



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Case Comment: Union of India vs K A Najeeb

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*Received 17 August 2022; Accepted 01 September 2022; Published 07 September 2022*

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### INTRODUCTION

K.A. Najeeb, a member of a fundamentalist group, was accused of attacking Professor TJ Joseph in Thodupzha, Kerala in 2010. The investigating authority alleges that Section 43D (5)<sup>1</sup> of the UAPA prohibits bail under applicable law.<sup>2</sup> In 2015, the National Investigation Agency (NIA) arrested Najeeb under the Unlawful Activities Prevention Act (UAPA). In 2019, the Kerala High Court granted him his release for significant delays in the case. The NIA filed an SLP with the Supreme Court, arguing that the Kerala High Court's order was incorrect as the NIA's special courts had previously rejected the bail application under UAPA provisions. The investigation agency argues (in its court ruling) that UAPA section 43D (5) (a) prohibits bail for UAPA offences. Although the Supreme Court dismissed the National Investigation Agency's appeal in its final decision, it did not set a ground standard that could pave the way for similar cases in the future. The three-judge jury consisting of NV Ramana, Surya Kant, and Aniruddha Bhosale retained the power of the constitutional courts to grant bail to those who have been charged or detained under the Draconian Law to Prevent Unlawful Activities (UAPA).

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<sup>1</sup> Unlawful Activities Prevention Act 1967

<sup>2</sup> Unlawful Activities Prevention Act 1967, s 43D

Regardless of the court decision, in this case, some questions about UAPA and the bail law generally remain unanswered.

## FACTS OF THE CASE

In this case,<sup>3</sup> the defendant is K.A. Najeeb, a member of the People's Front of India (PFI). The victim, T.J Joseph, was a professor at Newman College in Thodupuzha. According to the defendant, the victim's question was offensive and discriminatory towards a particular religion. Therefore, the accused and other members of the group conspired to harm the victim.<sup>4</sup> When the victim, his mother, and his sister returned home on July 4, 2010, they were attacked by members of the PFI. A minor problem with an unacceptable question led them to cut off the victim's right palm with axes and knives. Efforts were also made to dissuade passers-by from helping the victim by throwing locally produced bombs at them. An FIR was filed after the incident and the National Investigation Agency (NIA) ruled that everyone involved in the attack must comply with the UAPA because the weapons involved were dangerous.<sup>5</sup> The NIA Special Court sentenced each of the co-defendants to prison terms of two to eight years or acquitted them.<sup>6</sup>

He was finally detained in judicial custody for five years. The NIA Special Court systematically rejected the defendant's bail plea when he was in prison due to alleged evidence against him.<sup>7</sup> Further, under Section 43d(5)<sup>8</sup> of the UAPA, standard bail terms are prohibited, so he cannot be released on bail. After failing to obtain bail from the NIA Special Court, the defendant took his case to the High Court. Overturning the NIA Special Court's decision, the High Court granted bail to the defendant. There was no resolution to the trial, according to the court. Following the bail decision, the NIA appealed, alleging it was flawed.

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<sup>3</sup> *Union of India v KA Najeeb* (2021) 3 SCC 713

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> S Banerjee, 'Union of India vs K.A. Najeeb: A Trial without a Trial' (*Academike*, 9 May 2021)

<<https://www.lawctopus.com/academike/case-uo-i-v-najeeb/>> accessed 15 August 2022

<sup>7</sup> *Ibid*

<sup>8</sup> Unlawful Activities Prevention Act 1967, s 43D(5)

## ISSUES FRAMED BY THE COURT

1. Is it true that a violation of Section 21<sup>9</sup> renders UAPA Section 43 (d) (5) ineffective?
2. Can a court deny bail to a defendant if the charges are found to be true?
3. The court's refusal to provide a reason for its decision to grant bail can be appealed, right?

## ARGUMENTS

### *Petitioner*

According to the petitioner, this bailout is invalid because the defendant has violated UAPA Section 43 (d)(5). The court should refuse bail if the suspect is found guilty, the lawyer said. Citing the case of the National Investigation Agency v Zahoor Ahmad Shah Watali,<sup>10</sup> explained that the procedures for issuing bail due to special orders are different and bail is denied if a suspect is initially found guilty.<sup>11</sup> Furthermore, the accused has been missing for a prolonged period, raising questions about his bail. Furthermore, since the defendant evaded the law for so long, he shouldn't have been granted bail. According to the attorney, the NIA filed an additional affidavit seeking to question 276 witnesses following the trial's postponement.

### *Defendant*

The defendant's lawyer pointed out that most of the co-defendants were sentenced to prison terms of up to eight years or acquitted. In addition to the above cases, the accused had been detained for more than five years, in violation of Part III of the Constitution,<sup>12</sup> "Equal access to justice and expedited trial. Bail granted by the High Court should not be appealed to the Supreme Court, except in exceptional circumstances. In addition, he cited the Shaheen Welfare Association v Union of India.<sup>13</sup> It was still necessary to give a reason before asking for bail, even if the evidence wasn't taken into account.<sup>14</sup>

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<sup>9</sup> Unlawful Activities Prevention Act 1967, s 21

<sup>10</sup> *National Investigation Agency v Zahoor Ahmad Shah Watali* Criminal Appeal No 578 of 2019

<sup>11</sup> *Ibid*

<sup>12</sup> Constitution of India, part III

<sup>13</sup> *Shaheen Welfare Association v the Union of India* 1996 SCC (2) 616

<sup>14</sup> *Ibid*

## THE RATIONALE BEHIND THE JUDGMENT

According to the Supreme Court, the defendant had the right to present evidence of his choice and establish his allegations beyond a reasonable doubt under Part III of the Constitution. In this regard, the appellant's SLP<sup>15</sup> was considered unsustainable.

### *UAPA Section 43D (5) may apply in the event of a violation of Article 21*

The court ruled that constitutional courts still have the power to grant bail despite statutory limitations such as UAPA Section 43D(5).

### *Is bail denied when an initial suspicion of guilt exists?*

There can be a coexistence between the limitation of the law and the constitutional jurisdiction of the Supreme Court. While the judges initially suspected that the defendant was guilty, they recognized the nature of the offences based on his time served in prison. As a result of the "unlikelihood of the trial being concluded in the foreseeable future", the High Court issued bail for the defendant. The trial continued.

### *Is it possible to contest a judge's bail decision without providing a reason for the appeal?*

It has been argued that Section 43D(5) of the UAPA is less restrictive than Section 37 of the NDPS.<sup>16</sup> Unlike their NDPS, which requires the court to determine that the defendant is innocent and unlikely to commit another crime while on probation, UAPA does not require it. Section 43D(5) of the UAPA<sup>17</sup> simply provides another reason for a court of competent jurisdiction to deny bail. In this case, the court used this as a further justification for granting bail to the accused and therefore refused to appeal the High Court's decision. The Honorable Court imposed several other restrictions on defendants in the interest of the wider community and to discourage acts of violence within the community. Defendants must report to the district police station by 10:00 am each Monday and declare in writing that they are not involved in any

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<sup>15</sup> Constitution of India, art 136

<sup>16</sup> Narcotics Drugs & Psychotropic Substances Act 1985, s 37

<sup>17</sup> Unlawful Activities Prevention Act 1967, s 43D(5)

new crimes. Respondents are also prohibited from participating in activities that may lead to social unrest. In addition, it was ruled that the defendant's bail would be removed immediately in the event of a breach of bail conditions, tampering with evidence, or interference with the trial.

## DEFECTS OF LAW

The UAPA was designed to reduce the burden on Indian criminal courts, but its amendments were seen as unpredictable. In particular, Section 43(D)(5)<sup>18</sup> of the UAPA will be reviewed to give the NIA Special Court exclusive authority to deny bail. The term "necessary" was not defined in this context either by law or by subsequent decisions. Therefore, law enforcement agencies may abuse this provision. Moreover, as the current case shows, the NIA Special Court repeatedly denied the defendant bail before the Supreme Court granted it. The National Criminal Records Service reports that only 2.2% of those imprisoned under the UAPA were convicted (NCRB).

Therefore, if the defendant has been in custody for a long time, the situation may look questionable. Long-term police detention, on the other hand, is related to fundamental rights. Again, the defendant violated constitutional human rights and without trial, he was sentenced to over five years in prison. The suspect was later released on bail, according to the Supreme Court. Prosecutors have often used the harsh provisions of Section 43(d)(5) of the Unlawful Activities (Prevention) Act as a weapon, making it nearly impossible to bail anyone charged under the UAPA. Many awaiting trials, like the defendant, in this case, are imprisoned for years as the trial continues and investigative services spend too much time interviewing witnesses.

Even if found not guilty, mistakes in investigating and framing offenders under new laws such as UAPA could result in their death. In a similar case, *NIA v Zahoor*,<sup>19</sup> the defendant's bail application was denied due to the weak and unfounded allegations made by

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<sup>18</sup> Unlawful Activities Prevention Act 1967, s 43D(5)

<sup>19</sup> National Investigating Agency (n 11)

the investigative agency. The same didn't even get a glance. The recognition of natural justice in the constitution guarantees fairness and defends individual liberties.<sup>20</sup>

Defendants have few, if any, rights under UAPA Section 43d(5),<sup>21</sup> in clear violation of the Core Principles. Although the court has not established specific rules to support future parole requests, this case should serve as a model for similar cases to protect the right to freedom and a fair trial. The deliberate slowness of the investigation, the procedural system, and the length of time the defendants were incarcerated have all been highlighted in this case, while also shedding light on the work of India's anti-terrorism authorities. Judiciary officials said there was "no reason to doubt the police" over the level of abuse in the state case against Mohd Afzal. It has become clear that the widespread practice of detention is largely ignored.<sup>22</sup>

To get justice in this case, the defendant had to apply for bail six times in four years. In the future, judges will have to take this fact into account and broaden the scope of the decision taken in the present case, because the right to a swift trial also includes the preliminary phase. Delay strategies are often used by investigation organizations, as evidenced by several recent cases.<sup>23</sup>

Having determined that the right to a speedy trial is of greater constitutional importance than statutory limitations, the court should recognize such remedies for abuse of power in statutes such as the UAPA. The reasons for passing a new law like the UAPA, as well as the methods used to implement it, vary.<sup>24</sup> They should be interpreted as "special laws" which distinguish between "the extraordinary" and the "other". In her essay, Rajshree Chandra discusses the necessity, effect, and justification of "exception." She argues that while laws can have a huge impact and violate civil liberties, they are forced to deal with the extraordinary.

## INFERENCE: CONCLUDING REMARKS

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<sup>20</sup> *Ibid*

<sup>21</sup> Unlawful Activities Prevention Act 1967, s 43D(5)

<sup>22</sup> Sehgal DR, 'The Status of UAPA Undertrials in the Light of Union of India v K.A. Najeeb' (*iPleaders*, 16 July 2021) <<https://blog.iplayers.in/status-uapa-undertrials-light-union-india-v-k-najeeb/>> accessed 15 August 2022

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

1967, the Unlawful Activities Prevention Act was supposed to help the government stop the proliferation of terrorist activities and reduce the burden on the criminal justice system. In light of these events, it is reasonable to conclude that UAPA has violated the constitutional rights of citizens, which cannot be curtailed when the country is in an "emergency " in addition to fighting terrorist activities. Creating a balance between fundamental rights and strong laws is crucial for citizens to feel empowered and not threatened.