

**Recent judgments on The Unlawful Activities (Prevention) Act, 1967**

<p align="center">Conditions for Bail</p>	<ul style="list-style-type: none"> <li>• length of custody undergone</li> <li>• peculiar facts and circumstances</li> <li>• Trial Court shall impose such conditions as may deem appropriate</li> <li>• accused shall not leave the city without express permission of the trial court</li> <li>• accused shall record his presence in the concerned police station every Monday</li> <li>• in a register maintained for the purpose for six weeks</li> <li>• After six weeks, accused shall be at liberty to go back to his native place but shall report at the local police station in similar fashion that is to say on every Monday and mark his presence in the register maintained in that behalf.</li> <li>• accused shall deposit his passport if not already deposited with the investigating machinery before his actual release.</li> <li>• accused shall not misuse his liberty in any manner and he shall not be in contact with any person(s) connected with the present controversy in question.</li> </ul>	<p align="center">Sidhique Kappan Versus State of Uttar Pradesh, 2022 SCC OnLine SC 1195</p>
	<ul style="list-style-type: none"> <li>• bail on medical grounds</li> <li>• Trial Court shall impose such conditions as may deem appropriate</li> <li>• accused shall not leave the area of Greater Mumbai without the express permission from the Trial Court</li> <li>• accused shall not in any way misuse his liberty</li> <li>• accused shall not get in touch with any of the witnesses</li> <li>• accused shall not try to influence the course of investigation</li> <li>• Any infraction of the conditions shall entail in cancellation of bail granted</li> </ul>	<p align="center">Dr. P. Varavara Rao Versus National Investigation Agency and Another, 2022 SCC OnLine SC 1004</p>
<p>Condition in Section 43D(5) of the UAPA Act</p>	<p>The condition in Section 43D(5) of the Act of 1967 has been understood to be less stringent than the provisions contained in Narcotic Drugs and Psychotropic Substances</p>	<p align="center">Jahir Hak Versus State of Rajasthan, 2022 SCC OnLine SC</p>

less stringent than the provisions contained in NDPS Act	Act, 1985	441 K. A. Najeeb vs Union Of India, (2021) 3 SCC 713
Objective of Section 44, UAPA	<ul style="list-style-type: none"> <li>• The provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C.</li> <li>• The objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses</li> <li>• They are in the nature of a statutory witness protection</li> <li>• On the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, such an order can be passed</li> </ul>	Waheed-ur-Rehman Parra Versus Union Territory of Jammu & Kashmir, 2022 SCC OnLine SC 237
Availing of default bail	<ul style="list-style-type: none"> <li>• The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court</li> <li>• However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred, the right to default bail would be extinguished. The Court would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.</li> </ul>	Naser Bin Abu Bakr Yafai vs The State Of Maharashtra (2022) 6 SCC 308
Magistrate's jurisdiction to extend time under the first	<ul style="list-style-type: none"> <li>• so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D (2)(b) is nonexistent</li> <li>• Consequently, in so far as "Extension of time to complete investigation" is</li> </ul>	Sadique & Ors. vs State of Madhya Pradesh (2022) 6 SCC 339

proviso in Section 43-D (2)(b) is nonexistent	concerned, the Magistrate would not be competent to consider the request and the only competent authority to consider such request would be “the Court” as specified in the proviso in Section 43-D (2)(b) of the UAPA	Bikramjit Singh vs The State Of Punjab, (2020) 10 SCC 616
House arrest is also custody	<ul style="list-style-type: none"> <li>• House arrest is also custody and forced detention.</li> <li>• broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts</li> <li>• the remand/ transit remand order is one which is passed under Section 167 of the Cr.P.C.</li> <li>• detention ‘during investigation’ under Section 428 is integrally connected with detention as ordered under Section 167.</li> </ul>	Gautam Navlakha Versus National Investigation Agency, 2021 SCC OnLine SC 382
Grant of bail under Section 43 (5) D	<ul style="list-style-type: none"> <li>• Section 43-D (5) mandates that a person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true</li> <li>• While considering the grant of bail under Section 43 (5) D, it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not</li> </ul>	Sudesh Kedia vs Union Of India (2021) 4 SCC 704
Confession statement	<ul style="list-style-type: none"> <li>• since the trial of the other two accused persons was separate, their confession statements are not admissible in evidence</li> </ul>	Raja @ Ayyappan vs State Of Tamil Nadu (2020) 5 SCC 118
Section 438 of the Cr.P.C. not applicable	<ul style="list-style-type: none"> <li>• However, we are satisfied that in view of the provisions contained in Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967, which exclude the operation of Section 438 of the Cr.P.C.</li> </ul>	Anand Teltumbde Versus State of Maharashtra and Others, 2020 SCC OnLine SC 858
Charge vis-à-vis discharge	<ul style="list-style-type: none"> <li>• it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out</li> </ul>	Asim Shariff vs National Investigation Agency (2019) 7 SCC 148

	<ul style="list-style-type: none"> <li>• where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge</li> <li>• by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him</li> </ul>	
Section 167(2) vis-à-vis Section 309, Cr.P.C	<ul style="list-style-type: none"> <li>• The accused can be remanded under Section 167(2) Cr.P.C during investigation till cognizance has not been taken by the Court</li> <li>• That even after taking cognizance when an accused is subsequently arrested during further investigation, the accused can be remanded under Section 167(2) Cr.P.C.</li> <li>• When cognizance has been taken and the accused was in custody at the time of taking cognizance or when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under Section 309(2) Cr.P.C.</li> </ul>	Pradeep Ram vs The State Of Jharkhand (2019) 17 SCC 326
Necessary ingredients of the proviso to Section 43D(2)(b)	<ul style="list-style-type: none"> <li>• It has not been possible to complete the investigation within the period of 90 days</li> <li>• A report to be submitted by the Public Prosecutor</li> <li>• Said report indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 90 days</li> <li>• Satisfaction of the Court in respect of the report of the Public Prosecutor</li> </ul>	Union Of India vs Mubarak @ Mohammed Mubarak (2019) 6 SCC 252
Public prosecutor is not bound with the reasons given by the IO	<ul style="list-style-type: none"> <li>• The public prosecutor has the option to agree or disagree with the reasons given by the IO for seeking extension of time</li> <li>• request of an IO for extension of time is not a substitute for the report of the public prosecutor</li> </ul>	The State of Maharashtra vs Surendra Pundlik Gadling (2019) 5 SCC 178
Law in regard to grant or refusal of bail	<ul style="list-style-type: none"> <li>• The court granting bail should exercise its discretion in a judicious manner and not as a matter of course</li> <li>• Though at the stage of granting bail a detailed examination of evidence and</li> </ul>	Lt Col Prasad Shrikant Purohit vs The State Of Maharashtra (2018) 11 SCC 458

	<p>elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence</p> <ul style="list-style-type: none"> <li>• Any order devoid of such reasons would suffer from non-application of mind</li> <li>• It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are: <ul style="list-style-type: none"> <li>➤ The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence</li> <li>➤ Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant</li> <li>➤ Prima facie satisfaction of the court in support of the charge</li> </ul> </li> <li>• At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken</li> <li>• The grant or refusal to grant bail lies within the discretion of the court</li> <li>• The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case</li> <li>• But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused</li> </ul>	
<p>Successive applications for grant of bail</p>	<ul style="list-style-type: none"> <li>• though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected</li> <li>• In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications</li> </ul>	<p>Lt Col Prasad Shrikant Purohit vs The State Of Maharashtra (2018) 11 SCC 458</p>
<p>Ability of Constitutional Courts to grant bail</p>	<ul style="list-style-type: none"> <li>• Presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of</li> </ul>	<p>K. A. Najeeb vs Union Of India, (2021) 3 SCC 713</p>

	<p>the Constitution</p> <ul style="list-style-type: none"> <li>• Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised</li> <li>• Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial</li> </ul>	
<p>Scope of inquiry for grant of bail in sub-section (5) of Section 43D</p>	<ul style="list-style-type: none"> <li>• However, while considering the prayer for grant of bail Courts are not concerned with the defence of the accused</li> <li>• The stringent conditions for grant of bail in sub-section (5) of Section 43D will apply only to the offences punishable only under Chapters IV and VI of the 1967 Act</li> <li>• The offence punishable under Section 13 being a part of Chapter III will not be covered by sub-section (5) of Section 43D and therefore, it will be governed by the normal provisions for grant of bail under the Criminal Procedure Code, 1973</li> <li>• The proviso imposes embargo on grant of bail to the accused against whom any of the offences under Chapter IV and VI have been alleged</li> <li>• The embargo will apply when after perusing charge sheet, the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is <i>prima facie</i> true</li> <li>• scope of inquiry is to decide whether <i>prima facie</i> material is available against the accused of commission of the offences alleged under Chapters IV and VI</li> <li>• While doing so, the Court has to take the material in the charge sheet as it is</li> </ul>	<p>Thwaha Fasal Versus Union of India, 2021 SCC OnLine SC 1000</p>
<p>Public Prosecutor duty</p>	<ul style="list-style-type: none"> <li>• We also make it clear that the learned trial Court will consider and impose</li> </ul>	<p>Angela Harish Sontakke vs State</p>

<p>in imposing of appropriate conditions subject to which the accused will be released on bail</p>	<p>appropriate conditions subject to which the accused appellant will be released on bail in terms of the present order so as to ensure that the accused appellant is available for trial</p> <ul style="list-style-type: none"> <li>• In this regard, the learned Public Prosecutor would be at liberty to address the learned trial Court so far as the conditions subject to which the accused appellant will be allowed to go on bail in terms of the present order</li> </ul>	<p>Of Maharashtra (2021) 3 SCC 723</p>
<p>Court is expected to apply its mind</p>	<ul style="list-style-type: none"> <li>• at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities</li> <li>• The Court is expected to apply its mind to ascertain whether the accusations against the accused are prima face true</li> </ul>	<p>National Investigation Agency vs Zahoor Ahmad Shah Watali (2019) 5 SCC 1</p>
<p>Validity of Amendment Act 2019 pending</p>	<ul style="list-style-type: none"> <li>• <i>Sajal Awasthi v Union of India</i>, WP (C) 1076/2019</li> <li>• <i>Association for Protection of Civil Rights v Union of India</i>, WP (C) 1076/2019</li> </ul>	
<p>Modified procedure in the context of the claim of privilege on the ground of public interest by the Central Government</p>	<ul style="list-style-type: none"> <li>• ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny</li> <li>• In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires</li> <li>• The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association</li> <li>• This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny</li> </ul>	<p>Jamaat-E-Islami Hind vs Union Of India, 1995 SCC (1) 428</p>
<p>Justification of the</p>	<ul style="list-style-type: none"> <li>• for justification of the immediate ban under the proviso, something distinct and</li> </ul>	<p>Mohammad Jafar vs Union Of</p>

immediate ban	different which calls for the urgent step has to be in possession of the Central Government and the same has to be communicated to the association	India, 1994 Supp (2) SCC 1
Court is obliged to inform the accused of his right of being released on default bail	<ul style="list-style-type: none"> <li>The court is obliged to inform the accused of his right of being released on default bail and enable him to make an application in that behalf</li> </ul>	Hussainara Khatoon case Hussainara Khatoon v. Home Secy., State of Bihar, (1980) 1 SCC 98
An oral application for grant of default bail would suffice	<ul style="list-style-type: none"> <li>even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted</li> </ul>	Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67
Right to default bail a fundamental right	<ul style="list-style-type: none"> <li>so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete</li> <li>It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed</li> <li>So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted</li> <li>The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled</li> </ul>	Bikramjit Singh vs The State Of Punjab, (2020) 10 SCC 616



<p>Whether while computing the period of 90 days or 60 days as contemplated in Section 167 (2)(a)(ii) of the CrPC, the day of remand is to be included or excluded</p>	<ul style="list-style-type: none"> <li>• <b>Whether while computing the period of 90 days or 60 days as contemplated in Section 167 (2)(a)(ii) of the CrPC, the day of remand is to be included or excluded, for considering a claim for default bail?</b></li> <li>• There is divergence of opinion.</li> <li>• In <i>State of M.P. v. Rustam</i>, 1995 Supp (3) SCC 221 : 1995 SCC (Cri) 830, <i>Ravi Prakash Singh v. State of Bihar</i>, (2015) 8 SCC 340, and <i>M. Ravindran v. Directorate of Revenue Intelligence</i>, (2021) 2 SCC 485 it was held that the date of remand is to be excluded for computing the permitted period for completion of investigation.</li> <li>• In <i>Chaganti Satyanarayana v. State of A.P.</i>, (1986) 3 SCC 141, <i>CBI v. Anupam J. Kulkarni</i>, (1992) 3 SCC 141, <i>State v. Mohd. Ashraft Bhat</i>, (1996) 1 SCC 432, <i>State of Maharashtra v. Bharati Chandmal Varma</i>, (2002) 2 SCC 121 and <i>Pragyna Singh Thakur v. State of Maharashtra</i>, (2011) 10 SCC 445 it was held that the date of remand must be included for computing the available period for investigation for determining entitlement to default bail.</li> <li>• a judicial conundrum has arisen which is required to be resolved for guidance of the Court</li> <li>• Reference of the issue to a larger Bench</li> <li>• Unless the issue is appropriately determined, the courts across the country may take decision on the issue depending upon which judgement is brought to the Court's notice or on the Courts own understanding of the law, covering default bail under Section 167 (2)(a) II of CrPC.</li> </ul>	<p>Enforcement Directorate, Government of India Versus Kapil Wadhawan and Another, 2021 SCC OnLine SC 3136</p>
<p>Imposing condition to deposit a sum of Rs.8,00,000/ while releasing the accused on default bail/statutory bail</p>	<ul style="list-style-type: none"> <li>• No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.</li> </ul>	<p>Saravanan Versus State represented by the Inspector of Police, (2020) 9 SCC 101</p>

<p>Sanction to prosecute stands on separate footings in grant of statutory bail</p>	<ul style="list-style-type: none"><li>• Notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) Cr.P.C.</li><li>• Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet.</li><li>• The two are on separate footings.</li></ul>	<p>Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77</p>
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