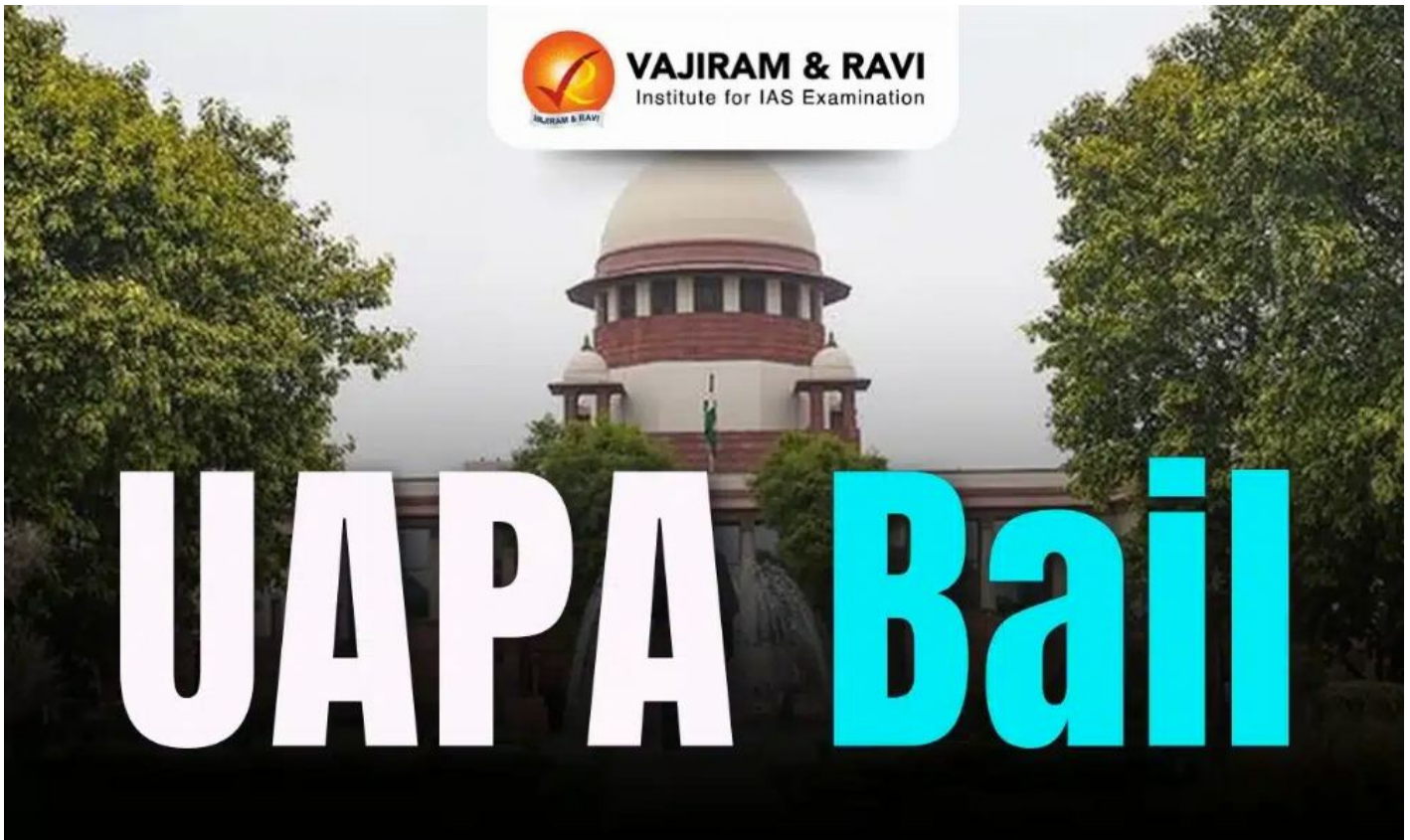


UAPA Bail and Supreme Court's Evolving Jurisprudence on Personal Liberty

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UAPA Bail Latest News

- The Supreme Court has referred to a larger Bench the issue of whether prolonged incarceration and delayed trial can override strict bail conditions under the Unlawful Activities (Prevention) Act (UAPA).

Understanding UAPA and Bail Provisions

- The **Unlawful Activities (Prevention) Act, 1967 (UAPA)** is India's primary anti-terror law. Initially enacted to deal with unlawful organisations.
- The Act has gradually expanded to include provisions related to **terrorism, terrorist financing, and designation of individuals as terrorists**.
- UAPA grants wide powers to investigative agencies, especially in cases involving threats to national security.
- However, one of the most debated aspects of the law concerns **bail provisions**, which are significantly stricter than ordinary criminal law.

- Under normal criminal jurisprudence, courts generally follow the principle of **“bail, not jail”**, based on the presumption that an accused person remains innocent until proven guilty. UAPA, however, modifies this principle through Section 43D(5).

Bail Difficulty Under UAPA

- Section **43D(5)** of UAPA creates a stringent framework for granting bail. It provides that courts shall deny bail if, after examining the chargesheet or case diary, there are **“reasonable grounds” to believe that accusations are prima facie true**.
- This provision effectively shifts the balance in favour of prolonged detention.
- The Supreme Court’s ruling in **National Investigation Agency (NIA) vs Zahoor Ahmad Shah Watali (2019)** strengthened this restrictive approach.
- The Court held that judges need not undertake an elaborate analysis of evidence at the bail stage. Instead, courts only need to examine the broad probabilities of the accusations.
- As a result, securing bail under UAPA became significantly harder because courts often defer to the prosecution’s initial allegations. Critics argue that this transforms pre-trial detention into a form of punishment.

The K.A. Najeeb Judgment and Constitutional Safeguards

- A major shift came through the Supreme Court’s decision in **Union of India vs K.A. Najeeb (2021)**.
- The Court recognised that rigid application of Section 43D(5) could violate **Article 21 of the Constitution**, which guarantees the **right to life and personal liberty**.
- In this case, the Supreme Court held that constitutional courts have the power to grant bail when an accused has spent a substantial period in jail and the trial is unlikely to conclude within a reasonable time.
- The judgment clarified that prolonged incarceration without trial cannot continue indefinitely, irrespective of the seriousness of charges.
- It stressed that courts cannot become mute spectators if legal delays effectively punish an undertrial person before conviction.
- Thus, the **Najeeb judgment softened the rigour of Section 43D(5)** by allowing constitutional principles to override statutory restrictions in exceptional circumstances.

Recent Supreme Court Debate on UAPA Bail

- The present controversy arose after the Supreme Court granted **interim bail to two accused in the 2020 Delhi riots case** and referred a larger legal question regarding UAPA bail.
- The debate intensified because of apparent differences between two recent Supreme Court rulings:
 - Syed Iftikhar Andrabi vs National Investigation Agency (2026).
 - Gulfisha Fatima vs State (Government of NCT Delhi) (2026).
- In the **Andrabi case**, Justices B.V. Nagarathna and Ujjal Bhuyan raised concerns that smaller Benches may be weakening the principle established in **K.A. Najeeb**.
 - Justice Bhuyan emphasised that courts must not ignore prolonged incarceration merely because offences are serious.

- The Bench observed that undertrials should not suffer because the State fails to complete trials within a reasonable time. It also noted that seriousness of charges alone cannot justify indefinite detention.
- Justice Bhuyan further highlighted that UAPA conviction rates remain low, reportedly between 2% and 6% nationally, raising concerns over prolonged imprisonment without conviction.
- However, another Bench in the **Gulfisha Fatima case** denied bail to accused persons such as **Umar Khalid and Sharjeel Imam**, holding that an accused-specific assessment of evidence justified continued detention.
 - The Bench maintained that the K.A. Najeeb ruling did not create an automatic right to bail merely because of delay.
 - Because of these differing interpretations, the Supreme Court has now referred the matter to a larger Bench for authoritative clarification.

Balancing Security and Liberty

- The ongoing debate reflects a larger constitutional tension between:
 - National security and anti-terror enforcement, and
 - Protection of personal liberty under Article 21.
- Supporters of strict bail norms argue that terrorism-related offences require exceptional caution.
- Critics, however, contend that prolonged incarceration without trial undermines constitutional rights and effectively punishes individuals before guilt is established.
- The Supreme Court's upcoming clarification may significantly shape India's future **UAPA bail jurisprudence**.

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