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Evolution of UAPA Bail Jurisprudence: Watali to Andrabi

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*In Indian Criminal law, the evolution of bail jurisprudence under the Unlawful Activities (Prevention) Act, 1967, reflects one of the most crucial constitutional debates with national security imperatives on one hand and individual liberty on the other. Section 43D(5)¹ sets an exceptionally high bar for pre-trial release whenever the state's allegations appear "prima facie true". If the court thinks that there are reasonable grounds for believing the accusation against such a person is prima facie true without venturing deep into the merits of the case, bail will be denied – departing from day-to-day criminal law principles. Using doctrinal and case-law analysis, the paper reflects upon the doctrinal trajectory from the prosecution-centric approach in *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019)² to the rights-affirming correction in *Union of India v K.A. Najeeb* (2021)³, with the central argument being how statutory bars must be accommodative of constitutional principles. The paper ventures into the role of *Syed Iftikhar Andrabi v National Investigation Agency* (2026)⁴ in restoring larger-bench discipline under Article 141⁵ and reaffirming the non-negotiable supremacy of Article 21. The paper argues that prolonged pre-trial incarceration cannot be constitutionally sustainable under anti-terror security laws and that courts must act as guardians, protecting the security of personal*

¹ Unlawful Activities (Prevention) Act 1967, s 43D(5)

² *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) 5 SCC 1

³ *Union of India v KA Najeeb* (2021) 3 SCC 713

⁴ *Syed Iftikhar Andrabi v National Investigation Agency, Jammu* (2026) INSC 503

⁵ Constitution of India 1950, art 141

liberty. The paper further analyses *Gurwinder Singh v State of Punjab (2024)*⁶ and *Gulfisha Fatima v State (Govt. of NCT of Delhi) (2026)*,⁷ which narrowed the practical scope of *Najeeb*, raising questions regarding judicial discipline and the binding nature of larger bench precedents. Beyond judicial developments, the paper examines the constitutional implications of post-2019 amendments, arguing that expansions of executive authority raise concerns of federalism. By evaluating these shifting judicial standpoints and statutory changes, the paper argues that procedural delays and pre-trial incarceration are a *de facto* punishment before conviction, which goes against the established rule of law. The paper argues that post-*Najeeb* jurisprudence has created a doctrinal inconsistency whereby constitutional courts acknowledge Article 21 as overriding statutory restrictions while simultaneously permitting prolonged incarceration under Section 43D(5).

Keywords: *unlawful activities, bail, trial, prima facie true.*

INTRODUCTION

The maintenance of the fragile balance between national security and individual liberty remains a defining challenge in liberal constitutional democracies. Can an individual be deprived of liberty for years before conviction merely because the State alleges involvement in terrorist activity? The answer to this question has profound implications not only for anti-terror legislation but also for the constitutional meaning of personal liberty, the presumption of innocence, and the rule of law.

The constitutional debate regarding the UAPA bail law does not stem from the validity of countering terrorism. Instead, it pertains to the constraints that constitutional protections place on the techniques used to attain that goal. Although the State has a strong interest in safeguarding national security, constitutional democracy mandates that even exceptional powers must be accountable to judicial review and basic rights. The difficulty, then, is in harmonising collective security with the constitutional dedication to personal freedom.

This strain has emerged via a range of court rulings that have taken significantly different stances regarding the connection between legal limitations and constitutional safeguards. The limiting framework created in *National Investigation Agency v Zahoor Ahmad Shah Watali (2019)* greatly reduced the extent of judicial intervention during the bail process. Consequently, Union of India

⁶ *Gurwinder Singh v State of Punjab (2024)* SCC OnLine SC 109

⁷ *Gulfisha Fatima v State (Govt of NCT of Delhi) (2026)* INSC 2

v K.A. Najeeb (2021) acknowledged that extended detention and postponed trials could warrant constitutional relief despite legal restrictions. Recent rulings have shown increasing ambiguity about the extent of this principle, culminating in the Supreme Court's judgment in *Syed Iftikhar Andrabi v National Investigation Agency* (2026).

This paper contends that the development of UAPA bail case law illustrates a larger constitutional conflict regarding the effectiveness of statutory anti-terrorism provisions in turning pre-trial detention into a form of punishment. It argues that Article 21 places significant constraints on Section 43D(5)'s application, and that *Andrabi* serves as a crucial reaffirmation of constitutional authority, judicial restraint, and the notion that freedom cannot be endlessly relegated to unverified claims. Consequently, the discussion regarding UAPA bail is not simply an issue of legal interpretation; it fundamentally represents a struggle over the constitutional limits of governmental authority.

STATUTORY AND CONSTITUTIONAL FRAMEWORK OF UAPA BAIL

Evolution of the Statute: The UAPA has increasingly shifted from being an anti-secessionist law to an expansive anti-terror law. Introduced in 1967, it was primarily conceptualised for the declaration of secessionist associations as unlawful, just after the peasants' uprising in Naxalbari, West Bengal. If the Central Government thought that any association had become unlawful or was unlawful, it could, by notification in the Official Gazette, declare the same as unlawful. Organisations like the CPI (Maoist), Sikhs for Justice and the LTTE were declared unlawful under this very legal apparatus. It was subsequently amended in 2004, 2008, 2012 and 2019 to absorb the legal vacuums left behind by the repeal of TADA and POTA.⁸

Successive legislative amendments continually armed the state with extraordinary enforcement powers. This expansion culminated in the 2019 amendments, which engineered radical structural changes. Before 2019, the Central Government could only designate an 'organisation' as a terrorist organisation if it committed or participated in acts of terrorism or was involved in terrorism. Post 2019 changes empowered the Government to designate 'individuals' as terrorists

⁸ Unlawful Activities (Prevention) Act 1967, ss 3–4; Unlawful Activities (Prevention) Amendment Act 2004; Unlawful Activities (Prevention) Amendment Act 2008; Unlawful Activities (Prevention) Amendment Act 2012; Unlawful Activities (Prevention) Amendment Act 2019; Anil Kalhan et al., 'COLONIAL CONTINUITIES: HUMAN RIGHTS, TERRORISM, AND SECURITY LAWS IN INDIA' (2006) 20(1) *Columbia Journal of Asian Law* 93, 138–145 <https://www.nycbar.org/pdf/ABCNY_India_Report.pdf> accessed 05 May 2026

on the same grounds. The Lok Sabha and Rajya Sabha debates on this law brought forward the reasoning – same individuals keep on creating new organisations under parent umbrella organisations to flout sanctions or legal proceedings. But the bigger question is the mark left on the accused person’s reputation as a result of prolonged incarceration without even undergoing a trial. This creates a direct conflict with Article 21 as the right to Reputation is an intrinsic part of the same, as recognised by *Subramanian Swamy v Union of India* (2016).⁹

Before 2019, an investigating officer was required to obtain prior approval of the Director General of Police of the respective State to seize properties connected with terrorism. Post 2019, if an investigation is carried out by NIA, then approval of the Director General of NIA is required. This provision is critiqued for promoting heavy centralisation of powers and impacting India’s delicate federal balance – a part of the basic structure of the constitution. Finally, procedural gates were lowered by permitting officers of the rank of Inspector and above to conduct investigations, down-ranking the previous statutory mandate requiring a Deputy Superintendent of Police.¹⁰

Section 43D(5): The Statutory Bail Bar: A defining feature of bail jurisprudence transformation is Section 43D (5), which established one of the most restrictive bail regimes of India. Unlike the ordinary Code of Criminal Procedure, where courts assess factors such as flight risk, witness intimidation or interference with investigation, this provision asks courts to evaluate the bail proceedings at face value and admit them if they are ‘prima facie true.’ Justice V Krishna Iyer’s renowned ‘Bail is a norm; Jail is an exception’ is put on the back burner, and bail is denied if there are reasonable grounds to believe that the accusations made are prima facie true.¹¹ The burden of proof in this law is on the accused, just like that of PMLA cases, and there are no prescribed timelines for supplementary investigations. By restricting courts from testing the credibility of state evidence at the bail stage, the provision forces the judiciary to treat unproven state narratives as provisionally infallible. The practical significance of the provision lies in its tendency to shift the balance away from liberty and towards preventive detention, often at a stage where allegations remain untested through trial.

⁹ *Subramanian Swamy v Union of India, Ministry of Law and Ors* (2016) 7 SCC 221

¹⁰ Unlawful Activities (Prevention) Amendment Act 2019, s 4

¹¹ *Gudikanti Narasimhulu and Ors v Public Prosecutor, High Court of Andhra Pradesh* (1978) 1 SCC 240 [16]; Unlawful Activities (Prevention) Act 1967, s 43D(5)

Constitutional Safeguards: Article 21 guarantees that no person shall be deprived of personal liberty except according to a just, fair, and reasonable procedure established by law. This right comes with speedy trial (*Hussainara Khatoon v State of Bihar (1979)*),¹² procedural fairness, right to reputation and protection against any form of arbitrary detention. Following *Maneka Gandhi v Union of India (1978)*,¹³ Personal liberty has been given a broad interpretation, even when restrictions are authorised by the State. While Section 43D(5) upends the bar for granting bail, it provides no reasonable safeguards against excessive delay. As a result, restrictions upon liberty operate immediately, but adjudication of guilt is stalled for years. This risks punitive detention without any conviction.

The operation of Section 43D(5) also raises concerns regarding the presumption of innocence, a foundational principle of criminal jurisprudence. By requiring courts to assess whether accusations are prima facie true while limiting scrutiny of prosecution material, the provision often places significant weight on untested allegations at the pre-trial stage.

Statutory restrictions, however stringent, cannot entirely exclude constitutional scrutiny where prolonged incarceration threatens liberty and fair trial guarantees. The constitutional controversy surrounding UAPA bail, therefore, extends beyond questions of legislative policy and enters the domain of constitutional supremacy. The central issue is whether exceptional anti-terror measures can operate consistently with the constitutional commitment to liberty, fairness and the rule of law.

The foregoing discussion proves that UAPA is not just any other legislation providing substantive powers to the Centre, but rather it enhances the coercive powers which can be misused, overused and hyperused. The stringent bail conditions raise the question of the extent to which the Parliament can restrict personal liberty in the name of national security.

EVOLUTION OF UAPA BAIL JURISPRUDENCE

Early Anti-Terror Jurisprudence: In the earlier precedents of Anti-Terror Jurisprudence, we first come across *Kartar Singh v State of Punjab (1994)*.¹⁴ This landmark judgement examined

¹² *Hussainara Khatoon and Ors v Home Secretary, State of Bihar, Patna (1980)* 1 SCC 81

¹³ *Maneka Gandhi v Union of India (1978)* 1 SCC 248

¹⁴ *Kartar Singh v State of Punjab (1994)* 3 SCC 569

the Constitutional validity of the Terrorist and Disruptive Activities (Prevention) Act (TADA)¹⁵, one of the earliest and most stringent anti-terror statutes. Though upholding the Constitutionality of TADA, the Court simultaneously warned against the dangers of misuse inherent in extraordinary criminal legislation. The Court, no doubt, recognised terrorism as a serious threat to national security and public order, thereby recognising and justifying special legal measures. However, the most important criterion in its operation should be its operation within Constitutional boundaries.

Procedural safeguards were stressed as indispensable even in anti-terror prosecutions. The Court observed that extraordinary powers granted to investigating agencies should not become instruments of arbitrary detention or mala fide executive access. The judgment, more importantly, reaffirmed that Articles 14 and 21 should continue to apply, and cases of national security shall be no exception.¹⁶ Hence, for UAPA jurisprudence, Kartar Singh laid the foundational balancing doctrine: anti-terror law may impose stricter standards, but Constitutional protections cannot be wholly extinguished. This principle later became very crucial in interpreting Section 43D(5) of the UAPA.

Later, in *Shaheen Welfare Association v Union of India* (1996),¹⁷ the decision of the Court represented one of the earliest judicial recognitions that prolonged incarceration under anti-terror statutes may itself become unconstitutional. The case came to light when a large number of undertrial prisoners had been detained under TADA for years without a conclusion.

The Supreme Court acknowledged that the harsh nature of anti-terror laws was legitimate, but held that indefinite detention without trial could not be justified just because of grave allegations involving terrorism. The Court, as a result, introduced a pragmatic classification system for accused persons based on the gravity of the allegations and the likelihood of trial completion. It consequently directed consideration of bail for categories of undertrials spending substantial periods in custody. This reasoning, later, strongly influenced the three-judge bench ruling in *K.A. Najeeb*.

¹⁵ Terrorist and Disruptive Activities (Prevention) Act 1987

¹⁶ *Kartar Singh v State of Punjab* (1994) 3 SCC 569 [394]

¹⁷ *Shaheen Welfare Association v Union of India and Ors* (1996) 2 SCC 616

Restrictive Turn: The Watali Standard: The apex Court, in *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019),¹⁸ fundamentally reshaped UAPA bail jurisprudence and is hence widely regarded as the most restrictive interpretation of Section 43D(5). The case concerned allegations related to terror funding in Jammu and Kashmir. The central question before the Court was the extent to which judges could scrutinise evidence while deciding bail applications under UAPA.

The Supreme Court adopted an extremely prosecution-oriented approach of Section 43D(5), holding that at the stage of bail, courts are not expected to conduct a detailed evaluation of evidence or test the admissibility of prosecution material. Rather, courts need to only determine whether the accusations appear ‘prima facie true’ based largely upon the prosecution’s case diary and charge sheet.¹⁹ Going a step further, the Court held that even broad possibilities favouring the prosecution would suffice to deny bail, creating a very low threshold for the prosecution to oppose bail.

The practical outcome of *Watali* was transformative. Bail under UAPA became extraordinarily difficult, coming as an outcome of the courts’ discouragement from critically examining the prosecution’s evidence. Even in many cases, the filing of a chargesheet alone became sufficient to justify years of incarceration.²⁰ Critics argued that *Watali* diluted the presumption of innocence by the virtual presumption of the accuracy of prosecution allegations at the pre-trial stage. Scholars and civil liberties advocates warned of the conversion of process into punishment under UAPA following the judgment.

Constitutional Correction: K.A. Najeeb: The case of *Union of India v K.A. Najeeb* (2021),²¹ two years after the *Watali* judgement, marked a major Constitutional correction done in the latter. Concerning an accused who had spent several years in prison under UAPA, the trial demonstrated no realistic movement or possibility of early completion. A three-judge bench of the Supreme Court held that Courts retain the authority to grant bail, in spite of the statutory embargo listed in Section 43D(5). The reasoning being the crux of this entire article, prolonged

¹⁸ *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) 5 SCC 1

¹⁹ *Ibid* [23]-[24]

²⁰ *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) 5 SCC 1 [23], [24], [51]

²¹ *Union of India v K A Najeeb* (2021) 3 SCC 713

incarceration and delayed trial, which subsequently violate Article 21, the rigours of Section 43D(5) ‘melt down’.

The judgment emphasised that anti-terror legislation cannot overlook Constitutional guarantees indefinitely. Deprivation of personal liberty without a timely trial would, hence, amount to punitive detention before conviction. More importantly, the Court reaffirmed that Constitutional Courts bring justice not merely under statutes, but under the Constitution itself. Therefore, statutory restrictions cannot completely oust judicial protection of Fundamental Rights.²²

K.A. Najeeb became the central precedent supporting bail where undertrials spend years in custody. It reintroduced liberty-oriented Constitutional reasoning into anti-terror jurisprudence and hence adopted a more humane and rights-oriented approach in the jurisdiction of Courts in UAPA.

Subsequent Developments and Judicial Divergence: In the subsequent cases after K.A. Najeeb, the Courts posed various divergent logics and made diverse developments under the UAPA regime. To begin with, in the case of *Thwaha Fasal v Union of India* (2021),²³ the Supreme Court clarified that mere possession of ideological literature or vague allegations of association cannot automatically justify prosecution under UAPA. The Court differentiated between passive association and active association in terrorist activity. Criminal liability, according to the judgment, requires concrete material linking the accused to the terrorist acts. Hence, this reasoning narrowed indiscriminate application of UAPA provisions and protected freedom of thought and association enshrined in Articles 19(1)(a) and 19(1)(c) respectively.

Secondly, in *Asif Iqbal Tanha v State (NCT of Delhi)* (2021),²⁴ the Delhi High Court was presented with a case from the Delhi riots conspiracy. The Court granted bail in the case and strongly cautioned against the mala fide misuse of anti-terror legislation to criminalise protest and dissent. The Court held that ordinary law and order problems cannot be elevated into a terrorism offence per se merely because of the occurrence of violence during the protest. The same blurs the boundary between dissent and terrorism, which in turn would threaten

²² *Ibid* [15]-[18]

²³ *Thwaha Fasal v Union of India* (2021) SCC OnLine SC 1000

²⁴ *Asif Iqbal Tanha v State (NCT of Delhi)* (2021) SCC OnLine Del 3253

democratic freedoms. The judgement became highly influential for its Constitutional defence of protest rights.

Again, shortly following the previous case, the companion cases of *Devangana Kalita v State (NCT of Delhi) (2021)*²⁵ and *Natasha Narwal v State (NCT of Delhi) (2021)*²⁶ similarly involved the Delhi riots prosecutions. After assessing the State's interpretation of terrorism as 'excessively broad', the High Court granted bail to the accused. On a liberal note, the Court stressed that Constitutional democracy permits protests and political dissent, and demonstrations going disorderly do not necessarily imply terrorism. It warned against using UAPA as a tool to suppress dissenting voices. These decisions are significant as they resisted expansive interpretations of anti-terror provisions and hence restored proportionality.

Lastly, in the case of *Vernon v State of Maharashtra (2023)*,²⁷ the apex Court followed a more nuanced approach towards UAPA bail. The Court engaged in closer scrutiny of the prosecution's evidence, which was judged against the *Watali* standard, rather than mechanically assenting to allegations at face value. Though the Court did not explicitly overrule *Watali*. Although the judgment indicated that Courts are not entirely prohibited from examining the quality of evidence while also determining whether accusations are *prima facie* true. This offered a modest correction to the highly restrictive interpretation established earlier, negating the blind reliance on prosecution narratives in UAPA prosecutions.

THE GULFISHA FATIMA AND GURWINDER SINGH DEPARTURES

The years following the case of *K.A. Najeer* witnessed a judicial struggle over the extent to which Constitutional liberty could limit the extremely harsh bail conditions and restrictions laid down in Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967. Though *Najeer* appeared to restore the balance by recognising prolonged incarceration as a valid ground for bail, the adaptation in later cases and the subsequent narrow interpretations significantly weakened its practical effect.

In *Gurwinder Singh v State of Punjab (2024)*, the Supreme Court approached the issue conservatively and treated the exception recognised in *Najeer* as confined to highly exceptional

²⁵ *Devangana Kalita v State (NCT of Delhi)* AIR ONLINE 2021 DEL 837

²⁶ *Natasha Narwal v State (NCT of Delhi)* AIR ONLINE 2021 DEL 832

²⁷ *Vernon v State of Maharashtra (2023)* INSC 655

circumstances. In its course of action, the Court emphasised the seriousness of terrorism-related offences and reiterated that Section 43D(5) was precisely enacted to ensure the seriousness of grave terror offences and that such accused persons do not get bail easily. Again, the Court restored its previous reasoning and reduced the significance of prolonged custody.

These ups and downs in the bail framework were similarly approached in *Gulfisha Fatima v State (Govt of NCT of Delhi)* (2026). The judgment arose from the Delhi riots ‘larger conspiracy’ prosecutions involving Umar Khalid and Sharjeel Imam, both of whom had spent more than five years in custody without trial. Despite the extraordinary delay and factors in favour of the accused, the Court denied bail and again interpreted *Najeeb* narrowly, observing the peculiarity of the aforesaid judgement, and its motive was not establishing a broad Constitutional limitation upon Section 43D(5). The Court even barred renewal of the bail plea for one year, thereby prolonging custody even further.²⁸

The ruling attracted substantial criticism because it appeared to normalise prolonged detention without proper adjudication of guilt. Critics contended that the ruling effectively transformed pre-trial custody into punishment, reflecting a continuing judicial tendency to prioritise national security over the rights of detainees and the right to a speedy trial. These judgements, arising as a major concern, were institutional rather than substantive. Since *K.A. Najeeb* was decided by a three-judge bench, later a two-judge bench narrowing its scope appeared inconsistent with the doctrine of precedent under Article 141, raising questions regarding judicial discipline, consistency and the authority of larger benches within adjudication.

ANDRABI AND THE LARGER BENCH DOCTRINE

The last, but the most important judgment in this article, is *Syed Iftikhar Andrabi v National Investigation Agency* (2026). The decision in this case marks the most important turning point in contemporary UAPA jurisprudence. The accused, in this case, had spent more than five years and nine months in jail without any realistic possibility of early completion of trials. The Court was hence compelled to confront a foundational question: can statutory restrictions justify indefinite incarceration before conviction? Same old question, but the point of view and perspective differed.

²⁸ *Gulfisha Fatima v State (Govt of NCT of Delhi)* (2026) INSC 2 [269]–[286]

The Supreme Court answered this question firmly in favour of Constitutional liberty. Granting bail to Andrabi, the Court affirmed that Article 21 remains fully applicable even in prosecutions concerning anti-terror legislation. The judgment, upholding the previous judgment of Najeeb, clarified that prolonged incarceration without trial could not be solely justified with the application of Section 43D(5). Hence, speedy trial and detention rights are substantive guarantees rather than mere discretionary considerations.

The Court rejected the modern and relatively newer restrictive interpretations of Gurwinder Singh and Gulfisha Fatima and pointed out that Najeeb is itself not confined within its own facts. Instead, it represented a broader limitation upon statutory bail restrictions under UAPA. Where trial delays become unreasonable, the ‘rigours’ of Section 43D(5) necessarily weaken.²⁹ The judgment did not skip the issues of judicial discipline as well. The Court, for the first time in this case, emphasised that smaller benches cannot dilute or depart from binding larger bench precedents. By upholding the authority of Najeeb, Andrabi restored doctrinal consistency and reinforced the Constitutional principle that liberty cannot be indefinitely subordinated to executive allegations.

The broader emphasis of Andrabi lies in its rejection of the increasingly common argument that under the UAPA statute, the presumption of innocence must take a ‘backseat’. The judgment went in line with traditional criminal law understanding of the rule: ‘innocent until proven guilty.’

BROADER ANALYSIS OF THE DOCTRINE OF PRECEDENT AND LARGER BENCH AUTHORITY

The controversy surrounding UAPA bail jurisprudence cannot be fully understood, evading the doctrine of precedent and the binding force of larger benches. Under Article 141 of the Constitution of India, the law declared by the Supreme Court is binding upon all the courts within the country, which forms the backbone of judicial consistency and institutional stability in our nation. The doctrine of precedent serves several important functions. First of all, it ensures uniformity and predictability in legal interpretation. Secondly, it preserves the discipline by preventing conflicting opinions from benches of lesser or equal strength. Lastly, it strengthens

²⁹ *Union of India v K A Najeeb* (2021) 3 SCC 713 [17]; *Syed Iftikhar Andrabi v National Investigation Agency, Jammu* (2026) INSC 503 [34]-[39]

public confidence in the judiciary by eradicating arbitrariness and fluctuating personal interpretations.

The apex Court has many times repeated the clarified hierarchy of bench strength. In *Central Board of Dawoodi Bohra Community v State of Maharashtra (2005)*,³⁰ the Court observed that a bench of lesser strength is bound by the decision of a larger bench and hence it cannot diverge from it except by referring the matter to a larger bench.³¹ In the same manner, in *Pradip Chandra Parija v Pramod Chandra Patnaik (2002)*,³² the Court emphasised that judicial discipline requires smaller benches to follow larger benches even when disagreement exists.

The same issue became the central point of debate in the context of UAPA bail as *K.A. Najeeb* was decided by a three-judge bench, whereas *Gurwinder Singh and Gulfisha Fatima* were decided by smaller benches, posing an anomaly, threatening institutional coherence by the indirect dilution of the former by the latter, as uncertainty prevails in UAPA bail jurisdiction. The *Andrabi* judgment restored clarity by reaffirming that larger bench precedents remain binding unless reconsidered by a bench of equal or greater strength.

CRITICAL ANALYSIS AND EXAMINING CONCERNS

The evolution of UAPA bail jurisprudence is nothing less than a roller coaster ride, laden with ups and downs, that reveals a deep Constitutional tension between collective security and individual liberty. On one hand, the State argues that terrorism presents extraordinary hazards that require exceptional handling mechanisms. On the other hand, a constitutional democracy cannot permit statutes to completely extinguish basic Fundamental Rights.

One of the most contentious concerns with the current jurisprudence is the phenomenon of 'process of punishment'. Due to the extremely restrictive interpretation of Section 43D(5), undertrials frequently remain in custody for years before the trial even begins meaningfully. In various cases, the eventual acquittal of the accused comes after prolonged incarceration that has already inflicted severe and irreparable personal, social and economic damages. The punishment has hence been converted from actual conviction to the process itself.

³⁰ *Central Board of Dawoodi Bohra Community and Anr v State of Maharashtra and Anr* (2005) 2 SCC 673

³¹ *Ibid* [12]; *Pradip Chandra Parijan and Ors v Pramod Chandra Patnaik and Ors* AIR 2002 SC 296 [6]

³² *Pradip Chandra Parijan and Ors v Pramod Chandra Patnaik and Ors* AIR 2002 SC 296

Major concerns of weakening the presumption of innocence remain like a bulwark, still posing threats to true justice. The Watali framework significantly tilted bail proceedings in favour of the prosecution by limiting judicial scrutiny. Courts were effectively reduced to the decider of the prima facie evidence rather than the guardian of justice, as they were effectively required to accept prosecution allegations at their face value while denying meaningful examination of their credibility. The transformation of bail hearings into procedural formalities heavily favoured continued detention. Such an approach also risks chilling democratic dissent. Several UAPA prosecutions, particularly in protest-related cases, raised concerns regarding the inclusion of public dissent and political activism in the definitions of terrorism. Decisions such as Asif Iqbal Tanha, Devangana Kalita and Natasha Narwal attempted to resist the trend by distinguishing between genuine terror activities and constitutionally protected protest.

The Constitutional significance of *Andrabi lies*, hence, in restoring the equilibrium. The judgment reminds us that nothing can go above the Grundnorm of our polity and that Article 21 cannot be indefinitely suspended for the sake of national security. At the same time, the resistance to invalidating Section 43D(5) altogether aims to harmonise statutory restrictions with limitations.

Ultimately, the future of UAPA will depend upon the will of the Courts. Prioritising Constitutional liberty alongside legitimate security concerns is the need of the hour. A democratic society committed to the Rule of Law³³ cannot permit indefinite imprisonment without trial to become a normal scenario. The true strength of good governance lies not in the mere curbing of threats to the State, but in preserving liberty even during moments of crisis.

WAY FORWARD

Viewing through the Prism of the Constitution: The Grundnorm guides us in case of any disputes in statutes, and the Courts interpret the constitutionality of any new law whenever questions arise. The same may be the case for UAPA. Courts may consistently interpret Section 43D(5) through the lens of the right to Life and Liberty. Similarly, the principle established in *K.A. Najeeb* should be treated as a consistent limitation on the statutory bail restrictions rather

³³ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 188

than a fact-specific exception. For the same, a Constitutional Bench may be constituted to settle the position conclusively.

Incorporation of Sunset Clause: Statutes may be introduced by the Parliament which favour the presumption of bail after a specified, reasonable period of incarceration if the trial has not progressed substantially. In that scenario, unspecified pre-trial detention cases can be reduced, and pressure to fast-track pending cases will result in faster adjudication and less incarceration.

Periodic Judicial Review: Honourable Courts may consider examining the progress of pending UAPA investigations, the number of witnesses examined, the likelihood of trial completion and the proportionality of continued detention. In this way, not only can an oversight be established, but judicial control over arbitrary actions can be set up, thereby promoting justice and accountability in UAPA cases.

Fast-Track UAPA Courts: Dedicated tribunals and Special Courts may be set up with exclusive jurisdiction over UAPA trials, and thereon, strict timelines for framing charges and recording evidence may be introduced to reduce custodial time and fast-track the adjudication process. Besides, digital case management may be thought of to remove unnecessary procedural delays and make case handling easier.

Proportionality-Based Bail Analysis: The doctrine of proportionality can be adopted in UAPA jurisprudence, so that the gravity of allegations can be balanced against mitigating factors like duration of custody, age and health of the accused, likelihood of absconding and realistic progress of trial.

Reaffirming Right to Reputation through Exemplary Damages: Exemplary damages may be provided to the convicted accused for the social and economic damages incurred due to prolonged custody and damage to reputation. With accusation collaterally comes a threat to societal rehabilitation and consequent change in image in front of the beloved. For the same reason, compensation may be thought of as a way out.

Balancing Security and Liberty: Last, but not least, there should be a clear objective for creating a framework where security interests are protected, not at the cost of foundational Constitutional commitment to liberty, dignity and fair trial. Security protocols have to be

imposed fast and speedily, and trials have to be fast-tracked for the good of both the society and the accused. Then only true justice will prevail.

CONCLUSION

At its core, the doctrinal journey of the Unlawful Activities Prevention Act under Indian law is a long-winded story of a contest between the state's imperative for national security and an individual's inalienable right to personal liberty, which is guaranteed under Article 21 of the Indian Constitution. The said tension, which has never really just been theoretical, has played out in the lives of numerous undertrial prisoners in India, who have spent years and sometimes even decades behind bars, awaiting conviction and, in some cases, a trial. The statutory framework in Section 43D(5) of the UAPA was designed and put in place with the purpose of not granting individuals accused of terrorist activities bail with ease.

The legislative intent of the framework is not without justification. The threats that the anti-terror legislation seeks to address are real, and the consequences of misplaced leniency can be catastrophic. But in spite of it, the history of UAPA bail jurisprudence demonstrates that a provision which was crafted as a safeguard for the nation can, in practice, operate as an instrument of punishment, not by conviction, but by prolonged incarceration itself.

The Supreme Court's ruling in *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) marked a pivotal shift towards the severity of the framework. By mandating that courts conduct only a prima facie assessment of the prosecution's case at the bail stage, largely depending on the chargesheet and case diary, Watali transformed bail under UAPA from an exception to an impossibility. Subsequent courts used that judgment as a conclusive authority to deny bail without taking into consideration the pace of the trial. The notion of 'innocent until proven guilty', which is the cornerstone of justice, was effectively set aside, and as the additional solicitor general, S.V Raju, later argued before the court that the presumption of innocence 'takes a backseat' in UAPA matters, it reflected how far the notion of liberty had actually fallen.³⁴

³⁴ Aaratrika Bhaumik, 'Delhi Police suggest larger Supreme Court Bench to review UAPA bail restrictions' *The Hindu* (20 May 2026) <https://www.thehindu.com/news/national/delhi-police-seeks-larger-bench-reference-on-uapa-bail-curbs-amid-conflicting-coordinate-bench-rulings/article70997010.ece#google_vignette> accessed 05 May 2026

It was in the light of these events and provisions, that the landmark ruling in *Union Of India v K.A. Najeeb* (2021) was delivered, establishing that the statutory restrictions under the UAPA, specifically Section 43D(5), do not override the constitutional powers of higher courts to grant bail when the incarceration period has been going on for a long time violating the individual's right to speedy trial under Article 21. In doing so, K.A. Najeeb restored to the judiciary a 'measure of discretion' which Watali had, in practice, precluded. But despite the judgment in K.A. Najeeb, the judgments in subsequent cases, that is, *Gurwinder Singh v State of Punjab* (2024) and *Gulfisha Fatima v State (Gov of NCT Delhi)* (2026), presented a troubling feat. Both these judgments, hollowed out K.A. Najeeb, treating it not as a binding constitutional principle but as a narrow ruling confined to its own facts. Additionally, it had shrunk K.A. Najeeb by answering a proposition which was never advanced, that is, whether the mere lapse of time automatically yields bail.

In *Gulfisha Fatima*, the court denied bail and even noted that Article 21 cannot function as a 'trump card' for seeking bail³⁵. A 'correction' came in the form of *Syed Iftikhar Andrabi v National Investigation Agency, Jammu* (2026) when a Supreme Court bench granted bail to Syed Iftikhar Andrabi, ruling that prolonged pre-trial incarceration cannot become a de facto punishment. Holding reservations against *Gurwinder Singh* and *Gulfisha Fatima*, the court held that the judgments had diluted K.A. Najeeb. The bench also reaffirmed the principle laid down in Article 141 of the Constitution, i.e., a bench of lesser strength is bound by the judgments of a bench of greater strength. In doing so, the bench not only held K.A. Najeeb but also the institutional precedent upon which the rule of law depends, the larger bench rule.

The broader lesson of the evolution of UAPA bail jurisdiction proves that the core issue is not just theoretical but also institutional. Theoretically, it has been proven that statutory frameworks cannot override constitutional rights. Anti-terror measures occupy a very large and rightly justified place in legal and policy discussions. But it should not, and cannot, erode constitutional protections that are granted to every individual. The right to personal liberty under Article 21 and the right to speedy trial are indispensable provisions and not concessions that can be withdrawn by policies made by the Parliament or can be eroded by the judgments passed by

³⁵ Samriddhi Ojha, 'SC Refers Question Of Applicability Of Article 21 To UAPA Bail Bar To Larger Bench [Read Judgment]' (*LawStreet Journal*, 26 May 2026) <<https://lawstreet.co/judiciary/sc-refers-question-of-applicability-of-article-21-to-uapa-bail-bar-to-larger-bench>> accessed 05 May 2026

courts. Institutionally, Andrabi proves that the decision or authority of a larger bench is not just a norm but a doctrine of judicial discipline through which courts maintain their legitimacy.

A system in which smaller benches override the judgments passed by a larger bench is a system in which the rule of law becomes uncertain, and there is no binding precedent. As of May 2026, the matter at hand has been referred to a larger bench of the Supreme Court. This is to be welcomed because a constitutional bench ruling on the relation and interplay between Section 43D(5) of the UAPA and Article 21 of the Constitution would bring long overdue clarity and a sense of finality. It would provide a framework which the subsequent lower courts can use while deciding on bail concerning UAPA. National security remains a legitimate concern, but it should not come at the expense of liberty.

A democracy can only function fully when every marginalised person and every person awaiting trial is treated with respect. The notion of innocent until proven guilty should take precedence over anything. Anti-terror legislation that changes pre-trial detention into a de facto punishment and judicial precedents that override constitutional rights fail citizens. The true test now lies in making sure that a balance is struck between national security and individual liberty. Until that can be achieved, we cannot conclude that the current system is fair.