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AMOL CHANDRA DAS v. National Investigation Agency (2026)

Drawing the line between Illegal Infiltration and terrorism

TANYA HARI GUPTA

INTRODUCTION

In a landmark judgment delivered on May 8 2026 the supreme court of India held that mere illegal infiltration into India by Bangladeshi nationals does not constitute a terrorist act under the Unlawful Activities (Prevention) Act (UAPA) 1967¹. The bench of Chief Justice Surya Kant and Justice Joymalya Bagchi granted bail to Amol Chandra Das (alias Sujib), a Bangladeshi national who had lived in Bengaluru for using a forged passport and was accused of helping run a syndicate trafficking Bangladeshis into India². In the alignment of UAPA 1967 “terrorist act” definition under Section 15 that writes “any act committed with the intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror in the public” along with this ruling is legally significant as it narrow the scope³.

This hype of retrospective acknowledgment arose along with the Bhartiya Janta Party (BJP) pledge to deport all illegal immigrant from west Bengal paralleled exposing India’s legislative vacuum on refugees⁴. In India they have The foreigners act (1946)⁵ passport (entry into India) act (1920)⁶ and citizenship act (1955)⁷, but these lack procedural clarity for distinguishing refugees from illegal migrant. This commentary dissects on the facts, reasoning, constitutional implications, and policy gaps, exploring the due process violations in deportation frameworks.

FACTS AND PROCEDURAL HISTORY

Mr. Amol Chandra Das, a Bangladeshi National, resided in Bengaluru for over 10 years using a forged Indian passport and a fake Aadhar Card obtained on the same day in Karnataka and

¹ *Amol Chandra Das v. National Investigation Agency*, Special Leave Petition (Crl.) No. 5567/2026 (Supreme Court of India, May 8, 2026) (India)

² *Id.*

³ The Unlawful Activities (Prevention) Act, 1967, § 15 (India)

⁴ the Indian Express article at <https://indianexpress.com/article/india/bengal-elections-2026-cao-citizenship-modi-infiltrators-warning-10631042/>.

⁵ The Foreigners Act, 1946 (India).

⁶ The Passport (Entry into India) Act, 1920 (India).

⁷ The Citizenship Act, 1955 (India).

Assam. Arrested by the National Investigation Agency (NIA) in November 2023⁸ he faced charges under Unlawful Activity Prevention Act 1967, The Foreigners Act 1946 And The Passports Act 1967 for being a member of a group that engage with the illegal cross-border trafficking of people in Indian from Myanmar and Bangladesh. The NIA portrayed him as a key syndicate member distinguishing him from co-accused who had secured bail earlier.⁹

Procedural journey

1. Karnataka high court

Denied bail, stating Das has traveled to Bangladesh 5 times using the forged passport and Aadhaar, affirming flight risk.

2. Supreme Court Temporary stay

Das has filed SLP under article 32, challenging the high court order.

3. Hearing

Additional solicitor general SD Sanjay opposed bail citing syndicate involvement.

4. Final Order

Bail granted with conditions weekly reporting to NIA Bengaluru, passport confiscation and trial court expedited proceedings.

LEGAL ISSUES

1. Under the UAPA Act section 15 defines that entering a foreign country means it's a "terrorist act"?
2. Can UAPA Act Section 43D (5) bar bail when no overt violent act exists?
3. Does the ruling impact foreigner's tribunals (FTs) or the executive's deportation powers under the Foreigners Act 1946?

COURT DECISION AND REASONING

The court granted bail with the condition that the accuse must report to National Investigation Agency (NIA) every week. The core reasoning, of the judgment centers on the principle that illegal immigration alone does not constitute a terrorist's act, regard with the time spent in custody the court find that he can also be released on bail. Justice Bagchi emphasized this distinction clearly, stating that without any other overt action beyond illegal entry mere illegal immigration cannot be equated with terrorism¹⁰. Meanwhile, Chief Justice Kant acknowledged the serious reality of the situation noting India's porous border with Bangladesh and the large-scale illegal presence of migrants, but this did not outweigh the

⁸ *Illegal Infiltration into India Not Terror Act: Supreme Court*, Times of India (May 9, 2026), <https://timesofindia.indiatimes.com/india/illegal-infiltration-into-india-not-terror-act-supreme-court-gives-bail-to-bangladeshi-who-helped-others-to-cross-over/articleshow/130968826.cms>.

⁹ *Amol Chandra Das*, SLP (Crl.) No. 5567/2026,

¹⁰ *Id*

legal requirement for granting bail.¹¹ Although the state has board power over the expulsion of foreignrs, that power remains subject to constitutional limits and fair procedure.¹²

To reach this conclusion, the court used important legal principles. It narrowly construed Section 15 of the Unlawful Activities Prevention Act 1967, holding that an act must involve both explicit purpose and actual violence¹³ in order to be classified as terrorism under this clause. This ruling also relied on Article 21 of The Constitution¹⁴, adopting the proportionality principle and reiterating that bail ought to be the norm rather than the exception, significantly in cases when the charge does not obviously qualify as terrorism. The court also cited the presedent established in the case of *Arnesh Kumar V. State of Bihar*¹⁵ which created a presumption in favour of bail in situations when arrest and custody aren't technically essential guaranteeing that individual freedom isn't unjustly restricted.

LEGAL PRINCIPLES APPLIED

In order to issue bail while striking a balance between individual liberty and national security consideration the bench considered a number is important legal concept. **First**, it interpreted UAPA Section 15¹⁶ narrowly holding that migration or unlawful entrance alone does not meet the threshold for the clause, which need a particularly intent to threaten Indian unity or sovereignty by violence. **Secondly** the court saw bail as a norm rather than an exception. It relied on the landmark supreme court judgement in *Sanjay Chandra v. CBI*¹⁷ where it was held that "jai is exception; bail is rule". The court avoided the stringent bar under UAPA Section 43D (5) as there was not strong prima facie evidence of terrorism.

Thirdly the judgement applied the standard of due process the standard of due process and proportionality in Article 21 and found that the continued detention of the accused for 2.5 years without trial was patently disproportionate¹⁸ and in violation of fundamental rights. To safeguard the investigation and also to ensure personal liberty the court granted bail subject to conditions including weekly reporting to the NIA¹⁹. This is in line with *Sus hila Aggarwal v. NCT Delhi* (2020)²⁰ which held that protections under anticipatory bail should remain throughout the trial. Finally, court rely on *Zamora Ahead Shah Wagtail*²¹ (2019) which held that bail under the UAPA requires a strong prima facie case of indolent in terrorism, which is not present in the present case as illegal; immigration without overt terrorist action does not meet the statutory definition of terrorism.

STRENGTHS OF RULING

¹¹ *Id.*

¹² *Hans Muller of Nurenburg v. Superintendent, Presidency Jail*, AIR 1955 SC 367; *Louis De Raedt v. Union of India*, 1991 Supp. (1) S.C.C. 554

¹³ *Id.*

¹⁴ India Const. art. 21; *see also Amol Chandra Das*, SLP (Crl.) No. 5567/2026, slip op. at 7 (applying the constitutional rule of proportionality to state detention thresholds)

¹⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, 278-79 (India)

¹⁶ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00001_196737_1517807318055&orderno=15

¹⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, 278-79 (India)

¹⁸ *Union of India v. K.A. Najeeb*, (2021) 3 S.C.C. 713.

¹⁹ That approach is consistent with the Article 21 fairness principle in *Maneka Gandhi v. Union of India*

²⁰ *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1

²¹ *Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 S.C.C. 1.

India's failure to provide a clear asylum framework leaves refugees, trafficking victims, and irregular migrants vulnerable to the same coercive process.²² The judgement's most important contribution is preventing UAPA misuse by curbing what critics call "terror washing" the use of anti-terror law to prosecute everyday crimes such as illegal migration. As seen in the *Wagtail* case²³ UAPA has allowed for indefinite detention without any substantial evidence of terrorism. The court has set UAPA back on course with its original counter terrorism purpose, by insisting on overt violent action plus specific intent to threaten the unity or sovereignty of India, instead of allowing it to become an immigration enforcement tool.

The ruling also strongly upholds the principle of proportionality and human rights under *Manu Gandhi* (1978)²⁴ which requires that detention must be fair reasonable and non-violent stay even with forged document clearly failed that test and did not justify terror charges. The judgement also much needed clarity to lower courts by laying down a clear test that infiltration per se is not terrorism and syndicate facilitating without violence should be prosecuted under the foreigner's act and not UAPA.

WEAKNESS AND GAP

But the ruling has important limitation. Critics say it glosses over the risk of trafficking syndicates. The NIA said Das was operating through a network linking order crossing to fake adhere and voter cards. It's also said that the Myanmar and Bangladesh trafficking routes are often used to fund extremist activities, a security nuance that the judgement may have missed. Crucially the decision does not address the broken foreigner's tribunals (FTs)²⁵. The NLSIU report, *unmaking citizens* (2025) points to systematic problems scarcity of legal aid, biased evidence standards and violations of article 14 these due process gaps remain unaddressed with the 2.4 lakh post NRC Assam references pending.

The ruling also comes amid frowning political backlash. States may view judicial overreach into security policy and resistance to implementation, especially as BJP has promised to deport illegal immigrant from west Bengal and Assam CM Himanta Biswas Sarma has sounded alerts on demographic change in April 2026.

This decision is significant not because it minimizes the seriousness of border management but also it insists that criminal law must remain faithful to statutory limits and constitutional discipline. By refusing to convert illegal infiltration of UAPA while also reminding the state that migration control, deportation and asylum require a separate and procedurally fair legal framework. The ruling therefore leaves us with a sharper doctrinal boundary but also with an unresolved legislative question: how should India regulate irregular migration without collapsing it into national security law?

²² UNHCR, *Handbook for Parliamentarians No. 27: A Guide to International Refugee Protection and Building State Asylum Systems* (2017); Exec. Comm. of the High Comm'r's Programme, Conclusion No. 82 (XLVIII), *Safeguarding Asylum*, U.N. Doc. A/AC.96/895 (1997); Universal Declaration of Human Rights art. 14(1), Dec. 10, 1948, 217 A (III)

²³ id

²⁴ *Manu Gandhi*, AIR 1978 SC at 624

²⁵ https://www.nls.ac.in/wp-content/uploads/2025/07/Unmaking-Citizens_online-report.pdf