



2025:DHC:8285



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: August, 13, 2025
Pronounced on: September 18, 2025*

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BAIL APPL. 1407/2025

UMESH @ KALA

S/O Sh. Vijender Singh,
R/o H.No.152, Gaon Tajpur Kalan,
North West Delhi,
Delhi-110036.

.....Petitioner

Through: Mr. Murari Tiwari, Mr. Rahul Kumar,
Mr. Sarthak Singh and Ms. Indira
Murthy, Advocates.

VERSUS

STATE,
THROUGH SHO
P.S. Special Cell
Lodhi Road, Meharchand Market,
Lodi colony,
New Delhi-110003.

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC (CrI.) for
the State with Mr. Arjit Sharma and
Ms. Sakshi Jha, Advocates with SI
Devendra Rawat, Cell/NDR/New
Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



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1. Second Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the Applicant *Umesh @ Kala* for grant of *Regular Bail* on case FIR No.77/2018 under Section 3/4 Maharashtra Control of Organised Crime Act, 1999 (*hereinafter referred to as "MCOCA"*), Police Station Special Cell, Delhi.
2. It is submitted that the Applicant is a family person, having his wife and old and ailing parents. He is in Judicial custody for last 6 years, 7 months and 12 days since 24.08.2018. He has been implicated falsely in this case as there is no evidence to show that he was involved in *organized crime*, as alleged by the Prosecution.
3. He has been implicated falsely in *FIR No.83/2018* under Section 302/307/120B Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*), Police Station Maurya Enclave which was registered on 16.03.2018. On the basis of the said FIR, the provisions of MCOCA have been wrongly invoked for registration of present FIR by wrongly portraying that the Applicant is a *member of organized crime*. He has already been granted Regular Bail in the said FIR No. 83/2018. While granting Bail, the Ld. Court had observed that out of 61 witnesses, only 19 witnesses had been examined. The trial is likely to take long to get concluded.
4. The Applicant had been granted Interim Bail by this Court and the Ld. Trial Court *vide* Order dated 19.06.2024, 21.11.2024 and 10.11.2024 respectively on the ground of medical condition of wife of the Applicant. He complied with the conditions imposed and surrendered before the concerned Jail Authority on time. There was *no misuse of liberty* of the Interim Orders granted to him.



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5. The Applicant's father Vijender Kumar had been diagnosed with severe heart condition and has been advised by the Doctors at AIIMS to undergo urgent *bypass heart surgery*. The Doctor's recommendation highlights the immediate surgical intervention necessary to prevent life threatening situation. The Applicant being the only son, is the sole caretaker who can look after his father during and after the surgery. He has a history of *stent placement* in the *Left Anterior Descending Artery* on 28.09.2013 and *Left Circumflex artery*, on 14.10.2013. He has also undergone Coronary Angioplasty in 2019. Presently, he is experiencing Angina pain on Exertion Grade II for the past four months with significant 60% *ejection fraction* since 2013. Given his deteriorating condition, Doctors at AIIMS have advised him continuous medical attention and further bypass surgery.

6. The reference is made to Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813, where while granting Bail, it was observed that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

7. It is submitted that after a period of more than 6 years, *Charges have been framed on 24.08.2024*. There are 88 Prosecution witnesses and the examination of all the witnesses shall take long. He has already undergone more than 6½ years of custody and denying him Bail, is violative of his right under Article 21 of the Constitution of India.



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8. It is submitted that in addition to the aforesaid case, the Applicant was implicated in *three more cases* bearing **FIR No.193/2015 P.S. Alipur**, **FIR No.466/2015 P.S. Murthal** and **FIR No.41/2016 P.S. K.N. Katju Marg**, as per the Chargesheet filed in the present case.

9. In the *FIR No.466/2015 P.S. Murthal*, Punjab and Haryana High Court suspended his sentence *vide* Order dated 30.07.2024 by observing that the Applicant did not inflict any injury upon the deceased.

10. In *FIR No.193/2015 P.S. Alipur* under Section 302/307/34 IPC and Section 25, 27 Arms Act, 1959, the Applicant has been acquitted.

11. In the case *FIR No.41/2016 under Section 307/34 IPC and Section 25, 27, 54, 59 Arms Act, 1959, P.S. K.N. Katju Marg*, he has been on Regular Bail from the onset and based on the testimony of the witnesses, no substantial role has been attributed to him and he is likely to be acquitted.

12. No recovery of any movable or immovable has been made from the Applicant in any of the cases. The Police was unable to link the Applicant directly in the present FIR.

13. He is also apprehensive of danger to his life in Jail for which an Application for grant of protection and security has been filed before the Ld. ASJ, Rohini Court. The Ld. Court *vide* Order dated 08.01.2025 has issued directions to the Jail Superintendent to ensure the security of the Applicant in Jail and to conduct an appropriate inquiry.

14. The role of the Applicant as delineated by the I.O in the Chargesheet, is minimal. It is claimed that he has been erroneously cited as an Accused even in matters where his name is not even mentioned. The investigatory lapse, replete with errors and manifest lack of proper application of mind, indicates an ulterior motive on the part of the Police Officials to frame him



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with trumped-up charges with the sole intent of associating him with alleged organized crimes committed by others. The Investigating Officer has arbitrarily and unjustifiably highlighted cases in which he had no role to play, merely to portray him as a member of an *organized crime syndicate*.

15. In State of Maharashtra vs. Rahul Ramchandra Taru, 2011 SCC OnLine Bom. 605, the Court observed that merely filing of the Chargesheet in the past, does not ipso facto constitute an offence of organized crime. Reliance is also placed on Prafulla s/o Uddhav Shende vs. State of Maharashtra 2009 ALL MR (Cri) 870, wherein similar observations have been made. Further reliance is placed on Gokul Bhagaji Patil vs. State of Maharashtra (2007) 2 SCC 475.

16. In addition, it is submitted that wife of the Applicant is suffering from numerous ailments and recently underwent appendectomy.

17. The *Regular Bail Application had been dismissed by Ld. ASJ* without considering the fact that except the present FIR, the Applicant is not required in any other case including the cases on the basis of which the present FIR has been registered. The Applicant is resident of House No.152, Gaon Tajpur Kalan, North West Delhi and had deep roots, strong family and social ties and is not a flight risk. He undertakes to comply with all the conditions that may be imposed.

18. *Hence, a prayer is made for grant of bail.*

19. ***The Status Report has been filed on behalf of the State***, wherein it is stated that the Accused Sunil @ Tillu (now deceased) was a desperate gangster who along with his associates namely the Applicant, Umesh @ Kala, herein and other gang members were involved in a number of sensational crimes including broad daylight shootouts in gang rivalry,



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gruesome and inimical murders of witnesses and others, attempt to murders, extortions from businessmen under fear of death, offences under the Arms Act, etc. *Sunil @ Tillu* formed an organized crime syndicate with the objective of gaining pecuniary benefit or gaining undue economic or other advantages for himself or other persons.

20. After receiving approval dated 22.06.2018 from senior officers on the proposal initiated by the then ACP to invoke MCOCA against *Sunil @ Tillu* and his gang members for running organised crime syndicate, the present FIR No.77 of 2018 under Section 3/4 MCOCA was registered at Police Station Special Cell, Delhi.

21. During the investigations, key member of this Organized Crime Syndicate i.e., Applicant who had executed several heinous crimes on the direction of gang leader *Sunil @ Tillu*, was arrested in this case on 24.08.2020. In all, six accused persons namely *Sunil @ Tillu*, *Amit @ Danbang*, *Sandeep @ Dhillu*, *Sonu @ Himmat*, Applicant and *Jitender @ Alloo* were arrested. *After completion of investigations, Chargesheet and three supplementary Chargesheets have already been filed before the Trial Court.*

22. It is stated that the Applicant is having a key role and is an active member of organized crime syndicate of *Sunil @ Tillu* gang who have been involved in murder and other heinous crimes. During his absconding period, he along with his associates, was continuously involved in several murders and extortion cases on the direction of gang leader and have eliminated his rival gang members in public places leading to increased terror and fear of this Organized Crime Syndicate, in Delhi and NCR. He is a hardcore and



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notorious criminal of the Gang. These facts are clearly established from four involvements with gang leaders and gang members, which are as under:

S.No.	FIR	BRIEF FACTS	ARRESTED ACCUSED	STATUS
1	193/2015 U/S 302/307/34 25/27 Arms Act PPS Alipur, Delhi	One person namely Arun @ Commando who was associate of Jitender @ Gogi Gang was murdered by members of Tillu gang on the directions of Sunil @ Tillu in gang war.	1) Sunil @ Tillu 2) Jitender @ Alllo 3) Amit @ Dabang 4) Umesh @ Kala 5) Rajesh @ Bunt 6) Manjeet	Acquitted
2	466/15 U/s 302/307/34 IPC and 25/27 Arms Act PS Murthal, HR	One person namely Niranjana @ Master who was witness in case FIR No.193/2015 PS Alipur, Delhi, was murdered by Sunil @ Tillu, Umesh @ Kala and their associates.	1) Sunil @ Tillu 2) Umesh @ Kala 3) Vikas @ Vicky Kansala 4) Anil 5) Chandan @ Pintu 6) Rajesh 7) Vinay @ Bittu 8) Sunil Mann	Convicted
3	41/2016 U/s 307/34 and 25/27/54/59 Arms Act P.S. K.N. Katju Marg, Delhi.	Umesh @ Kala, Sunil @ Tillu and other associates fired upon one person namely Vishal, for monetary dispute for protection money, who got	1) Umesh @ Kala 2) Sunil @ Tillu 3) Vikash @ Vicky Kansala 4) Chandan @ Pintu 5) Virender Pahlwan 6) Dinesh	Pending Trial



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		sustained bullet injury.		
4	83/2018 U/S 302/307/120B PS Maurya Enclave, Delhi.	One person namely Monu Nepali who was associate of Jitender @ Gogi gang was murdered by Umesh @ Kala and his gang members near Power House Pitampura, Rohini Court Delhi on the direction of Sunil @ Tillu.	1) Umesh @ Kala 2) Amit @ Dabang 3) Sandeep @ Dhillu 4) Mohit @ Rohit @ Monu 5) Gorav Sharma @ Golu @ Naresh 6) Deepak @ Sonu 7) Naresh 8) One CCL	Pending Trial

23. It is further submitted that 10 public witnesses who have been living in the vicinity of the Applicant's residence and Delhi-NCR, have been recorded who have deposed against him and the other accused persons. *They have stated that they had received life threats or threats for protection money or extortion from Applicant and other gang members on behalf of Crime Syndicate.* Members of this gang are also targeting witnesses of the other cases so that no one dares to depose against them.

24. This is evident from his involvement in the murder of witness Niranjana @ Master in *FIR No.466/2015* under Section 302/307/34 IPC P.S. Murthal, Haryana. The Applicant along with Sunil @ Tillu and other accused were convicted and punished with imprisonment for life in the aforesaid case. After pronouncement of sentence by Ld. ASJ in this matter, co-accused Sunil and Sonu @ Himmat had sent their sharp shooters to kill



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witness and his relatives who had deposed against him. In this regard, FIR No.463/2020 under Section 307/34/120B IPC P.S. Alipur was registered.

25. It is also submitted that more than 10 public persons have lost their lives in gang rivalry between Tillu gang and Gogi gang. Other arrested gang members i.e. Sonu, Sandeep, Amit and his associates are still operating this gang from inside the Jail and are continuously involved in executing several murders on the direction of key members of the gang. The details of the FIRs in which the Applicant is accused are as follows:

S.NO.	DETAIL OF FIRs	STATUS
1.	193/2015 U/s 302/307/34 IPC 25/27 Arms Act PS Alipur, Delhi.	Acquitted
2.	466/15 U/s 302/365 PS Murthal, Sonapat, Haryana	Convicted
3.	41/2016 U/s 307/34 and 25/27/54/59 Arms Act PS K.N. Katju Marg	Pending Trial
4.	55/2016 U/s 25 Arms Act PS K.N. Katju Marg	Pending Trial
5.	83/2018 U/s 302/307/120B PS Maurya Enclave	Pending Trial
6.	114/19 U/s 307 IPC North Rohini, Delhi	Discharge

26. *Sunil @ Tillu Gang* has strong rivalry with *Jitender @ Gogi Gang* and members of one gang have been targeting the members of other gang which was clearly shown by brutal murder of *Jitender @ Gogi* in the Court Room, Rohini during court evidence, by members of *Tillu Gang* and merciless murder of *Sunil @ Tillu* by members of *Gogi gang*, in Tihar Jail. The Applicant is the key and active member of this gang.

27. Considering that there was sufficient evidence, *the Charges under Section 3/4 MCOCA have been framed against the Applicant.*



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28. *The Bail Application is strongly opposed* as he may threaten or murder the witnesses who are yet to depose in the present case. He may also jump bail or flee from country, to evade the trial of the case and may also get involved in further heinous crimes.

Submissions heard and record perused.

29. MCOCA has been enacted to deal with the gang crime which at one point of time, shocked the city of Mumbai. This Act was extended to National Capital Territory of Delhi *vide* Notification dated 02.04.2002, in view of the rampant increase in hardcore criminal activities and gang rivalry in and around Delhi. The object of this Act was to make special provision for prevention and control and for coping with criminal activity by Organized Crime Syndicate or Gang or for matters connected there with.

Satisfaction of twin conditions under Section 21(4) of MCOCA:

30. The considerations which *normally weigh* with the court in granting bail in non-bailable offences have been explained by the Apex Court in the case of State v. Capt. Jagjit Singh (1962) 3 SCR 622 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 which basically are — **the nature and seriousness of the offence**; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

31. However, twin additional conditions have to be satisfied to get the bail, as provided in **Section 21(4)** MCOCA which reads as under:



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“...21(4). Notwithstanding anything contained in the Code, **no person accused of an offence punishable under this Act shall**, if in custody, be released on bail or on his own bond, unless--

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that **he is not guilty of such offence** and that he is not likely to commit any offence while on bail.
....”

32. This section which is couched in negative, provides that for being entitled to bail, **twin conditions** have to be satisfied; **firstly**, a finding by the Court that it is satisfied that there are *reasonable grounds* for believing that *he is not guilty of such offence* and **secondly**, that *he is not likely to commit any offence* while on Bail.

33. The Apex Court in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294, has in detailed analysed the twin conditions provided under Section 21(4) MCOCA as under:

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. **It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction**



and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

34. To have a holistic view of the rival contentions of the parties to ascertain if the Applicant is entitled to bail, it would be pertinent to first refer to the definitions of the terms ‘*continuing unlawful activity*’, ‘*organized crime*’ and ‘*organized crime syndicate*’, which are defined as under :



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*“2(d) “**continuing unlawful activity**” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a Competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;*

*2(e) “**organised crime**” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;*

*2(f) “**organised crime syndicate**” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;”*

35. From the very definition, ‘**Organised Crime Syndicate**’ is a group of two or more persons who singly or collectively act as a syndicate or gang, to indulge in activities of organised crime. The ‘**organised crime**’ means continuing unlawful activity by an individual singly or jointly as the member of organised crime syndicate. The ‘**continuing unlawful activity**’ means an activity undertaken singly or jointly as a member of Organised Crime Syndicate, which is punishable for an imprisonment of three years or more in respect of which more than one Chargesheet have been filed before the competent Court within preceding period of ten years and on which cognizance has been taken by the Court.



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36. In the present case, as has already been stated above, there have been four FIRs registered against the Applicant as member of the gang, while six individual FIRs. It has been explained in the Status Report that the Applicant is a *member of Sunil @ Tillu gang* which is rival of Jitender @ Gogi gang. There has been gang rivalry in which many members of their respective gangs, have been killed. Not only this, even though some members of Tillu gang are in Jail, they have not ceased their activities and from within the precincts of Jail, they have been conspiring and continuously involved in several murder and extortion cases on the directions of Sunil @ Tillu. As a part of gang rivalry, Sunil @ Tillu, the hardcore notorious criminal head of the gang, has been killed in Tihar Jail by members of *Gogi gang*. Likewise, Jitender @ Gogi has been brutally murdered in the Court room in Rohini Courts.

37. All these facts show that the Applicant has been indulging in Organized crime as part of organized criminal syndicate. Further, to constitute an offence under this Act, requirement is that there must be two or more FIRs as members of the Gang in which Charge-Sheet has been filed and cognizance taken, which is also not disputed as the number of FIRs against the Applicant against the Applicant in past ten years have been registered and cognizance has been taken in all the cases. The *Charges under Section 3/4 MCOCA have been framed against the Applicant in the present case.*

38. Some of the cases may have ended in acquittal which is of little consequence for invoking C. It has been vehemently submitted by the Learned Prosecutor that most of these cases against the Applicant and other gang members ended in acquittal because the witnesses are not willing to



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come forth to give testimony in the Court out of fear and threat which is continuously extended to the witnesses. This aspect is also evident from the fact that *conspicuously the requirement under MCOCA is of taking cognizance and does not talk about the conviction/ acquittal.*

39. The propensity to commit crime and to silence the witnesses is corroborated by FIR No.466/2015 which was registered against the Applicant and the other gang members along with Sunil @ Tillu, for murder of one Niranjana @ Master who was the witness in case FIR No.193/2015 P.S. Alipur, Delhi.

40. From the aforesaid circumstances, it is evident on the face of it, there is sufficient material to show the complicity of the Applicant in the serious organized crimes being a *member of the Organised Crime Syndicate. The Applicant has failed to satisfy the twin test as laid down under Section 21(4) MCOCA for the grant of Bail.*

Delay in trial:

41. The main gravamen of the contention of the Applicant is that the trial would take long time to get concluded and the detention of the Applicant must not be made into a pre-trial conviction.

42. The fundamental right to life and liberty under Article 21 of Constitution of India has been emphasized time and again in the various judgments by the Apex Court and by other High Courts. The right to speedy trial now firmly stands entrenched in constitutional jurisprudence under Article 21 Constitution of India and is not a mere empty promise, but it ensures the most fundamental right to personal liberty.

43. The dilemma of balancing the individual rights of an accused with the larger societal interest while considering the grant of bail under UAPA, was



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expressed by the Apex Court in the case of Union of India v. K.A. Najeed, (2021) 3 SCC 713, indicating that *per se* it does not oust the jurisdiction of the constitutional courts to grant bail on violation of Part III of the Constitution of India, but they have to be construed harmoniously. The Apex Court has observed as under:—

“17.Whereas at commencement of proceedings, the 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 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

44. A reading of the judgment in K. A. Najeed (supra) gives an indication that delay cannot be the sole factor for grant of bail.

45. In the recent judgment of Mohd. Muslim vs. State (NCT of Delhi) 2023 SCC OnLine SC 352, the Apex Court while dealing with Section 37 NDPS Act which is *parametria* to Section 21(4) MCOCA, held that protracted incarceration as an undertrial even in cases involving serious offences must weigh heavily in favour of granting bail, particularly when such delay is not attributable to the accused.

46. Factors such as long incarceration or delay in trial cannot be taken as sole factors for the grant of bail without considering the gravity of the offence or the role played by the accused in the said case, which can be only determined upon a consideration on the merits of the case. Such factors are



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only ancillary in nature and cannot be viewed in isolation for considering bail under Section 43D(5) of UAPA.

47. The Constitution Bench in Kartar Singh vs. State of Punjab (1994) 3 SCC 569 dealing with similar provision under Section 20 TADA Act, it was observed that despite this provision under Section 20, call of Article 21 as the right to speedy trial may even require in some cases quashing of the criminal proceedings altogether, as has also been held by the Constitution Bench in A.R. Antulay vs. R.S. Nayak (1992) 1 SCC 225. Right of release on bail must be taken as embedded in the right of speedy trial under Article 21. While some amount of deprivation of personal liberty cannot be avoided in such cases, but if the period of deprivation pending trial would become unduly long, the fairness assured by Article 21 would receive a jolt.

48. The provision of law which curtails the right of the accused to secure bail and correspondingly fetter judicial discretion, has been upheld by the Apex Court in the case of Mohd. Muslim (supra) as conflating two competing values i.e. the right of the accused to enjoy freedom, based on presumption of innocence, and societal interest.

49. In Gobarbhai Naranbhai Singala v. State of Gujarat, (2008) 3 SCC 775, the Apex Court while relying upon State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 has observed that long period of incarceration cannot itself be the ground for grant of Bail.

50. Recently, in the case of Siddhant vs. State of Maharashtra 2024 SCC OnLine SC 3798 while considering the Bail Application under MCOCA, it was reiterated that excessive pre-trial incarceration particularly in the absence of meaningful progress in the proceedings, infringes the fundamental rights of the accused.



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51. However, the Apex Court in Gurwinder Singh v. State of Punjab, (2024) 5 SCC 403, while refusing to grant Bail to an Accused under the Unlawful Activities (Prevention) Act, 1967, has observed that *mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail*.

52. In Dheerpal v. State Govt. of NCT of Delhi, 2024 SCC OnLine Del 4106, the Coordinate Bench of this Court, while refusing to grant bail to an accused under MCOCA, held that delay in conclusion of trial is an important factor to be considered in a bail application, but it cannot be the only ground for granting bail. The Court further noted that there has to be a balance between the rights of the accused and the gravity of the offence, especially when the charge is under a heinous law like MCOCA.

53. From the aforesaid judgments, it emerges that *the right of the accused* needs to be balanced with the *societal interest*. Factors such as long incarceration or delay in trial cannot be taken as sole factors for the grant of bail without considering the gravity of the offence or the role played by the accused in the said case, which can be only determined upon a consideration on the merits of the case. Such factors are only ancillary and cannot be viewed in isolation for considering bail under the special Acts. If it is found that there is no significant progress in the trial and there is no meaningful progress in the proceeding, or that the delay is not on account of the conduct of the accused, the Bail may be justified. Pertinently, it was also noted that in such serious offences, number of witnesses are more and there is justification for the trial to take long.

54. Therefore, it may be concluded that while delay in trial definitely impinges on the Right of liberty of the accused under Article 21 of



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Constitution of India, but the corresponding *societal interests* need to be balanced for which the gravity and seriousness of offences; whether the trial is not progressing and also the number of witnesses, become significant.

55. In the present case, the Applicant got arrested in the present FIR on 24.08.2020 and since then Charges have already been framed on 24.08.2024 and about 10 prosecution witnesses have also been recorded. There may be 88 witnesses of the Prosecution, in all but it cannot be said that the trial is not delayed or is not proceeding according to its pace. It cannot be said to be a case where there is no meaningful progress in the trial.

56. Additionally, it cannot be overlooked that if the Applicant is released on Bail, the possibility of his committing the crime again while on Bail, cannot be overlooked especially considering that he is allegedly a part of notorious gang headed by Sunil @ Tillu who though has died, but the gang activity is being continued by other members. Also, there is a gang rivalry with Jitender @ Gogi gang which has also seen murders of the members of rival gangs.

57. In the light of the aforesaid discussion, this is one case where even though the Applicant is in Judicial Custody since 24.08.2020, the circumstance as discussed above, do not justify grant of Bail.

58. The Bail Application is accordingly, dismissed. Pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 18, 2025

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