

Bail Under UAPA - SC's Divergent Approaches Raise Constitutional Questions

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Bail Under UAPA Latest News

- In a significant ruling granting bail to a Kashmiri man in an alleged narco-terror case, the Supreme Court of India (SC) gave a landmark verdict.
- It reiterated that prolonged incarceration under the stringent provisions of the Unlawful Activities (Prevention) Act (UAPA) **cannot override** the constitutional guarantee of personal liberty under **Article 21**.
- The court emphasised upon the landmark **2021 K.A. Najeeb judgment**, once again exposing the **evolving** and often **divergent** judicial approaches within the SC regarding bail under anti-terror laws.

What is UAPA?

- **Background:**
 - Enacted in 1967, the law deals with the unlawful activities threatening India's sovereignty and integrity.

- Over time, especially after the 2004, 2008 and 2019 amendments, it evolved into India's **principal anti-terror legislation**.
- **Key features:**
 - Declares organisations and individuals as terrorists,
 - Empowers the National Investigation Agency (NIA),
 - Allows extended detention periods,
 - Provides stringent bail restrictions,
 - Permits seizure of property linked to terror activities.
- **Bail process:**
 - **Section 43(D)(5):** It makes grant of bail extremely difficult. A court cannot grant bail if the prosecution shows a prima facie case against the accused. This creates a **reverse burden** (on the accused person) compared to ordinary criminal law.
- **Implications:**
 - Courts often rely heavily on prosecution documents at the bail stage,
 - Detailed scrutiny of evidence is discouraged,
 - Undertrials may remain incarcerated for years before trial completion.

Divergent SC Verdicts on the Issue

- **The Watali Judgment (2019):**
 - **Strengthening state power:** The SC held that courts must largely accept the prosecution's version at the bail stage, evidence need not be tested rigorously during bail hearings, and only a broad prima facie assessment is required.
 - **Impact:** The ruling significantly tightened bail standards under UAPA and led to prolonged incarceration of undertrials, increased judicial deference to investigative agencies.
- **The K.A. Najeeb Judgment (2021):**
 - **Reasserting constitutional liberty:** The Court held that –
 - Constitutional courts can grant bail despite statutory restrictions,
 - Prolonged delay in trial violates Article 21,
 - Personal liberty cannot be indefinitely suspended merely because UAPA is invoked.
 - **Constitutional significance:** The judgment **restored balance** between national security concerns, and fundamental rights protections. The present ruling reaffirms that Najeeb remains the binding precedent ("good law").
- **Judgments ignoring Najeeb precedent:**
 - **Gurwinder Singh v. State of Punjab (2024):** The court cautioned against "mechanical" invocation of delay to seek bail, suggesting bail should only be considered if it also satisfies the test under Section 43(D)(5) of UAPA.
 - In (January) 2026, the court held that the accused in the Northeast Delhi riots case had not "crossed the constitutional threshold" of delay to seek bail.

Significance of the Recent Judgment

- The judgment revisits a **core constitutional dilemma**: Can stringent anti-terror bail provisions prevail indefinitely over the right to life and personal liberty guaranteed under Article 21?
- The court stressed that prolonged detention without trial cannot become punishment in disguise. Section 43-D(5) remains **subordinate** to Article 21 at all times.
- The ruling also highlights:
 - Judicial inconsistency in UAPA bail jurisprudence,
 - Tension between national security and civil liberties,
 - Need for **doctrinal clarity** from a larger constitutional bench.
- The apex court voiced “**serious reservations**” about “various aspects” of its January **2026 judgment** refusing bail to former JNU student leader Umar Khalid in the Delhi riots case, including the denial of their right to seek bail for a year.

Way Ahead to Avoid Divergence in Judicial Approach

- **Constitution bench clarification**: A larger Bench should authoritatively settle the relationship between Article 21 and Section 43(D)(5), and the scope of judicial scrutiny at bail stage.
- **Time-bound trials in UAPA cases**: Special courts must ensure speedy trials, regular monitoring, prevention of indefinite detention.
- **Clear bail guidelines**: The SC must frame uniform principles regarding duration of incarceration, evidentiary thresholds, and constitutional safeguards.
- **Strengthening judicial discipline**: Smaller benches must consistently follow larger bench precedents unless formally referred for reconsideration.
- **Periodic review of UAPA provisions**: Parliament should examine safeguards against misuse, proportionality of detention provisions, and accountability mechanisms for investigative agencies.

Conclusion

- The controversy reflects a deeper constitutional debate:
 - Is bail the rule and jail the exception even under anti-terror laws?
 - Can prolonged detention without trial be justified in a constitutional democracy?
 - How should courts balance collective security with individual liberty?
- The answers will shape the future of criminal justice and constitutional freedoms in India.
- A **balanced framework** — one that protects both national security and constitutional freedoms — is essential for preserving the rule of law in a democratic republic.

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