HIGH COURT OF DELHI

BENCH : HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

Date of Decision: April 29, 2024

CRL.A. 343/2022 & CRL. M.As. 20364/2022 & 722/2023

MUBEEN KADAR SHAIKH …APPELLANT

Versus

STATE OF NCT OF DELHI …RESPONDENT

Legislation:

Sections 121, 121A, 122, 123, 302, 307, 323, 427, 120B of the Indian Penal Code, 1860

Sections 3, 4, 5 of the Explosive Substances Act, 1908

Sections 16, 18, 19, 20, 23 of the Unlawful Activities (Prevention) Act, 1967

Section 66 of the Information Technology Act, 2000

Section 21(4) of the National Investigation Agency Act, 2008

Subject: Criminal appeal involving denial of bail in connection with involvement in multiple bomb blasts in Delhi, as part of the activities linked to the Indian Mujahideen terror group.

Headnotes:

Background and Arrest – Appellant Mubeen Kadar Shaikh implicated in multiple FIRs following the Delhi bomb blasts on September 13, 2008 – Arrests followed disclosures by other arrested individuals and recovery of evidence including laptops and communication equipment allegedly used in the orchestration and execution of the bomb blasts – Email sent prior to blasts claimed responsibility and threatened further violence – Initial and

subsequent arrests brought forward the “Media Cell” connection implicating the appellant [Paras 1-6, 18-23].

Bail Applications and Denials – Appellant’s multiple bail applications were denied based on the gravity of the charges, the evidence presented (including forensic reports and recoveries), and the alleged ongoing threat posed by active terror networks – Noted continuous judicial custody of over 13 years and a previous acquittal in a similar case based on similar evidence did not tilt in favor of bail due to the severe nature of the offenses and overarching conspiracies involved [Paras 7-10, 28-34].

Current Appeal – Challenging the latest bail denial, the appellant argued lack of direct evidence linking him to the conspiracies, discrepancies in evidence regarding the creation and last access times of critical emails alleged to have been sent by him – The appeal also highlighted the prolonged trial duration and the partial examination of listed witnesses [Paras 11-17, 36-43].

Court’s Analysis – Emphasized the stringent conditions for bail under the UAPA, relying on precedents that require a prima facie assessment of truthfulness in accusations in cases involving terrorism – Acknowledged the lengthy trial but pointed to the gravity and potential implications of releasing the appellant on bail [Paras 28, 37-41].

Decision and Direction – Bail denied based on comprehensive consideration of the involvement in a complex conspiracy, potential risk of absconding, influencing witnesses or committing further offenses – Directed expeditious trial proceedings, ordering the Special Court to conclude the trial with increased frequency [Paras 44-51].

Referred Cases:

- State of Kerala Vs. Raneef, (2011) 1 SCR 590
- Union of India Vs. K.A. Najeeb, SLP (Crl.) 11616 of 2019
- Mohd. Hakim Vs. State (NCT of Delhi), CRL.A. 170/2021
- Gurwinder Singh Vs. State of Punjab and Another, 2024 SCC OnLine SC 109
- NIA Vs. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1

Representing Advocates:

For Appellant: Mr. Nitya Ramakrishnan, Senior Advocate with Mr. Siddharth Sunil and Mr. Aditya Wadhwa

For Respondent: Mr. Ritesh Kumar Bahri, Additional Public Prosecutor

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal is filed on behalf of appellant under the provisions of Section 21 (4) of the National Investigation Agency, 2008 (NIA Act) seeking bail in FIR Nos. 130/2008, 166/2008, 293/2008, 418/2008, and 319/2008 registered on 13.09.2008.

2. The appellant is facing trial before the Court of Sessions for the offences punishable under Sections 121/121A/122/123/302/307/323/427/ 120-B of the Indian Penal Code, 1860, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/19/20/23 of the Unlawful Activities (Prevention) Act, 1967 and Section 66 of the Information Technology Act, 2000.

3. The factual matrix of the present case, as has been narrated in the present appeal, is that on 13.09.2008, at about 06:27 pm, a terrorist group "Indian Mujahideen" sent an e-mail from email ID I_arbi_delhi@yahoo.com to various electronic/print media of Pakistan, India and other countries including Darul Uloom Deoband, Central Waqf Council, Al Jamia Tussalafiah (Markazi Darul-Uloom Varanasi) with the heading „MESSAGE OF DEATH" and claiming intense, accurate and successive bomb attacks exactly 5 minutes from the said mail.

4. The said email also had slide containing pictures of their previous blasts in India and a PDF file claiming responsibility of present and previous serial blasts in Rajasthan and Gujarat and challenged the Indian Government that there is no shortage of explosives or lack of manpower with them and they are extremely capable to shed blood anywhere anytime in India and threatened to do whatever Indian Government could do to stop the blasts.

5. In pursuance to the serial bomb blast incidents that occurred on 13.09.2008 at different parts in Delhi, five cases were registered, i.e. FIR No.166/2008 dated 13.09.2008, under Sections 121/ 121A/122/123/302/ 307/323/427/120B of IPC, Sections 3/4/5 of Explosive Substances Act & Sections 16/18/20/23 Unlawful Activities (P) Act, 2004 & Section 66 of Information and Technology Act, at Police Station Karol Bagh, New Delhi; FIR

No.130/2008 dated 13.09.2008, under Sections 121/121A/122/123/307/323/427/120-B of IPC, Sections 3/4/5 of Explosive Substances Act & Sections 16/18/20/23 of Unlawful Activities (P) Act, 2004 and Section 66 of Information and Technology Act, was registered at Police Station Greater Kailash-I, New Delhi; FIR No.293/2008 dated 13.09.2008, under Sections 121/121A/122/123/120B of IPC, Sections 4/5 of Explosive Substances Act, Sections 16/18/20/23 of Unlawful Activities (P) Act, 2004 & Section 66 Information and Technology Act, was registered at Police Station Tilak Marg, New Delhi; FIR No.418/2008 dated 13.09.2008, under Sections 121/121A/122/123/302/307/323/427/120B of IPC, Sections 3/4/5 of Explosive Substances Act & Sections 16/18/20/23 of Unlawful Activities (P) Act, 2004 and 66 Information and Technology Act, was registered at Police Station Connaught Place, New Delhi; FIR No. 419/2008 dated 13.09.2008, under Sections 121/121A/122/123/302/307/323/427/120B of IPC, Sections 3/4/5 of Explosive Substances Act & Sections 16/18/20/23 Unlawful Activities (P) Act, 2004 and Section 66 of Information and Technology Act, was registered at Police Station Connaught Place, New Delhi.

6. The case of the prosecution is that on 23.09.2008 and 24.09.2008 some accused persons were arrested by Mumbai police in CR No. 152/2008 P.S. Crime Branch, Mumbai who disclosed about involvement of appellant with co-accused Mansoor “Asghar Peerboy, Akbar Ismail Chaudhary and Asif Basir Shaikh, all residents of Pune, Maharastra; in Delhi Bomb Blast case and revealed that “Media Cell” of Indian Mujahideen was being run by them. This led to arrest of appellant and two co-accused on 28.09.2000 from Pune by Mumbai police. Appellant was formally arrested in that case on 12.03.2009. The disclosure statement of the appellant was recorded on 30.09.2008 and two HCL Laptops Model P30PDC and B30C2D, wireless routers adapters for sending Emails, a mobile phone and a black and blue coloured bag were recovered. The recovered articles were sent to the Forensic Science Laboratories (FSL) for forensic analysis. The appellant was accordingly arrested in this case and upon completion of investigation, charge-sheet was filed on 18.12.2008 before the learned Trial Court, wherein five accused persons were arrayed. Thereafter, five supplementary chargesheets were filed against 14 accused persons. As per second supplementary charge-sheet dated 11.06.2009 his role is identical in all the charge-sheets. The prosecution cited 610 witnesses and on 31.05.2011, the prosecution evidence began.

7. The appellant moved his first bail application on 13.10.2016 before the learned Trial Court, which was rejected *vide* order dated 28.10.2016. Being aggrieved, the appellant preferred bail application on 16.03.2017 before this Court but the same was withdrawn on 27.10.2021.

8. On 25.11.2021, the appellant preferred CRL.A. 366/2021 titled Mubeen Kadar Shaikh Vs. State of NCT of Delhi under Section 21(4) of the National Investigation Agency Act, praying for setting aside of the order dated 28.10.2016 rejecting his bail. However, the same was withdrawn by the appellant *vide* order dated 28.02.2022 with liberty to file fresh bail application before the learned Trial Court.

9. According to the appellant, on 08.02.2022, he was acquitted from the trial in the case arising out of the Ahmadabad bomb blast in 2008, on the basis of substantially similar evidence as in the present case. On 04.03.2022, the appellant then filed his second bail application before the learned Trial Court in Delhi. V*ide* order dated 28.04.2022 his application was rejected holding that there is a *prima-facie* case against the appellant and that the rigours of Section 43(D)(5) of the UAPA are met with disentitling the appellant for right of bail.

10. Pursuant to dismissal of his second bail application, appellant filed application dated 12.05.2022 before the learned Trial Court seeking day-today hearing in his case which was dismissed *vide* order dated 28.05.2022. The appellant has, thus, assailed the order dated 28.04.2022 whereby his bail application has been rejected by the learned Trial Court.

11. Learned senior counsel vehemently submitted that there is no evidence relied upon by the prosecution which links appellant to the incident or provides evidence to show his links with other co-accused persons to claim his involvement in the conspiracy. It was submitted that the FSL report clearly indicates that the file “3.pdf” allegedly attached alongwith the email dated 13.09.2008 was created on 15.09.2008 and was last accessed on 30.09.2008 i.e. on the date the said recoveries were made. More so, the prosecution has also not produced evidence to show that the appellant and co-accused Mansoor Asghar Peerboy had purchased the said laptop in July, 2008. Furthermore, the cross-examination of PW-231/Deepak Vanigota has brought out glaring discrepancies in the prosecution case. The evidence and the conspiracy links relied upon by the prosecution against the appellant are weak and scattered which does not indicate the involvement of the appellant in the bomb blast.

12. During the course of hearing, learned senior counsel appearing on behalf of the appellant submitted that out of 610 witnesses cited by the prosecution, only 260 witnesses have been examined till date and trial has prolonged for 14 years. Reliance was placed upon decision in ***State of Kerala Vs. Raneef*** (2011) 1 SCR 590, to submit that if the trial continues for several years, the accused cannot be denied bail. Further reliance was also placed upon Supreme Court‟s decision in ***Union of India Vs. K.A. Najeeb (SLP (Crl.) 11616 of 2019*** and a decision of this Court dated 06.10.2021 in CRL.A. 170/2021 titled ***Mohd. Hakim Vs. State (NCT of Delhi)*** and in support of above contention.

13. Learned senior counsel for appellant next submitted that appellant has spent 13 years of continuous judicial incarceration and he has already been acquitted by the Ahmadabad Sessions Court and there is no occasion for him to tamper with the evidence or influence the witnesses, therefore, settingaside of impugned order dated 28.04.2022 is sought.

14. The respondent/State, in its Status Report dated 18.08.2022, has opposed the release of the appellant on bail, stating that there is sufficient material against him and other associates, who hatched conspiracy of serial blasts in Delhi, which resulted in explosions causing killing of 26 people and injury to 135 people.

15. It is averred in the status report dated 18.08.2022 that the main conspirators of Delhi bomb blast namely Riyaz. Bhatkal and Iqbal Bhatkal of banned terrorist outfit are still absconding and are reportedly hiding in Pakistan with other conspirators, namely, Dr. Shahnawaz and Amir Raza Khan and if the appellant is released on bail, he is likely to abscond or cause the same offences again with their assistance. It is averred that substantial prosecution witnesses have been examined and the appellant is facing trial before Gujarat and Mumbai Courts for the similar offences although acquitted by Sessions Court at Gujarat.

16. During the course of the hearing, learned Additional Public Prosecutor appearing on behalf of the respondent/State submitted that the trial of the case is moving forward on a fast pace and hearing in the present case is being held on every working Saturday to expedite its proceedings.

17. Learned Addl. Public Prosecutor for State relied upon decision of Hon‟ble Supreme Court in ***Gurwinder Singh Vs. State of Punjab and Another*** 2024 SCC OnLine SC 109 to submit that mere delay in trial cannot be used as a ground to grant bail, especially in cases pertaining to grave offences.

18. Learned Addl. Public Prosecutor further submitted that as per prosecution case, on receipt of specific inputs, the Special Cell, Delhi on 19.09.2008 conducted a raid at flat No. 108 of building L-18, Batla House, Delhi to trace the suspects involved in serial bomb blasts. During this raid, a shootout occurred between the inmates and team of Special Cell in which Inspector Mohan Chand Sharma, HC Balwant Singh & two inmates sustained bullet injuries while two inmates managed to escape from the flat, by firing on the police party, one unarmed person, namely, **Mohd Saif** was apprehended from the washroom of the flat who revealed the names of the escapee-accused as Ariz @ Junaid (arrested and convicted for death sentence in this shootout case) and Shahzad @ Pappu (arrested & convicted for life in this shootout case) and injured accused persons as Mohd. Atif Amin @ Bashir & Mohd Sajid @ Pankaj Sharma, all resident of Azamgarh U.P. During cursory search of flat no. 108, L-18 Batla House, one AK series rifle alongwith two magazines containing 30 live rounds each, two pistols of 30 bore with fire and live cartridges and various articles used for assembling bombs etc. were recovered.

19. During further interrogation at the spot, the surrendered accused- Mohd Saif stated that „Indian Mujahideen" had one "MEDIA GROUP" which was responsible for sending e-mails before blasts to Electronic & Print media. During further investigation, the group „Indian Mujahideen" was found sending email of 26.07.2008 and 23.08.2008 related to Gujarat Blasts and 13.09.2008 of Delhi blasts from Mumbai. In this regard, the Crime Branch of Mumbai Police lodged a CR No. 152/2008 dated 23.09.2008 U/s 295A/505 (2)/507/506 IPC r/w 120B/121/122/286 IPC r/w 2/25 Arms Act r/w Sections 6/9 B Explosive Act, 1884 r/w Sections 4/5 of Explosive Substances Act, Sections 10/13 of Unlawful Activities (P) Act, 1967, Section 66 of IT Act, 2000 r/w Section 3 (i) (ii), 3 (2), 3 (4) of MCOCA Act at Police Station Crime Branch, Mumbai to apprehend the criminals involved in these terror incidents.

20. On 24.09.2008, Mumbai Police arrested an accused Sadiq Israr Shaikh r/o Mumbai who was involved in 13./09.2008 Delhi serial blasts. During interrogation, **Sadiq Israr Shaikh** revealed about the Media Cell led by accused **Mansoor Asghar Peerbhoy** assisted by the **appellant-Mubeen Kadar Shaikh** and other co-accused persons, namely, Akbar Ismail Choudhary & Asif Basir Shaikh, who were responsible for sending email on 13.09.2008 to Electronic and Print Media before blasts in Delhi.

21. Subsequently, on the basis of several leads provided by Sadiq Israr Shaikh to Mumbai Police, **the appellant - Mubeen Kadar Shaikh was arrested on 28.09.2008 from Maharashtra** and two HCL laptops Model P-30 PDC & B-30 C2D, spy finder, R.F detector etc. relating to 13.09.2008 email of Delhi serial Blasts were recovered.

22. On 12.03.2009, the appellant Mubeen Kadar Shaikh was formally arrested by Special Cell in the present case. Learned Addl. Public Prosecutor for State pointed out that the appellant in his disclosure statement revealed regarding his involvement in 26.07.2008 serial blasts at Ahemdabad and Surat and also serial blasts in Delhi on 13.09.2008. Further revealed to be an active member of "Media Group" of Indian Mujahidin and admitted to have sent the e-mail to electronic and print media on 13.09.2008 of Delhi blasts with the help of his associates by hacking the Wi-Fi system of a company in Mumbai.

23. Further submitted that appellant was an active member of Media Cell of terrorist outfit Indian Mujahideen led by co-accused Mansoor Asghar Peerbhoy and they had sent the email to Electronic and Print media on 13.09.2008 by hacking the Wi-Fi system of M/s Kamran Power Pvt. Ltd in Mumbai of Delhi Blasts. Two laptops used by the appellant for preparing and sending threatening email of 13.09.2008 Delhi Blast were recovered from his possession by the Mumbai Police.

24. It was also submitted that after arrest in present case, the appellant pointed out the shop "Modern Technology" in Mumbai from where he had purchased the laptop which was used for sending email of 13.9.2008 Delhi blasts. The appellant also pointed out the place from where they had hacked the Wi-Fi of Kamran power limited and sent the alleged email of Delhi Serial blast 13.09.2008. In confessional statements under Section 18 of MCOC Act before Mumbai Police, the appellant admitted that he was the member of Media Cell of terror outfit "Indian Mujahideen" and involved in sending email of 13.09.2008 Delhi serial Blasts.

25. Learned Addl. Public Prosecutor for State also submitted that the alleged email ID al_arbi_delhi@yahoo.com was found generated from an IP-59.184.129.2 of MTNL Mumbai, which was allotted to M/s Kamran Power Control Pvt. Limited, 201202, Eric House, 16th Road, Chembur Mumbai. The alleged sender of this email was found hacking the "Wi-Fi" of said company to send email as warning for serial blasts in Delhi. Appellant was using mobile number 9970273404 up to the day of his arrest by Mumbai Police.

26. Learned Addl. Public Prosecutor for State submitted that evidence of PW226 reveal that both the e-mails were sent from the laptop recovered from the appellant and co-accused Mansoor Asghar Peerboy and the forensic examination report EX. PW207/E does not support the case of the appellant. Also submitted that the decision in ***K.A. Najeeb (Supra)*** is distinguishable on facts, where the Charge was framed after 05 years of arrest of accused and accused charged for the offences wherein the maximum punishment prescribed was eight years and on such parameters, the bail was granted to the accused. Further submitted that decision in ***K.A. Najeeb (Supra)*** does not in any manner sets aside the ratio of law laid down by the Hon"ble Supreme Court in ***NIA Vs. Zahoor Ahmad Shah Watali*** (2019) 5 SCC 1 which has spelt out rigors of Sections 16,18 and 20 of UAPA which has highest punishment of death. Thus, the present appeal deserves to be dismissed.

27. **The submissions advanced by learned counsel representing both the sides were heard at length and the impugned order as well as material placed before this Court has been carefully perused.**

28. It has already been held in a catena of decisions that grant of bail, though discretionary in nature, yet such exercise cannot be arbitrary and in heinous nature of crime warrant more caution. Also held that at the stage of grant of bail, a detailed examination of evidence and elaborate documentation of the merit of the case, need not be undertaken, however, the Court while granting or refusing bail are required to give reasons for arriving at such decision.

29. On the aspect of grant of bail in special offences, the Hon"ble Supreme Court in ***NIA Vs. Zahoor Ahmad Shah Watali*** (2019) 5 SCC 1 has observed and held as under :-

> ***"23.*** *By virtue of the proviso to sub-section (5)****, it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise****. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably,* ***under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic***

Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence*. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true.* ***By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted.*** *In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus : (SCC pp. 316-17)*

"36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once

the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. … What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea."

And again in paras 44 to 48, the Court observed : (SCC pp. 318-20)

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an

accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that ***for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail****.*

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. ***However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.***

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537-38, para 18) „18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)

“8. … Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.”

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent."

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***26.** Be it noted that 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. To wit, soon after the arrest of the*

accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, 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."

30. In the present case, charge sheet was filed before the learned Trial Court on 20.10.2010 and charge was framed on 05.02.2011 against all the accused persons involved in serial blast cases. The learned Trial Court while passing order on framing of Charge dated 05.02.201 has noted that during investigation of serial blasts in Gujarat, Delhi, Mumbai and Ahmadabad, on the basis of specific leads, appellant- **Mubin Kadar Shaikh** was arrested from Pune, Maharashtra on 28.09.2008. The text of the alleged threatening email was handed over to the appellant herein and his co-accused Mansoor Agha Khan Peerboy, in a pen drive at Pune and they both made grammatical corrections in the said e-mail draft. Thereafter, on the same day, appellant with co-accused Mansoor Agha Khan Peerboy and Riaz Batkal went to Mumbai in Maruti Esteem Car driven by Mohd. Akbar Ismile Choudhary and at about 06:00 PM they found unsecured *wifi* connection. Mansoor Agha Khan Peerboy connected the wireless laptop and created the e-mail ID ID al_arbi_delhi@yahoo.com and attached the PDF file and slide the initial and gave the subject *"Message of Death".* At about 06:25 PM the unsecured *wifi* connection was hacked and the e-mail was sent to various electronic and

print media through unsecured *wifi* connection of M/S Kamran Power Control Private Limited, Mumbai.

31. The learned Trial Court while specifically noting the role of the appellant observed as under:-

"17.

x. The material on record against accused Mubin Kadar Shaikh (A-10) includes besides other articles recovery of two HCL Laptops P-30 and B30., wireless broadband router, two hard disks and one mobile etc. All these articles were also sent for analysis to Directorate of Forensic Science Laboratory at Mumbai and the result of analysis shows that HCL Laptop P-30 contained three separate files (i) THE RISE OF JIHAD, REVENGE-

OF GUJRAT, RELEASEED BY INDIAN MUJAHIDDIN IN THE LAND OF HIIND (ii) THE CARS THAT DEVASTED YOU THE TRUTH REVEALED. RELEASED BY INDIAN MUJAHIDDIN IN THE LAND OF HIND AND (iii) EY FOR AN EYE THE DUST WILL NEVER SETTLE DOWN ELEASED BY INDIAN MUJAHIDDIN IN THE LAND OF HIND". This laptop was also found containing photographs of people killed in bomb blasts with sentences "Message of Death", "Your Destiny" and "Your Blood etc". The other HCL Laptop B-30 shows presence of secure file erasing and disk wiping software and traces of secure erasing of files and disk wiping.

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52. With respect to accused Mubin Kadar Sheikh (A-10) the material on record includes recovery of 02 HCL Laptops-Model P30 and B30. As per FSL Result laptop P30 was found containing three PDF documents including terror e-mail dated 13.09.2008 besides photographs of people killed in the bomb blasts. The HCL Laptop B30 showed presence of secure file erasing and disk wiping software and traces of secure erasing of 3 PDF files and disk wiping on 13.09.2008. Though Ld. Defence counsel argued that as per FSL result the incriminating e-mail was found written in the laptop on 15.09.2008 i.e. after

the date of incident, but this argument is contrary to the FSL result abut data of laptop P-30 according to which the date and time of last written PDF file-3 PDF, which is the terror mail dated 13.09.2008, is 1.28.32 AM on 13.09.2008, which was received by various Electronic and Print Media by e-mail at 06.27 pm on 13.09.2008. In view of the FSL Result about date of an time creation of this file in the laptop of A-10, there is no merit in the argument of defence counsel because the material on record prima facie shows that the terror e-mail dated 13.09.2008 was created on the intervening night of 12-13/08.2009 on the HCL laptop P-30 recovered from the possession of A-10 and this strongly indicates his involvement in creating and sending the terror e-mail in association with A-9 and others.

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66. .....Therefore, in my opinion, prima facie offences punishable under Section 121-A/121 of the Indian Penal Code are made out against allt he accused persons namely Mohd. Shakeel (A-1), Mohd. Saif (A-2), Zeeshan Ahmad (A-3), Zia-Ur-Rahman (A-4), Sqquib Nishar (A-5), Mohd. Sadique (A-6), Kayamudding Kapadia (A-7), Mohd. Hakim (A-8), Mohd. Mansoor Ashgar Peerbhoy (A-9), ***Mubin Kadar Shaikh (A-10****, Asif Bhashirudding Shaikh (A11), Mohd. Akbar Ismail Choudhary (A-12) and*
Shahjad @ Pappu (A-13).""

32. While noting the role of the appellant, the learned Trial Court held that the accused persons have committed offence punishable under Sections 302/307/427 read with Section 120-B IPC; under Sections 3 and 4 of the Explosive Substances Act read with Section 120B IPC; under Sections 18,16 and 20 of the Unlawful Activities (Prevention) Act, 1967 and under The Information and Technology Act, 2000 and directed that these accused shall be tried together by clubbing all the FIRs, while FIR No. 166/2008 shall be taken as the lead case.

33. Pursuant to framing of Charge, the prosecution sought to examine 610 witnesses. While disposing of the second bail application filed by the appellant, the learned Trial Court vide impugned order dated 28.04.2022 took

note of the allegations raised against the appellant by the prosecution and observed that 260 witnesses had already been examined, which according to prosecution had supported its case. The learned Trial Court further observed that even though appellant-accused had asserted that the witnesses so far examined had failed to prove the prosecution case yet the role of the appellant cannot be viewed in isolation. Further observed that prosecution witness PW-226, in his testimony has proved recovery of laptops, hard discs, *wifi* hot spot finder, RF signal detector, net connector, spy finder camera etc. which were recovered at the instance of co-accused Mansoor Peerbhoy. Further, ACP Tukaram Duraphe (PW-226) has testified the CA reports which reveal that both the e-mails were sent through the laptops recovered from the Mubin Kadar Sheikh and Mansoor Asghar Peerbhoy and he had found a secure file erasing and disk wiping software present in one of the recovered laptops. Also, another witness (PW-207) in his evidence has stated that upon forensic analysis of the recovered laptops, three PDF files were found which matched with the reference documents given with the case file i.e. the e-mails claiming responsibility of the blasts. The analysis also revealed about the date of over writing / wiping activity on 13.09.2008 at about 06:48 PM soon after the serial bomb blast. The learned Trial Court also took note of the testimony of PW- 231 who stated that appellant with co-accused Mansoor Asghar Peerbhoy had purchased the laptops in question in July, 2008.

34. The learned Trial Court, considering the nature and seriousness of allegations and statutory bar under Section 43 D(5) of UAPA, dismissed appellant"s bail application, while ensuring to take up the trial on every Saturday for expeditious disposal.

35. Relevantly, the grounds of bail raised by the appellant before this Court are not distinct than the one raised before the learned Trial Court. The appellant has sought parity with co-accused Mohd. Hakim who has been granted bail by this Court vide order dated 06.10.2021. Pertinently, in the case of ***Mohd. Hakim (Supra)***, this Court has taken note of his role by observing that *a limited role has been ascribed to the appellant in the offences alleged, namely, that he had carried a certain quantity of cycle ballbearings from Lucknow to Delhi, which, according to the allegations, were subsequently used to make Improvised Explosive Devices (IEDs), which were employed in the series of bomb blasts that occurred in Delhi in 2008*. While observing so, the Court held that *once charges under the provisions of UAPA have been framed against the appellant, the reasonable grounds to*

believe that the accusations against the accused are prima facie true, does not arise; which finding of learned Trial Court has not been challenged before this Court and so, the bar engrafted in the proviso to Section 43- D(5), as expatiated upon by the Hon'ble Supreme Court in Watali (supra), would operate.

36. The Hon'ble Supreme Court in ***Watali (Supra)***, in an appeal preferred by the NIA against the order and judgment of the High Court, whereby the order rejecting bail to the accused of committing offences under UAPA passed by the Trial Court, was reversed and observed that *the High Court did not appreciate the material which found favour with the Designated Court to record its opinion that there are reasonable grounds for believing that the accusation against the respondent is prima facie true and that the High Court ought to have taken into account the totality of the materials/evidences which depicted the involvement of the respondent in the commission of the stated offences and being a member of a larger conspiracy*. The Hon'ble Supreme Court further observed and held as under:-

> ***53.*** *……. The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. The High Court clearly overlooked the settled legal position that, at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true. Indeed, in the present case, we are not called upon to consider the prayer for cancellation of bail as such but to examine the correctness of the approach of the High Court in granting bail to the accused despite the materials and evidence indicating that accusations made against him are prima facie true."*

37. Thus, the ratio of law laid by Hon'ble Supreme Court in ***Watali (Supra)*** is that for grant and non-grant of bail, the elaborate examination or dissection of the evidence in not required and the Court is expected to merely record a finding on the basis of broad probabilities.

38. The appellant has placed reliance upon decision in ***K.A. Najeeb (Supra)*** wherein the appeal preferred by the appellant- Union of India against the order passed by the High Court of Kerala granting bail to accused facing

trial for offences under Explosive Substances Act, 1908; UAPA and provisions of IPC, was rejected by the Hon"ble Supreme Court observing as under:-

*"**17.** It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

39. In ***K.A. Najeeb (Supra)*** the facts were little different. In that case, concerned accused had earlier absconded and the trial proceeded against his other co-accused who were eventually sentenced to imprisonment for term, not exceeding eight years. The accused therein had already served undertrial incarceration for more than five years and there was no likelihood of completion of trial in near future, bail was granted to him.

40. This Court in ***Mohd. Hakim (Supra)*** has categorically observed that the decision of the Hon"ble Supreme Court in ***K.A. Najeeb (Supra)*** does not overrule its decision in ***Watali (Supra)***, and these two verdicts lay down two different approaches for considering the matter of bail in cases where offences under the UAPA are alleged.

41. There is no dispute to the settled proposition of law that at the time of grant or refusal of bail, each case has to be seen on its own facts and the role of accused has to be considered individually, especially in cases where a larger conspiracy is involved.

42. The time stamps of the serial bomb blasts throughout Delhi and the warning Email of the blasts sent by the „Media Group" of the terror outfit

„Indian Mujahideen" to electronic and print media in India and abroad, including Pakistan, has been given by the prosecution, which is as under:-

S.No.	*Event/Location*	*Time stamp*	*Remarks*
a.	*Blast at Karol Bagh*	*17:55 hrs.*	*- One IED was used in this blast. -Accused Mohd. Shakeel disclosed that*
			he was directed to fix the battery in the bomb between 6 and 6.15 PM as the scheduled time for the bomb blast was 6:35 PM. However, Accused Mohd. Shakeel inadvertently fixed the battery before 6 PM, which led to the explosion earlier than scheduled and also led to recovery of live bombs from other places.

			-The Disclosure Statement of Accused Mohd. Shakeel is yet to be exhibited in evidence. The same is enclosed herewith as Annexure 1.
b.	Warning Email sent to media houses	18:26:58 hrs. (05:56:26-0700 PDT Pacific Daylight Time)	- The Email had two attachments, viz. one PDF file namely“3.pdf” and one Video Clip namely “msg.wmv”. - The Email and its true typed copy is enclosed herewith as Annexure 2. - A print out of the PDF file namely

			"3.pdf" is already enclosed as Annexure A-5 (Pg. 46-59) with the Appeal.
c.	*Blasts at Greater Kailash*	*18:30 hrs*	*Two IEDs were used to carry out two blasts at separate locations in Greater Kailash.*
d.	*Blasts at Central Park, Connaught Place*	*18:30 hrs*	*Five IEDs were planted and Two live IEDs out of planted five were recovered.*
e.	*Blast at Barakhamba Road, Connaught Place*		
f.	*IED recovered at Children"s Park, India Gate, New Delhi*	*18:35 hrs*	*One live IED was recovered.*

43. As per prosecution, upon forensic analysis of laptops and other recovered articles, the following PDF files and one video, were recovered:-

"(a) On Forensic examination of the first recovered laptop (model P-30 PDC), the following PDF files and one Video Clip were recovered:

i. "1.pdf": It pertains to email of 26.07.2008 (Gujarat serial blasts). ii. "2.pdf": It pertains to email of 23.08.2008, claiming further responsibility of Gujarat serial blasts.

iii. "3.pdf" and "msg.wmv": This PDF file and Video clip pertain to 13.09.2008 (Delhi Serial Blasts). The PDF file contains the threat/warning of 9 serial blasts in Delhi and video clip contains the photographs of people killed in the previous Serial Bomb Blasts. It pertinent to mention herewith that 9 IEDs were used in 13/09/2008 Delhi Serial Blasts in which 6 IEDs were exploded and 3 IEDs were recovered live.

(b) On Forensic examination of the second recovered laptop (B-30 C2D), the following evidences were revealed:
i. Secure file erasing and disk wiping software namely "STELLER" was found and its logs were recovered. ii. These logs (Ex. PW-207/G) were self-generated by "STELLER" on 13.09.2008 at 18.48 hrs after secure erasing of files. iii. The study of these logs reveals that the entire disk including the PDF file namely "3.pdf" and video clip namely "msg.wmv" pertaining to the Delhi Serial Blasts as well as the other PDF files namely "1.pdf" and "2.pdf" pertaining to the Gujarat Serial Blasts were wiped from this laptop on 13.09.2008 at 18.48 hrs., shortly after the sending of the email dated 13.09.2008 at 18.26.58 hrs. (c) Further, in the said forensic examination, the time stamp of the PDF file namely"3.pdf"was found to be as follows:

S.No.	*Events*	*Time stamp*
1.	*Last written means the file was opened contents are changed and saved.*	*13.09.2008 at 01.28.32 AM*
2.	*File Created means the time stamp when the particular file was created on particular location or folder in the hard disk.*	*15.09.2008 at 07.39.52 PM*

3.	*Entry Modified means the operating system modifies the record entry in its index for the particular file.*	*15.09.2008 at 08.14.33 PM*
4.	*Last Accessed means the last time on which the file in question was opened and closed by the user.*	*30.09.2008 at 02.13.50 PM*

44. Further, the FSL Expert, namely, namely Mr. Kiran Deokate (PW207) has deposed that Contents of the PDF files found in the first recovered laptop have matched with the „reference documents" given with the case file and the files which were retrieved from the first recovered laptop (PDF and video clip) were exactly the same as those that found in the logs of the wiping software "STELLER".

45. The appellant before this Court was accused in three cases, two of which pertained to bomb blasts in Ahmadabad and Delhi for the serial bomb blasts which took place in the year 2008. The third case was filed in Mumbai for the offences under UAPA, MCOCA, IPC and Arms Act. The appellant was acquitted pursuant to trial at Ahmadabad Court.

46. On conclusion of the arguments, the appeal was reserved for orders, however, the learned counsel appearing on behalf of the appellant placed copy of order dated 23.01.2024 passed by the High Court of Bombay in CRL.A. 531/2022, wherein he (accused no. 8) has been granted bail in an appeal preferred under Section 21 of the NIA Act.

47. The Hon"ble Supreme Court in ***Gurwinder Singh (Supra)***, wherein the appellant had challenged dismissal of his bail for the offences under Sections 124A/153A/153B and 120B IPC as well as Sections 17/18/19 of UAPA read with Sections 25 and 54 of the Arms Act, upheld the decision of the High Court in view of the material available on record which, *inter alia*,

indicated his involvement with banned Terrorist Organisation. The Supreme Court observed and held as under:-

*"**28.** The conventional idea in bail jurisprudence visà-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.

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46. ..... As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted."

48. No doubt, the guilt of accused is required to be proved during trial, however, in light of the fact that appellant, who is admittedly a qualified Computer Engineer, and has been alleged to be an active member of Media Cell of Indian Mujahideen and as a part of large conspiracy, had prepared the text and content of terror mail sent in the name of Indian Mujahideen and for this purpose, he had visited Mumbai and purchased laptops; he has been identified by the shop owner (PW-231) from where the said laptops were purchased and used for sending the warning email and besides the aforesaid

two laptops, a spy finder, R.F detector were recovered from his possession. Also, as per testimony of PW-207, the PDF files retrieved from recovered laptops, it was emphasized on behalf of State connecting the appellant in 2008 serial blasts. Having considered the aforesaid, this Court finds that appellant does not deserve to be released on bail.

49. However, this Court is conscious that speedy trial is appellant‟s right. The Hon‟ble Supreme Court in ***Shaheen Welfare Association Vs. Union of India*** while emphasizing the need for speedy trial in offences under the Special Act, has observed as under:-

> ***"17.*** *When stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."*

50. This Court prior to dictating of the present appeal raised a query to learned Additional Public Prosecutor for State with regard to specific stage of the trial. We are informed that total 497 witnesses were cited, out of which 198 witnesses were dropped and so far 282 witnesses have already been examined and only 17 witnesses are left to be examined. We are informed that the learned Special Court is conducting proceedings on every Saturday so as to expedite conclusion of trial, which is already at its fag end. However, in the peculiar facts of the present case and keeping in view that the appellant is behind bars since the 2008, we direct the concerned Special Court to conclude the trial in the present matter by taking it up at least twice a week.

51. In view of our afore-noted discussion, the present appeal and pending application are hereby dismissed. We, however, add that the observations made hereinabove are tentative in nature and learned Trial Court shall not take the same as final expression on the merits of the case.