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## Case comment

### Union of India v K. A Najeeb

#### (2021)3SCC713

Authored by-Abhilasha Singh

#### Bench:

Justice N.V Ramanna

Justice Surya Kanta

Justice Anirudha Bose

#### Introduction:

It is said that bail is the rule and jail is the exception, however when it comes to the preventive detention laws, it is not the case, bail is rarity, and really difficult to procure.

This case law deals with the preventive detention law of UAPA(Unlawful Activities Prevention Act).It is one of those laws which affect the liberty of an individual, as there are negligible chances of securing bail.

This is not the only problem associated with this law, the conviction rate is also not very satisfying<sup>1</sup>. The apex court in this case dealt with the issues raised under various provisions of UAPA.

#### Historical Background And Facts Of The Case

UAPA has been enacted in 1967, the political situation of 1962 became one of the prime reasons for its adoption, the main objective of this law was penalisation of unlawful activities and maintenance of security in the country. "Unlawful activities" are defined in this act as "any action taken by such individual or association (whether by committing an act or bywords, either spoken or written, or by signs or by visible representation or otherwise):

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<sup>1</sup> Vignesh Radhakrishnan, Data | UAPA, PMLA, Section 153A: Rise in cases, low on convictions (Sep 15, 2022 00:06 AM), UAPA, PMLA, Section 153A: Rise in cases, low on convictions - The Hindu.

(i) which is intended or supports any claim to bring about on any ground whatsoever the cession of a part of the territory of India from the Union or which incites any individuals to bring about such cession or secession;

(ii) which disclaims or questions the sovereignty of India in respect of any part of the territory of India.

(iii) which disrupts or is intended to disrupt the integrity of India”<sup>2</sup>.

Along with this provision it is the section 43D (5), which makes getting bail really difficult<sup>3</sup>.

It lays down that “No person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard”<sup>4</sup>.

In this context, the facts of the case are as follows, K A Najeeb (the respondent), along with other accused was an active member of Popular Front of India, an extremist organisation, He was charged for attacking Professor T.J. Joseph of Newman College, Thodupuzha. The respondent was arrested under the provisions of UAPA which included Section 16, 18, 18B, 19, 20 of the said act, along with section 153A, 201, 202,212 of IPC(1860). The respondent was arrested on 10.04.2015, Thereafter the respondent applied for bail before the special court and the high court for as many as 6 times (2015-2019), but the bail was declined owing to the bar mentioned in section 43D (5) of UAPA.

In may 2019, the respondent applied again for bail, and the High court through its impugned order affirmed the release of the respondent on bail citing the delay caused in the initiation of trial as the primary reason, against this order the National Investigation Agency appealed before the apex court.

### **Issues involved:**

1. Can violation of Article 21 of the constitution, bring down the rigours of section 43D (5) of UAPA.
2. Whether it is mandatory on the part of the judges to deny bail, where there is a prima facie belief of accused crime.

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<sup>2</sup> Unlawful Activities Prevention Act, 1967.

<sup>3</sup> K. Venkatramanan, explained | What makes the UAPA so stringent, The Hindu (Sep 19, 2022 09:17AM) <https://www.thehindu.com/news/national/explained-what-makes-the-uapa-so-stringent/article61443821.ece>.

<sup>4</sup> Section 43D(5) of the Unlawful Activities Prevention Act (UAPA), 1967.

3. Can the court's decision of granting bail under this act be challenged on some specific grounds.<sup>5</sup>

## Contentions Of The Parties:

### **The appellant:**

It was contended by the party that the suspect was guilty prima facie, and there are numerous reasons to not to set him free, the counsel relied on the judgement of *National Investigation Agency v Zahoor Ahmed Watali*<sup>6</sup>, where the bail was refused owing to the special nature of the 1967 act, and courts have to mandatorily deny bail in such circumstances.

### **The respondent:**

The counsel for the respondent relied on the fact that, many co accused had been released, and if few were convicted as well, there sentences amounted to 8 years, However the respondent had already been incarcerated for more than five years. The counsel referred to the cases of *Shaheen welfare association v Union of India*<sup>7</sup>, and *Hussain V Union of India*<sup>8</sup> were it was relied that the delay in granting bail<sup>9</sup>, and disposal of a case, causes gross injustice to a party, it also violates the right to speedy trial under Article 21 of the Indian Constitution.

### **Judgement**

The Apex Court upheld the decision of High Court, by emphasizing individual's right under Article 21, the court quoted *shaheen welfare Case*<sup>10</sup> as

“No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

The court also referred to the case of *Rohidas Shankar Patil vs Smt. Mayra Gilbert Mendosa*<sup>11</sup>, where it was mentioned that the rigorous conditions in such special enactments

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<sup>5</sup> Shivangi Banerjee, Union of India vs K.A. Najeed: A Trial Without a Trial, Lawoctopus(Sep 15, 2022, 16:10 PM) <https://www.lawctopus.com/academike/case-uoiv-najeed/>.

<sup>6</sup> (2019) 5 SCC 1

<sup>7</sup> (1996) 2 SCC 616

<sup>8</sup> (2017) 5 SCC 702.

<sup>9</sup> Sanyam Agarwal Judgement Analysis: Hussain & Anr. v. Union of India (2017) 5 SCC 702 | Lawsisto Legal News ,(Sep 15, 2022, 16:38 PM) <https://lawsisto.com/legalnewsread/OTE5Mg==/Judgement-Analysis-Hussain-Anr-v-Union-of-India-2017-5-SCC-702>.

<sup>10</sup> (1996) 2 SCC 616

<sup>11</sup> 2003 (5) BomCR 600

are based on the touchstone of speedy trial, failing to which will attract the protection of Article 21.

The court said

“Owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”<sup>12</sup>

It further added that

The statutory restrictions like Section 43D (5) of 1967 act per se does not take away the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution.

### Analysis

The Supreme Court in the judgement of *Union of India V KA Najeeb*, granted bail to the accused charged under Unlawful Activities Prevention Act, 1967, which is a stringent anti-terror law.

The Act was amended in 2008 after the Mumbai blast case, and in 2012 and 2019. The recent amendments have brought under the ambit of UAPA wider coverage of the Act, and designation of an individual as a terrorist, not only this but it also curtails judicial discretion in the granting of bail<sup>13</sup>.

The provisions of these legislations have a direct bearing upon individual ‘s liberty and other rights associated to his life, considering this, the court ‘s decision of bringing a balance between security concerns of the state and Individual liberty is a welcoming step, it is also a ray of hope.<sup>14</sup> for various individuals who are awaiting trial under this act.

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<sup>12</sup> Union Of India vs K.A. Najeeb on 1 February, 2021, Indian Kanoon (Sep, 19 2022, 09:11 AM), <https://indiankanoon.org/docfragment/18346623/?formInput=uapa>.

<sup>13</sup> Ankit Yadav, *Bail under UAPA: A Tough Task*, Indian Journal of Law and Public Policy (Sep 14, 2022,23:42 PM), <https://ijlpp.com/bail-under-uapa-a-tough-task/>.

<sup>14</sup> Bharat Harne Union Of India v K.A. Najeeb – A Ray Of Hope For UAPA Undertrials? Live Law (Sep 24, 2022 23:45 PM) <https://www.livelaw.in/columns/supreme-court-uapa-bail-undertrial-prisoners-bail-section-43-d-170167?infinitemscroll=1>.

This judgement can be a long-standing precedent with regard to the case of undertrial prisoners, whose number is growing day by day, many of these prisoners already spent more than half of the punishment prescribed for the offence, this will serve as a strong reference for upholding of their fundamental rights<sup>15</sup> even in the cases registered under legislations like UAPA.

## Conclusion

There is no doubt that law like UAPA has been brought to meet conditions which are extraordinary in nature and directly affect the security of country, however data shows that in almost ninety percent of cases bail is denied<sup>16</sup>, and individuals remain in prison for a considerable period of time so the rule of bail is the rule and jail is the exception becomes exception in itself, in other words it is not applicable in anti-terror laws like UAPA. In the recent developments, it has been seen that the apex court is taking a progressive stance with respect to granting bail and the case of Union of India V K.A. Najeeb aided in changing the bail jurisprudence under UAPA.

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<sup>15</sup> Shruti kakkar, SC grants bail to journalist Siddique Kappan; asks him not to 'misuse' his liberty, New Indian Express(Sep 15,00<sup>02</sup> AM), <https://www.newindianexpress.com/nation/2022/sep/09/sc-grants-bail-to-journalist-siddique-kappan-asks-him-not-to-misuse-his-liberty-2496477.html>.

<sup>16</sup> Santanu Borthakur, UAPA: Terror of an anti-terror law,Northeast Now (Sep 15, 2022, 16:30 PM) <https://nenow.in/opinion/uapa-terror-of-an-anti-terror-law.html>.