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## BAIL UNDER UAPA: HOW THE NIA'S PRIMARY TOOL HAS REDEFINED THE PRESUMPTION OF INNOCENCE

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### ABSTRACT

In a democracy based upon the Rule of Law, the state has no right to take the life of an individual before it has determined that the individual has committed any crime. It focuses on the concept of "the presumption that a person is innocent until proven guilty in a court of law." In landmark decisions, the Supreme Court has established the rule of Criminal Jurisprudence that Bail is the rule, Jail is an exception.

The Unlawful Activities (Prevention) Act is India's primary anti-terrorism law. Section 43D (5)<sup>1</sup> of UAPA was introduced after the terror attacks in Bombay in 2008 and created a restrictive bail bar in Section 43D (5), which is the most contentious feature. This provision is one of the strictest bail provisions. It required a court to deny bail if there were reasonable grounds to believe that the case against the accused was prima facie true, with no right to challenge what had been written against them. The outcome is that people were spending years and years, sometimes more than five years, in prison for offenses they were never convicted of.

This research paper seeks to prove that the Bail Rules outlined in the UAPA have changed the concept of presumption of innocence in India with all the chargesheets, denial of bail and years of imprisonment. It examines cases like *NIA v. Zahoor Ahmad Shah Watali*<sup>2</sup>, *Union of India v. K.A.*

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<sup>1</sup> *Unlawful Activities (Prevention) Act, No. 37 of 1967, § 43D (5) (India).*

<sup>2</sup> *National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 S.C.C. 1 (India).*

*Najeeb*<sup>3</sup>, *Vernon Gonsalves v. State of Maharashtra*<sup>4</sup>, and *Shoma Kanti Sen v. State of Maharashtra*<sup>5</sup>. This paper critically examines Articles 20<sup>6</sup>, 21<sup>7</sup>, and 22<sup>8</sup> of the Indian Constitution, which requires that no person is to be punished unless the prosecution proves the guilt of the accused beyond a reasonable doubt. Yet there are special statutes enacted by the Indian legislatures that contain reverse burden clauses.

**Keywords:** UAPA, Section 43D (5), NIA, Presumption of Innocence, bail provisions, anti-terrorism law, Article 20, Article 21, Article 22, Constitution of India.

## INTRODUCTION

The presumption of Innocence<sup>9</sup> and the Right to a fair trial are the two most fundamental principles of criminal law. One ensures that the guilt must be proven, and the other ensures it is proven fairly. The UAPA has been India's central law against terrorism and unlawful activities since the year 1967. Later, the amendments included the definition of a terrorist act in 2004 and penalized terrorist organizations, expanding the scope of the act and granting the National Investigation Agency (NIA), its main enforcement body, broad investigative and prosecutorial powers.

It made bail difficult to secure because the court was looking at the charge sheet prepared by the National Investigation Agency (NIA), and the accused was not allowed to present any evidence outside the charge sheet for their defense. As a consequence, it deprives judges of any leeway to acquit an accused during a trial.

This has engendered problems, including whether the reverse burden provisions are compatible with the presumption of innocence provided in Article 20 and 21 of the Constitution. This Paper will aim to examine this reality in a legal discussion of precedents, legislation, and factual information. On 18th May, 2026<sup>10</sup>, the Supreme Court of India reiterated its clarity in the case of

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<sup>3</sup> *Union of India v. K.A. Najeeb*, (2021) 3 S.C.C. 713 (India).

<sup>4</sup> *Vernon Gonsalves v. State of Maharashtra*, 2023 SCC Online SC 885 (India).

<sup>5</sup> *Shoma Kanti Sen v. State of Maharashtra*, 2023 SCC Online Bom 1788 (India).

<sup>6</sup> INDIA CONST. art. 20.

<sup>7</sup> INDIA CONST. art. 21.

<sup>8</sup> INDIA CONST. art. 22.

<sup>9</sup> Chitkara, *The Trials of Bail: Pre-Trial Presumption of Innocence Under the UAPA and General Criminal Laws*, 35 Nat'l L. Sch. India Rev. (2023),

<sup>10</sup> *Syed Iftikhar Andrabi v. National Investigation Agency, Jammu*, 2026 INSC 503 (S.C. May 18, 2026).

*Syed Iftikhar Andrabi vs National Investigation Agency*<sup>11</sup> that in UAPA cases, bail must be granted. The UAPA's conviction rate has only been between 1%- 4% annually. It means that by the time a case reaches its conclusion, there is a chance that the accused will be acquitted.

## RESEARCH QUESTIONS

- I) Does the current method of interpreting Section 43D (5) of the UAPA raise concerns about the Constitution's guarantee of the presumption of innocence?
- II) What will be the court's stake in the future in regard to the propositions mentioned in *Watali (2019)* and *KA Najeeb (2021)* judgment?
- III) How does the conviction rate under the UAPA relate to the constitutional right to personal liberty and the extent to which it fulfills this constitutional right?
- IV) What Judicial and Legislative action does the UAPA Bail Provision have with respect to the Constitution's principles of freedom and fairness?

## LEGISLATIVE HISTORY AND DESIGN OF THE UAPA

The UAPA was originally passed in 1967 to address secessionist movements and anti-national activities in India, particularly during the Naga insurgency, in order to protect the territorial integrity. Over time, UAPA was expanded significantly. Subsequently, the amendments of 2004, 2008, and 2019 progressively added to the powers of law enforcement agencies. The most consequential change to the UAPA came with the 2008 amendment that was passed after the Mumbai Terror Attacks.

The 2008 amendment introduced Section 43D (5)<sup>12</sup>, the bail provision this Research paper focuses on. Under this bail provision, the court must deny bail if there are reasonable grounds to believe that the accusations in the chargesheet are prima facie true. Most importantly, the assessment will be made from NIA's case file only, and the accused will not be allowed to introduce any evidence against the case in court. The UAPA was preceded by two Acts, the Prevention of Terrorism Act (POTA)<sup>13</sup> and the Terrorist and Disruptive Activities Prevention Act (TADA)<sup>14</sup> which were both harsh and vulnerable to misuse. The investigations and

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<sup>11</sup> *Syed Iftikhar Andrabi v. National Investigation Agency*, 2026 SCC Online SC (India).

<sup>12</sup> *Id.*

<sup>13</sup> *Prevention of Terrorism Act, No. 15 of 2002 (India)*.

<sup>14</sup> *Terrorist and Disruptive Activities (Prevention) Act, No. 28 of 1987 (India)*.

prosecution of offenses under UAPA are carried out under a special law with a different procedure architecture than what it had in its initial mandate, which makes it much tougher.

## **THE 2019 AMENDMENT**

Furthermore, the 2019 change was the most talked about, granting the ability to designate not only organizations, but individuals as terrorists as well and without any judicial review. This made the bail provisions more stringent, as a person designated as a terrorist faces a higher threshold for release under Section 43D (5)<sup>15</sup>. UAPA is infamous for its large numbers of pre-trial detainees in compliance with its laws, investigations, trials, and low conviction rates.

UAPA vests within itself extraordinary powers. Under this law, agencies like the National Investigation Agency, the Anti-Terror Squad and Special Cells of State Police are given wide powers to arrest, investigate and prosecute persons, the powers that go beyond what is available under CrPC (now BNSS) and Indian Evidence Act (now BSA). Additionally, it reduces the basic rights and protections an accused person would ordinarily be entitled to, such as the right to challenge evidence and to a fair hearing.

## **REVERSE ONUS AND GUILT PRESUMPTION**

The UAPA also has two elements that put the onus on the accused. Section 43E<sup>16</sup> assumes that a person is guilty of an offence if the prosecution can prove that there had been a link between the accused and the scene of the offence, or that the explosive materials had been recovered under Section 15<sup>17</sup> of the Act, unless there could be evidence to the contrary. Further, Section 38 of the act provides that if the prosecution presents evidence that the accused was a member of an organization banned under this act, the accused must prove their innocence. These are accompanied by Section 43D (5)<sup>18</sup>, which provides a legal framework that presumes guilt, unless the accused proves otherwise. Analysis of Section 43D (5)<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Unlawful Activities (Prevention) Act, No. 37 of 1967, § 43E (India).*

<sup>17</sup> *Unlawful Activities (Prevention) Act, No. 37 of 1967, § 15 (India).*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

## **STATUTORY TEXT AND ITS PLAIN MEANING.**

The court, after reading the chargesheet, will grant bail if it has reasonable doubts over the nature of the charges being basically true as per Section 43D (5) of the IPC. No one is entitled to put up evidence at this stage or challenge prosecution. The outcome is one sided and the court listens only to the NIA's chargesheet and what seems prima facie true. The document (chargesheet) is the starting point for the prosecution of the accused. No opportunity for the other party (*Audi alteram partem*). In *Watali (2019)*<sup>20</sup>, the Supreme Court interpreted this provision so as to make the bail even more difficult to obtain.

It was believed that the proof required at the bail stage is less than that required in any other criminal law. The trial, which finally occurs, may have been postponed for years and the defendant could have been spending time in prison. This issue was discussed by Justice Bhuyan in his *Andrabhi* ruling in May 2026.

## **SUPREME COURT AND THE UAPA BAIL PRECEDENTS**

In the case of *Nia v. Zahoor Ahmad Shah Watali*<sup>21</sup>, Watali was accused of funding terrorist groups in Jammu and Kashmir. The NIA investigated him and filed a chargesheet, and the lower courts granted him bail.

As a result, the NIA challenged this before the Supreme Court, arguing that the bail should not have been granted once the chargesheet was filed under the UAPA.

The Supreme Court in this case canceled Watali's Bail and sent him back to prison. It held that if the NIA's chargesheet makes the case prima facie convincing, bail must be refused. The judge cannot examine the evidence too closely at the bail stage, and the accused had no right to present their own evidence or challenge the NIA's evidence in the chargesheet. The standard of proof required at this stage is lower than what is needed for framing charges against the accused

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<sup>20</sup> *Unlawful Activities (Prevention) Act, No. 37 of 1967, § 15 (India).*

<sup>21</sup> *Id.*

In February 2021, the Supreme Court delivered an important ruling in the case of *Union of India v. KA Najeeb*<sup>22</sup>. In this case, KA Najeeb was accused of the murder of an RSS worker in Kerala and was charged under the UAPA. He was in prison as an undertrial prisoner for several years with no progress in his trial.

He approached the Supreme Court and argued that he had been detained without a verdict on his case. He approached the Supreme Court, claiming that it violated his personal liberty under Article 21 of the Constitution of India.

The Supreme Court granted him bail after 6 years in prison. The court held that if a person has been in prison for a very long time and there has been no progress in his trial proceedings, then the delay alone is enough to grant him bail. It is important to note that Najeeb's bail was not granted because he had been in prison for several years without a verdict; the state cannot deny bail and drag the trial out indefinitely. *Bail is the rule and jail the exception*, and it doesn't go away completely under UAPA it may be more difficult to apply.

### **THE UMAR KHALID CASE<sup>23</sup>**

In recent years, the case of Umar Khalid, who had been arrested under the UAPA, was the closely watched test of the bail provision in the UAPA. In September 2020, Umar Kahlid, a doctoral researcher and student leader at the University, was arrested on February 2020 Delhi riots charges.

He was charged under multiple sections of the UAPA, along with IPC offenses and the Arms Act, though Umar Khalid was granted bail in April 2021 for rioting, vandalism, arson in the *Northeast Delhi Khajuri Khas Case*<sup>24</sup>, he remained in custody since September 2020 under the conspiracy case, his bail applications were rejected at every level leaving him imprisoned for over five years by the Supreme Court without a trial verdict.

The Supreme Court refused bail even after more than five years of imprisonment. It held that the NIA's chargesheet was convincing on prima facie satisfying the requirement under Section

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<sup>22</sup> *Id.*

<sup>23</sup> *Namrata Banerjee, Supreme Court Issues Notice in Umar Khalid's Plea for Bail,*

<sup>24</sup> *Northeast Delhi Khajuri Khas Case, FIR No. 2020, Khajuri Khas Police Station, Delhi (India).*

43D (5)<sup>25</sup>. Furthermore, the court observed that the delay in the trial was not severe to trigger the constitutional relief established in the Najeeb case. In such cases, doubts have been raised as to the application of UAPA and its precedent on the delay issue was not followed by courts. He had been granted a short-term bail by Delhi High Court to be with his mother while undergoing medical surgery.

### **SYED IFTIKHAR ANDRABI v. NIA (May 2026)**

Justice BV Nagarathna and Ujjal Bhuyan of the Supreme Court granted bail to Syed Iftikhar Andrabi who had been in custody in a narco-terrorism case in Jammu and Kashmir for nearly six years in May 2026. Despite being in jail for five years, his bail was denied by the Special NIA court in August 2024 and the Jammu and Kashmir High Court in 2025.

The High Court pointed out the gravity of the charges and that more than 320 witnesses were yet to be examined. Then Andrabi went to Supreme Court. He was released on bail by the Supreme Court after being jailed for six years. The bench had said that though UAPA is a special law, the principle was still that bail is the general rule and imprisonment the exception. It is one of the principles of the constitution and cannot be removed by any law<sup>26</sup>.

For the first time the Court relied directly on the conviction data provided by NCRB to grant bail. It pointed out that the conviction rate under UAPA in the country ranges from 1.5% to 4%, while in J&K, it did not go beyond 1%. The bench also considered the issue relating to the *Gulfisha Fatima ruling*<sup>27</sup>, where the prior court had restricted the application of the Najeeb Judgment to the most extreme cases<sup>28</sup>. It believes that the Najeeb judgment<sup>29</sup> holding that a prolonged delay constitutes grounds for granting bail is binding law, and that all courts must abide by it. It should not be considered as a limited exception.

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<sup>25</sup> *Id.*

<sup>26</sup> Reenaya Grover, *Bail Jurisprudence under UAPA: A Departure from the Presumption of Innocence*, 4 *Lex Scripta Mag. L. & Pol'y*

<sup>27</sup> *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, 2026 INSC 2 (S.C. Jan. 5, 2026).

<sup>28</sup> *The Bail Rule: On Liberty and the Andrabi Ruling*, *The Hindu*

<sup>29</sup> *Id.*

The Court was very concerned with the January 2026 Umar Khalid judgment. It condemned the process of the smaller benches<sup>30</sup> subtly undermining the decisions of the larger benches without formally dissenting from them.

## **DIFFERENCE BETWEEN WATALI vs NAJEEB vs. ANDRABI: DOCTRINAL MAPPING**

These three rulings have a legal position in progress. By restricting the court's examination at the bail stage, Watali gave the prosecution a head start. The Najeeb judgment sought to fill the void by introducing that long delay is a separate cause for bail. Andrabi is looking to establish the Najeeb Judgment as a precedent and reiterate that bail is a right, even in the context of UAPA. However, the key issue yet to be resolved is that the rulings were made by different benches and differ with each ruling case.

## **BHIMA KOREGAON CASE<sup>31</sup>**

Sixteen individuals were arrested in the Bhima Koregaon case in 2018-2020 under the UAPA. One of the accused was released on bail after being jailed for seven years, and others after five years. The main evidence against several of them was digital files that were independently determined by forensics experts to be evidence planted on their computers, according to the reports.

## **CONSTITUTIONAL ANALYSIS**

### **ARTICLE 21: THE RIGHT TO LIFE AND PERSONAL LIBERTY**

Article 21 of the Constitution provides that no person shall be deprived of his/her life or personal liberty save by lawful procedure. However, the Supreme Court in the Maneka Gandhi case has ruled in favor of the Andrabi case, stating that this procedure should not only be in existence but also be fair, just, and reasonable in practice.

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<sup>30</sup>Sucheta, *A Smaller Bench Cannot Hollow Out a Larger Bench Decision Without Expressly Disagreeing: Supreme Court on Judicial Discipline in UAPA Bail Cases*, SCC Times (May 20, 2026)

<sup>31</sup> *Bhima Koregaon Case*, FIR No. 4 of 2018, Vishrambaug Police Station, Pune, Maharashtra (India).

The Court in the *Andrabi* reiterated that the *principle of bail is the rule and jail is an exception*, which clearly emanates from Article 21<sup>32</sup> and 22<sup>33</sup>, and the presumption of innocence is the basis of any law, and the provision cannot be given a meaning that would keep the accused in prison for a long time. A statute must operate under the Rule of Law.

## **RIGHT TO SPEEDY TRIAL**

The Supreme Court has held the right to a speedy trial since *Hussainara Khatoon (1979)*<sup>34</sup> under the right to personal liberty as enshrined in Article 21 of the Indian Constitution. The UAPA cases are among the slowest-moving, and are seen to go through many supplementary chargesheets, have lengthy investigations, and have long lists of witnesses, which may be examined over years. This was what *Andrabhi bench*<sup>35</sup> had said while finding that the more serious the accusations the faster the trial should be conducted.

## **THE PROPORTIONALITY QUESTION**

The principle of proportionality<sup>36</sup> was established by the Supreme court in the *KS Puttaswamy Judgment*<sup>37</sup> which are as follows:

- 1) Does it have a law to permit this restriction?
- 2) Does it have a valid state reason?
- 3) Does the law provide proportion and does it go beyond necessary?
- 4) Lastly, are there adequate procedural safeguards?

## **CONCLUSION**

This paper has gone down three lines of argument, one that purports to have been written, one that looks at the interpretation of the courts, and the last, which comes from factual data<sup>38</sup>, all

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Hussainara Khatoon v. State of Bihar, (1979) 3 S.C.C. 532 (India).*

<sup>35</sup> *CJP Team, SC's Andrabi Judgment: Reclaiming Constitutional Liberty from the Expanding Carceral Logic of UAPA Jurisprudence, Citizens for Justice & Peace (May 21, 2026),*

<sup>36</sup> *Gauri Kashyap, Proportionality: Tried and Tested, S. Ct. Observer (Feb. 19, 2024),*

<sup>37</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).*

<sup>38</sup> *Ayushi Saraogi, Bail Under UAPA: Court in Review, S. Ct. Observer (Oct. 21, 2022),*

of which are in the same direction. The UAPA was originally meant to be a law for exceptional circumstances and for people who threaten national security from the legislative point of view. This bail provision was enacted to stop the dangerous person from evading justice.

But, in reality, it is keeping accused under trial for several years that is not resulting in a conviction. The Watali verdict from the court equated the NIA charge-sheet with unchallengeable at the bail stage. The Najeeb and Andrabi judgments have attempted to restore the meaning of Article 21 as a restraint on this power. In Umar Khalid's case, the Supreme Court had denied bail but in Andrabi's case the Supreme Court had granted bail in May 2026 through a different bench of the same court. The principle of presumption of innocence is a fundamental principle in the constitution.

No One should be effectively punished, before any guilt is established in court. The high rate of pre-trial detention coupled with the lack of adequate judicial monitoring in the bail process, highlights significant issues of personal liberty and due process guaranteed under Article 21 of the Constitution. India undoubtedly needs strong laws to deal with genuine threats to national security. It is not the law itself that is an issue, but how it is implemented.

The limits of the constitution have to be respected in the operation of the laws, this paper argues. A legal system that is both secure and democratic should seek to balance the constitutional protections and powers with the national security protections and powers. There is a legitimate purpose for the UAPA. Terrorism exists, and the state should and has the right to stand up to it. According to NCRB data, only 94% of cases result in a conviction. It is a constitutional promise. And a promise that the UAPA, as it exists, has yet to fulfill.