned ASG submits that the offences against the Appellant are serious in nature. Out of nine persons who have been shot at different points in time, seven in fact have passed away and two are grievously injured. The bail granted to the Appellant by the Punjab & Haryana High Court was in a case where there was injury and not murder. The various persons who have

been eliminated by the two shooters are in fact persons of high stature in Punjab including political leaders. The premeditated conspiracy and the target killings were intended to destabilise the law and order situation in Punjab. Thus the matter is of a serious nature and poses a threat to the sovereignty of India.

57. In addition, the N.I.A claims that even while the Appellant has remained in jail, he has levelled certain threats to some witnesses and, thus, his release could pose a threat to the witnesses. The witness statements informing threats levelled and requesting for protection are also produced before the Court. It was the N.I.A's stand that the Appellant is one of the main conspirators who is highly radicalized and has the potential to intimidate and influence the witnesses in the ongoing investigation.

**ANALYSIS & FINDINGS**

58. Heard and perused the record. There are a total of eight cases in which the Appellant has been named as an accused. Out of the eight cases, there have been deaths in four cases and grievous injuries in three cases. There can be no doubt that such killings and grievous injuries being inflicted, that too in the form of targeted killings, ought to be dealt with strictly in accordance with law. Active participation in anti-national activities, conspiracy to kill, that too for organizations such as *KLF* i.e., Khalistan Liberation Force, would also have to be dealt with stringently and action would be liable to be taken against the persons, who are involved in such unlawful, illegal and anti-national activities.

59. There are a total of sixteen accused in RC No. 27/2017/N.I.A/DLI(Crl.A.569/2024) and eighteen accused in RC No.

7/2019/N.I.A/DLI (Crl.A.577/2024*)*. The role of each of them is different. Some are active members of the *KLF*. Some are providing active support and some individuals have been on the sidelines. A1 and A2 are alleged to be the actual shooters. The Accused as per the Final Reports in RC No. 27/2017/N.I.A/DLI(*Crl.A.569/2024)* and RC No. 7/2019/N.I.A/DLI (*Crl.A.577/2024)* are as under

| **Names** | **Accused in RC No. 27/2017** | **Accused in RC No. 7/2019** | **Role Ascribed** |
|---|---|---|---|
| Hardeep Singh @ Shera @ Pahalwan | A-1 | A-1 | Shooter 1 |
| Ramandeep Singh @ Canadian @ Bagga | A-2 | A-2 | Shooter 2 |
| Dharminder Singh @ Guguni | A-3 | A-3 | Weapon Supplier |
| Anil Kumar @ Kala | A-4 | A-4 | Aided A-2 and A-1 in receiving the pistol |
| Harminder Singh @ Mintoo | A-5 Deceased | A-20 Deceased | Leader of KLF |
| Jagtar Singh Johal @ Jaggi @ Johar | A-6 | A-5 | Financier |
| Amaninder Singh @ Mindu | A-7 | A-6 | Aided A-1 in receiving funds |
| Manpreet Singh @ Mani | A-8 | A-7 | Aided A-1 in transporting pistols |

| | | | |
|---|---|---|---|
| Ravipal Singh @ Bhunda | A-9 | A-8 | Aided in purchasing pistols |
| Pahad Singh | A-10 | A-9 Chargesheet not filed | Forged Country made 'Kattas'(guns) |
| Parvez @ Farru | A-11 | A-10 Chargesheet not filed | Sold pistols to A-1 |
| Malook Tomar | A-12 | A-11 Chargesheet not filed | Sold pistols to A-1 |
| Taljeet Singh @ Jimmy | A-13 Discharged | NA | NA |
| Harmeet Singh @ Happy @ PhD @ Doctor | A-14 | A-12 | Leader of KLF |
| Gurjinder Singh @ Shastri | A-15 | A-13 | Leader of KLF |
| Gursharanbir Singh @ Gurusharan Singh @ Gursharanvir Singh @ Jagdev Singh @ Pehalwan | A-16 | A-14 | Leader of KLF |
| Gurjant Singh Dhillon | A-17 | A-15 Chargesheet not filed | Hawala Financier |
| Tarlok Singh @ Laddi | A-18 Discharged | NA | NA |
| Amit Kumar Arora | NA | A-16 Chargesheet not filed | NA |
| Mani Kumar @ Mani | NA | A-17 Chargesheet not filed | NA |

| | | | |
|---|---|---|---|
| Bharti Sandhu | NA | A-18 Chargesheet not filed | NA |
| Samar D'Souza | NA | A-19 Discharged | NA |

**PRIMA FACIE EVIDENCE AGAINST APPELLANT**

60. Insofar as the Appellant is concerned, the evidence (S.164 Statements of A-3-Harminder Singh @Mintoo and A-3-Dharminder Singh @ Guguni) which has come on record, at this stage, *prima facie* shows that he acted as a carrier of 3000 pounds from A-16-Gursharan Singh to A-3-Harminder Singh @ Mintoo in Paris, which thereafter, was passed to one of the shooters namely A-1-Hardeep Singh for executing the conspiracy. Apart from this evidence the remaining evidence, which is relied upon by N.I.A, is of certain protected witnesses who claimed to have received threats. The evidence in respect thereof is yet to be led by the N.I.A and the said witnesses are yet to be examined by the Court. As per the Reply filed by N.I.A, it was from the disclosure made by the Appellant that the conspiracy was unravelled and the two shooters were subsequently arrested and at their instance the weapons and vehicles used in killing were recovered.

**TRIAL COURT OBSERVATIONS**

61. In the impugned order, the Trial Court has given the following findings.

- The charges were framed on 15th October, 2022 under Sections 302 read with 120B and Sections 16,17,18, 18A & 20 of the Act.
- The Trial Court cites the judgment in ***National Investigation Agency v. Zahoor Ahmad Shah Watali***[16] to record various

[16] (2019) 5 SCC 1

factors to be considered for grant of bail wherein framing of the charge raises a strong suspicion.

- In view of the framing of the charges, the threshold of crossing the conditions under Section 43D(5) of the Act are arduous. At the time when the Punjab and Haryana High Court gave the judgment, the charges had not been framed and the trial was yet to commence, which has now commenced. In ***Gurwinder Singh v. State of Punjab***[17]**,** the Supreme Court has observed that the mere delay in trial is not sufficient to grant bail.
- Before the Trial Court, no arguments on merits were addressed.
- In ***Gurwinder Singh (Supra),*** the Supreme Court holds that in UAPA cases, bail cannot be taken as a rule. In addition, the accused is a flight risk.

62. In the light of the arguments made and the record perused, it is relevant to set out Section 43D of the Act. The said provision reads as under:

> *"[**43D. Modified application of certain provisions of the Code.**--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.*
> *(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--*
> *(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and*

[17] (2024) 5 SCC 403

*(b) after the proviso, the following provisos shall be inserted, namely:--*

*"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:*

*Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.*

*(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--*

*(a) the reference in sub-section (1) thereof*

*(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";*

*(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and*

*(b) the reference in sub-section (2) thereof, to 'the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".*

*(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.*

***(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 unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.]"*

63. The Appellant has also been charged under the IPC as well for criminal conspiracy. The legal position for bail under the Act is continuously undergoing a change, depending upon the kind of offences, but the provision itself requires that the accused shall not be released on bail if the allegations are *prima facie* true.

64. Section 43D of the Act has been considered in various decisions of the Supreme Court and it would be of relevance to discuss the same. In ***Zahoor Ahmad Shah Watali (supra),*** the allegation against the accused was that he acted as a conduit for transfer of funds received from various terrorist organisations to support separatist elements in executing violent activities and promoting the secession of Jammu and Kashmir from India. On the basis of

the allegation, the accused in the said case was charged under various provisions of the Act as also IPC. After having analysed the material on record the Trial Court rejected the bail applications of the accused on the ground that the offences alleged against the accused are *prima facie* made out. The said order was reversed by the High Court of Delhi in ***Crl.A.768/2018,*** on reconsidering the materials placed on record. Upon appeal by the N.I.A, the Supreme Court while setting aside the order of the High Court the various aspects that deserve consideration for deciding a bail application. The relevant portion reads:

> *"21. Before the rival submissions, it is apposite to state the settled legal position about matters to be considered for deciding an application for bail, to with:*
> ***(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence,***
> ***(ii) the nature of gravity of the charge,***
> ***(iii) the severity of the punishment in event of conviction,***
> ***(iv) the danger of accused absconding, or fleeing if released on bail***
> ***(v) Character, behaviour, means, position and standing of accused***
> ***(vi) likelihood of offence being repeated***
> ***(vii) reasonable apprehension of witness being tampered with and***
> ***(Viii) danger of course of justice being tweeted by grant of bail***
> *…*
> *24.* ***A priori, 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 evidence. The elaborate examination or dissection of the***

> ***<u>evidence is not required to be done at this stage. 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</u>***.*"*

65. In ***Gurwinder Singh (supra)***, an appeal was filed against the order passed by the High Court of Punjab and Haryana, which upheld the Special Judge's decision denying regular bail to Gurwinder Singh and co-accused in an N.I.A case. Charges were framed against the accused under IPC, UAPA, and Arms Act. The decision was rendered in a case which arose out of an incident where two individuals were apprehended for hanging *'Khalistan'* banners. The investigation revealed a terrorist module linked to the banned organization *'Sikhs for Justice'*, with the accused allegedly receiving funds through illegal means for separatist activities and attempts to procure weapons.

66. The Trial Court in ***Gurwinder Singh (supra)*** dismissed the bail application based on reasonable grounds to believe that the accusations against the Appellant were true. Subsequent investigation reports, including a 4th supplementary chargesheet, and disclosure statements from other co-accused further implicated the Appellant in the conspiracy. The High Court, considering the seriousness of the offences and considering that the protected witnesses were to be examined also rejected the bail plea.

67. The Supreme Court, affirming the High Court's decision, also rejected the bail application due to several reasons. Firstly, despite the Appellant's counsel arguing that the Appellant's mobile phone had not been scrutinized, call detail records showed consistent communication between the Appellant and co-accused Bikramjit Singh (Accused No.3), and secondly, the

Appellant's and co-accused's disclosure statements corroborated each other, indicating their trip to Srinagar to procure weapons for terrorist activities, even though the Appellant claimed ignorance of the purpose of the trip. The review petition[18] sought against the judgement in ***Gurwinder Singh(supra)*** has also been dismissed by the court.

68. In ***Gurwinder Singh (supra)***, the Supreme Court has discussed the scope of Section 43-D (5) of the Act, and observed that, unlike in conventional bail matters, where bail is a rule, and jail is an exception, under UAPA, the intention is to make the ***'bail an exception and jail a rule'***. The Supreme Court provided clear guidelines as to the manner in which grant of bail under Section 43-D(5) of the Act is to be considered. The relevant portion of the said decision is extracted below:

> *"18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released-suggests the intention of the Legislature to make* ***bail, the exception and jail, the rule****.*
>
> *19. The Courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the Courts are merely examining if there is justification to reject bail. The*

[18] Order dated 16th July 2024 in Review Petition (crl.) No.299 of 2024

*'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in* ***Zahoor Ahmad Watali*** *has noticed this difference, where it said:*

> *"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."*

***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'.***"

69. Paragraph 21 of the judgment as extracted above, prescribes the ***'twin-prong'*** test, which was the basis applied by the Trial Court in the rejecting grant of bail in the present case. Under this test, the first consideration is whether the reasons for rejecting bail are sufficient, and whether the test for rejection was satisfied. Thereafter, as part of the second prong, the Court is required to apply the ***'tripod test'***, which is the usual test for grant or non-grant of bail i.e., '*flight risk, influencing of witnesses and tampering of evidence'*. The Court also analysed ***Zahoor Ahmad Shah Watali (supra)*** and crystallized eight propositions as laid down in ***Zahoor Ahmad Shah Watali (supra)*** as under:

> *"**Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case***
> *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 CrPC 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:*

- ***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.*
- ***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 CrPC), 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.*
- ***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.*
- ***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."*

- ***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.*
- ***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.*
- ***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.*
- ***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.*"

70. The Appellant has relied upon the recent decision of the Supreme Court in ***Sheikh Javed Iqbal (Supra)*** wherein, the Supreme Court focused on the issue of speedy trial even in cases under the UAPA. This case involved

circulation of fake currency, and the accused had been in custody for more than five years. The Supreme Court emphasised that 'speedy trial' is part of the fundamental right of any accused. If the trial continues indefinitely, bail ought to be granted, even in a case under the Act. The relevant extract from the judgment is set out below:

> *"21. It is true that the Appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.*
>
> *22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude. "*

71. In ***Sheikh Javed Iqbal (supra)***, the Supreme Court granted bail and distinguished ***Gurwinder Singh (supra)*** on the ground that the trial was underway in the latter case, and 22 witnesses had already been examined.

72. This Court had the occasion to recently consider Section 43D(5) of Act recently in ***Abdul Wahid v. National Investigation Agency***[19] case as under:

> *"21. The UAPA is a special Act, which has provisions that lay down standards to be adopted for grant of bail. Section 43-D(5) of the UAPA reads as under:*
> *"(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****."*
>
> *22.* ***A perusal of the above provision shows that the threshold for granting bail under Section 43-D(5) of UAPA is quite high; the accused person shall not be released on bail if the Court is of the opinion that there are grounds to believe that the allegations against the accused are prima facie true."***

73. Recently In ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr***[20]**,** the Supreme Court observed that the fundamental right to speedy trial cannot be denied solely based on the ground that the crime is serious. The observations of the Supreme Court are as under:

[19] 2024 SCC OnLine Del 5402
[20] 2024 SCC OnLine SC 1693

> *"19.* ***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.*"

74. Recently, in ***Manish Sisodia v. Directorate of Enforcement***[21]***,*** the Supreme Court observed as under:

> *"53. The Court further observed that, over a period of time, the trial Courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment.* ***From our experience, we can say that it appears that the trial Courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial Courts and the High Courts should recognize the principle that "bail is rule and jail is exception".***

75. In ***Manish Sisodia (supra)***, the Court observed that there are 493 witnesses and over lakhs pages of digitized documents on the unique facts of the said case. Since there was no flight risk, the Court released the Appellant on bail. The observations of the Court are set out below:

> *"56. In the present case,* ***the Appellant is having deep roots in the society. There is no possibility of him***

[21] 2024 SCC OnLine SC 1920

***fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State."***

**APPLICATION OF THE ABOVE DECISIONS TO THE FACTS**

76. Cases involving serious crimes could be of various categories, such as offences relating to laundering of money, offences related to counterfeit currency, terrorist acts, etc. Acts of Terrorism and association with banned organisations which have international networks as also acts against the nation have to be considered as a distinct and more serious category of offences. All offences covered under the UAPA cannot be treated with the same brush. Even for the purpose of grant of bail, such offences are not to be examined on the basis of mere facts of one particular FIR but on a larger canvas in the overall scheme of the multiple FIRs, if existing, against a particular accused. The damage in terms of loss of life as also the intent behind such attacks *i.e.*, to destabilise the law and order situation as well as to strike terror in the minds of people in or outside India, has to be considered for the purposes of granting bail. Terrorist activities, which have trans-national links, would also fall in a more serious and grave category of cases. Accused, who are involved in such activities, could be working overtly and covertly. The fact that they could be linked through dark networks which are easily not traceable needs to be borne in mind. Investigating agencies face enormous challenges in unearthing evidence in such cases. While speedy trial is necessary as a Constitutional prescription, in cases involving anti-national activities and that too terrorism at an international scale, long incarceration in itself ought not to lead to enlargement on bail when facts show involvement in such activities. In the case of persons associated with terrorist or unlawful

organizations having their activities spanning across countries, the consideration for grant of bail in such serious offences ought to be strictly dealt with, as prescribed in the statute(UAPA), on the benchmarks contained in Section 43D(5) of the Act.

77. In fact, the Supreme Court in ***State of NCT Delhi v. Rajkumar***[22] has distinguished cases involving terrorism and has held that bail in such cases ought to be taken in a much more serious manner. The observations of the Supreme Court are set out herein below:

> *"13. One more aspect to be considered is the nature of offence which involved terrorist activities having not only Pan India impact but also impact on other enemy States. The matter should not have been taken so lightly."*

Similarly, the Supreme Court in ***Gurwinder Singh (Supra)*** observed that cases of this nature under the Act are serious cases, and in such cases, the bail cannot be treated as a rule.

78. Without going too much into the merits, the records of these cases reveal that as per the evidence unearthed, the Appellant/accused is stated to have handed over some money to a third person, which reached the ultimate accused A-1, who is the alleged shooter in all these cases. The said handing over of money was not in India but in Paris. The evidence, *prima facie*, shows that various accused involved in these cases, were from different countries namely Italy, France and UK. Some of the accused had links in other countries as well including Canada, India and Thailand. The Appellant himself is a British passport holder and was residing in Scotland. He is said

[22] 2024 LiveLaw (SC) 10

to have travelled from United Kingdom to Paris to hand over money which ultimately was meant for the shooter. There appears to be evidence to the effect that he had links with the other accused even in the past. The Appellant, at this stage, cannot be considered to be a by-stander, who merely acted as an innocent carrier or messenger. He was clearly aware of various persons involved in the conspiracy. One of the accused i.e., Gurusharan Singh A-16, in fact, admits that the Appellant was his friend (*dost)*. As per the statements of the protected witnesses, the Appellant, appears to be having complete knowledge of the various incidents that took place and as per N.I.A it was at his instance that the actual shooters were being arrested. This is clear from a perusal of the reply of the N.I.A where it is pleaded as under:

> *"Para wise reply of the bail application –*
>
> ...
>
> **(ii) … *The Appellant was the first to be arrested on 04.11.2017. It was the Appellant who bared the entire conspiracy and it was his statement in which led to the subsequent arrest of the two shooters namely Hardeep Singh @ Shera (A-1) and Ramandeep Singh (A-2) who carried out the said killings and, on their instance, weapons of offences, vehicles used in killings were recovered.*"**

79. From the record, at this stage, there are reasonable grounds to believe that the Appellant was not an innocent person, but was *prima facie* associated with the *KLF*. He had knowledge of the *KLF* and its activities and the charges have, in fact, been framed against him under Section 302 read with 120B of IPC and Sections 16, 17, 18, 18A and 20 of the Act. The framing of charges shows that the Petitioner has a higher threshold to cross. In ***Gurwinder Singh (Supra)*** the framing of charges is held to create a strong

suspicion/presumptive opinion as to the existence of the factual ingredients constituting the offences alleged against the accused. The observations of the Supreme Court in ***Gurwinder Singh (Supra)*** are set out herein below:

> "**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 CrPC), 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*."

At this stage, there are grounds to believe that the allegations against the Appellant are *prima facie* true. At the time when the Punjab and Haryana High Court had granted interim bail to the Appellant i.e., 15th March 2022, which was not interfered with by the Supreme Court, the charges were not yet framed. The charges were framed in RC.No.25/2017 on 3rd August 2022 and in RC.No.27/2017 on 15th October 2022 respectively. As held in ***Gurwinder Singh (supra)*** the framing of charges changes the considerations of bail in such cases, as a very strong suspicion exists.

80. The Appellant has not argued in detail on merits before the Trial Court. However, before this Court, some arguments on merits were placed.

Considering the nature of the provision *i.e.*, Section 43D(5) of Act, the evidence, as also the witness statements which have been placed on record the Court is of the opinion, that, there is a high possibility of the Appellant, upon being released, extending threats to witnesses. The possibility of the Appellant again participating in activities of the *KLF* cannot be ruled out. In respect of persons involved with such organisations, even a small role played by a particular individual can have a major impact and can cause loss of human life and threaten the safety and security of the public. The Appellant, who has travelled extensively and holds a British passport, may also pose a flight risk, as he appears well connected within the *KLF*, having an international network. For the above said reasons it is clear that the Appellant fails even the **Tripod test** and thus is not eligible to be released on bail.

**CONCLUSIONS**

81. In ***Crl.A.No 493/2023, 538/2023, 539/2023, 540/2023, 541/2023,*** though the initial filing is within the period envisioned under Section 21 of the N.I.A Act 2008; reading Section 21(5) of the N.I.A Act, along with Rule 5 of Delhi High Court Rules suggests the re-filing delay of 158 days ought to be considered as a fresh filing. At this stage, as the issue relating to whether power of condonation under Section 5 of the Limitation Act can be exercised in the context of Section 21 of N.I.A Act, is currently pending adjudication before the Supreme Court in ***Crl.A. 1824 - 1826/2019*** *[State (National Investigation Agency) v. Farhan Sheikh]* and other tagged appeals, the applications seeking condonation of delay are dismissed. Consequently appeals *i.e.*, ***Crl.A.No 493/2023, 538/2023, 539/2023, 540/2023, 541/2023*** are also dismissed. All pending applications *i.e.*, ***CRL.M.A.16870/2023,***

***CRL.M.A. 17982/2023, CRL.M.A. 17983/2023, CRL.M.A. 17984/2023, CRL.M.A. 17985/2023*** are also accordingly disposed of.

82. In ***Crl.A. 569/2024 and 577/2024,*** on merits, for the reasons recorded above, the Court is not inclined to grant bail to the Appellant**.** The impugned order does not warrant any interference**.** Thus, the said appeals are accordingly dismissed.

83. Needless to add that the Trial Court ought to take urgent steps to expedite the trial. The N.I.A is also directed to lead the evidence of its witnesses including the protected witnesses on early date so as to ensure that the trial proceeds in a speedier manner.

84. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made are only for the purpose of the present appeal/bail application.

85. Copy of this judgment be sent to the learned Trial Court for necessary information and compliance.

86. Copy of this judgment be sent to the concerned Jail Superintendent.

87. Judgment be uploaded on the website of this Court forthwith.

**PRATHIBA M. SINGH**
**JUDGE**

**AMIT SHARMA**
**JUDGE**

**SEPTEMBER 18, 2024**/*dk/Arvind*