



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No: -. CrI A(D) No. 24/2025

Reserved on:- 31.01.2026
Pronounced on:- 07.02.2026
Uploaded on:- 09.02.2026

Whether the operative part or full judgment
is pronounced: **Full**

Abdul Rashid, Age 42 years Appellant(s)
S/o Abdul Gani Sheikh
R/o Village Tantna, Tehsil Gundana, District Doda
At present lodged in Central Jail Kot Bhalwal,
Jammu.

Through: - Mr. I.H. Bhat, Advocate

V/s

UT of J&K through P/S JIC, Jammu / SIA,Respondent(s)
Jammu.

Through: - Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Per: Sanjay Parihar-J

1. By way of the present appeal, the appellant calls in question the order passed by the Court of 3rd Additional Sessions Judge, NIA Court, Jammu (hereinafter referred to as "the Trial Court"), whereby the bail application preferred by him came to be dismissed. The appellant is facing trial in FIR No. 06/2010 registered at Police Station JIC/SIA for offences punishable under Sections 13, 18, 18-B, 20 and 38 of the Unlawful Activities (Prevention) Act, 1967. The grievance projected by the appellant is



that the impugned order suffers from legal infirmity, inasmuch as the material prosecution witnesses examined so far have not supported the case of the prosecution, yet the Trial Court has declined bail despite the appellant being in custody since the filing of the charge-sheet.

2. Learned counsel appearing for the appellant contended that the FIR pertains to the year 2010 and that the appellant, though formerly a militant, had surrendered and thereafter faced prosecution in at least two criminal cases in which he earned acquittal. It was submitted that post surrender, the appellant did not indulge in any unlawful or criminal activity, and even his detention under the Public Safety Act did not survive judicial scrutiny. It was further argued that though the case was registered in the year 2010, the charge-sheet came to be filed only in the year 2022, that too without any legally admissible evidence, rendering the entire prosecution case suspect and untenable.
3. It was further submitted that the impugned order is vitiated as no recovery whatsoever has been effected from the appellant. The SIM card alleged to have been used in commission of the offence has not been recovered, nor has the mobile phone allegedly used for making extortion calls been seized. The appellant was arrested after a lapse of more than twelve years from the date of registration of the FIR, despite having been released in the year 2014 in other cases. Learned counsel contended that even as per the case diary, one of the Investigating Officers had initially opined that no case was made out against the appellant, but for reasons unexplained, the



investigation was revived in the year 2020, culminating in the appellant's arrest and filing of the charge-sheet.

4. The respondents, in their reply, submitted that FIR No. 06/2010 was initially registered on 27.07.2010 under Sections 420, 406 and 109 RPC on the basis of an enquiry report, which revealed misuse of SIM card No. 9906068834 by a terrorist to facilitate terrorist activities. It was stated that the said SIM card was originally issued in the name of one Mst. Halima Begum, which subsequently came into possession of her son Amir Nazir, who handed it over to his friend Mohd. Sharief Malik. The SIM card was thereafter allegedly forcibly taken by the appellant, who at the relevant time was active as a militant in District Doda.
5. It was further alleged that the appellant, along with one Sartaj Ahmed (since deceased), used the said SIM card for making extortion calls to influential persons and contractors in the area, demanding payment of money to further terrorist activities. It was also alleged that the appellant indulged in motivating the youth of the area to join militancy. During investigation, offences under Sections 13, 18, 18-B and 20 of the UAPA were found to be attracted against the appellant.
6. The respondents contended that PW-32 and PW-33, examined during the trial as protected witnesses, have supported the prosecution case and specifically deposed regarding extortion calls received by them from one "Arsalan", an active militant in District Doda. On the strength of such evidence, it was submitted that the Trial Court rightly declined bail, as the appellant failed to



demonstrate that the accusations against him were *prima facie* untrue, particularly in view of the gravity of the offences alleged.

7. Mrs. Monika Kohli, learned Senior AAG, appearing for the respondents, supported the impugned order and argued that the same has been passed after due appreciation of the material available on record, strictly in conformity with the mandate of Section 43-D (5) of the UAPA. It was contended that once charges have been framed, a *prima facie* satisfaction regarding the appellant's involvement stands recorded, and the trial being underway, no indulgence is warranted at the stage of bail.
8. Learned Senior AAG further submitted that the appellant had remained a District Commander of the proscribed organization Hizbul Mujahideen and had a history of terrorist activities. According to the prosecution, even after his surrender, the appellant continued to motivate youth to join militancy. It was urged that the stringent provisions of the UAPA must be given full effect, as grant of bail would not only impede the trial but also pose a serious threat to public order and the fragile normalcy restored in the District Doda area.
9. We have given our anxious and thoughtful consideration to the rival submissions advanced at the Bar. At the outset, it is not in dispute that the appellant is facing trial for offences under Sections 18, 18-B, and 38 of the UAPA and has been in custody since 31.05.2022. It is also fairly conceded that the appellant had earlier been associated with the proscribed organization Hizbul Mujahideen and was active in District Doda during the year 2010.



10. As per the appellant's own case, he renounced militancy and surrendered in the year 2010 under the rehabilitation policy prevalent at the relevant time. He thereafter faced prosecution in FIR No. 137/2010 of Police Station Kokernag and FIR No. 31/2010 of Police Station Doda and was also detained under the Public Safety Act by the District Magistrate, Anantnag. Upon completion of trial and quashment of the PSA, the appellant was released during the years 2013–2014. The present FIR, though registered on 27.10.2010, inexplicably remained under investigation for over a decade, a circumstance which requires careful scrutiny.

11. It is a matter of significance that at the time of the alleged occurrence, though the appellant was stated to be associated with a proscribed organization, the FIR was not registered under any provision of the Unlawful Activities (Prevention) Act, but only under Sections 420, 406 and 109 of the RPC. If, as alleged, the appellant was extending extortion threats in his capacity as a militant and for furtherance of terrorist activities, it remains unexplained as to why no material evidencing such activities was collected contemporaneously or in close proximity to the alleged commission of the offence. The belated invocation of the provisions of the UAPA, after a lapse of more than a decade, casts a serious doubt on the genuineness of the prosecution case.

12. The appellant has also rightly contended that even as per the investigation record, one of the Investigating Officers had initially concluded that no case was made out against him. The revival of the investigation after several years, culminating in the appellant's



arrest in 2022, without any fresh or cogent material coming on record, further weakens the prosecution narrative. Whether the testimony of PW-32 and PW-33 is sufficient to establish the complicity of the appellant is a matter to be determined at the stage of trial; however, for the purpose of bail, the delayed recording of their statements raises legitimate concerns regarding credibility.

13. The protected witnesses, PW-32 and PW-33, admittedly remained silent from the year 2010 till their statements were recorded nearly ten years later. Their testimony was secured at a time when the appellant had already renounced militancy and had been living outside the fold of insurgency for several years. Such unexplained dormancy of key witnesses, particularly in cases involving serious allegations, materially impacts the *prima facie* assessment required under Section 43-D (5) of the UAPA.

14. It is further not disputed that neither the SIM card alleged to have been used for making extortion calls nor the mobile phone through which such calls were allegedly made has been recovered during investigation. Equally unexplained is the fate of the intermediaries through whom the SIM card is stated to have changed hands. These missing links strike at the root of the prosecution case, especially when the entire allegation hinges upon telephonic communication attributed to the appellant.

15. The appellant has urged that the shadow of his past association has continued to haunt him, rendering him vulnerable to implication without credible supporting material. While it is not possible at this stage to return a definitive finding on the truthfulness or otherwise



of the allegations, the circumstances placed on record do suggest that the prosecution case suffers from inherent weaknesses. Notably, there is nothing on record to indicate that immediately prior to his arrest in 2022, the appellant was involved in motivating youth to join militancy or in any other unlawful activity.

16. The prosecution has asserted that there are reasonable grounds for believing that the accusations against the appellant are true. In ***NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1**, the Supreme Court cautioned that while considering bail under the UAPA, courts must confine themselves to a *prima facie* assessment and must not conduct a mini-trial by weighing the admissibility or sufficiency of evidence. The High Court, in that case, was found to have exceeded its jurisdiction by re-appreciating evidence in detail.

17. In ***Union of India v. K.A. Najeeb*, (2021) 3 SCC 713**, however, the Supreme Court clarified that the rigours of Section 43-D (5) do not completely oust the jurisdiction of constitutional courts to grant bail, particularly where prolonged incarceration results in violation of the fundamental right to speedy trial under Article 21 of the Constitution. It was held that statutory restrictions and constitutional safeguards must be harmoniously balanced, and where the trial is unlikely to conclude within a reasonable time, the continued detention of an accused may not be justified.

18. Recently, in ***Gurwinder Singh v. State of Punjab & Anr.*, Criminal Appeal No. 704 of 2024 decided on 07.02.2024**, the Supreme Court reiterated that the expression “*prima facie* true” requires the court to assess whether the material on record discloses



credible involvement of the accused in the commission of the offence. It was held that once charges are framed, a strong suspicion may arise, but even then, the accused can seek bail by demonstrating that the material relied upon does not reasonably support the accusation.

19. Applying the aforesaid principles to the facts of the present case, it is evident that although charges have been framed against the appellant under Sections 18-B and 38 of the UAPA, the material placed on record does not disclose any concrete act of recruitment, indoctrination or motivation of youth to commit terrorist acts after the appellant's surrender. The past conduct of the appellant, for which he has already faced prosecution and detention, cannot by itself justify continued incarceration in the absence of credible and proximate evidence connecting him to the alleged offences in the present FIR.

20. In view of the foregoing discussion, we are of considered opinion that the appellant has been able to demonstrate, on the touchstone of broad probabilities, that the accusations levelled against him do not disclose reasonable grounds for believing that they are *prima facie* true. The material collected during the investigation suffers from inherent infirmities, including unexplained delay in conclusion of investigation, absence of recovery of the alleged SIM card and mobile phone, and reliance on testimonies recorded after an inordinate lapse of time. Consequently, the statutory embargo contained in Section 43-D (5) of the Unlawful Activities



(Prevention) Act is not attracted in the peculiar facts and circumstances of the present case.

21. The continued incarceration of the appellant, who has remained in custody since 31.05.2022, would amount to pre-trial punishment, particularly when the prosecution has failed to demonstrate any proximate or continuing involvement of the appellant in terrorist or unlawful activities after his surrender in the year 2010. The object of bail is to secure the presence of the accused during trial and not to inflict punishment by way of prolonged detention, especially where the likelihood of the trial concluding within a reasonable time appears remote.

22. Accordingly, the appeal is allowed and the impugned order passed by the Court of 3rd Additional Sessions Judge, NIA Court, Jammu, rejecting the bail application of the appellant, is set aside. The appellant is ordered to be released on bail in FIR No. 06/2010 of Police Station JIC/SIA, subject to his furnishing a personal bond in the sum of ₹ one lac, along with two sureties of the like amount to the satisfaction of the Trial Court.

23. The appellant shall remain bound by the conditions that he shall appear before the Trial Court on every date of hearing unless exempted for valid reasons, shall not directly or indirectly influence or intimidate any prosecution witness, shall not leave the territorial jurisdiction without prior permission of the Trial Court, and shall refrain from indulging in any activity prejudicial to the interest of the State or public order.



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24. It is made clear that the observations recorded herein are confined solely to the adjudication of the present bail appeal and shall not be construed as an expression on the merits of the case, which shall be decided independently by the Trial Court on the basis of the evidence led before it.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
07.02.2026
Diksha

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes