

A wooden gavel and a pair of metal handcuffs are shown on a textured, light-colored surface. The gavel is positioned diagonally, with its head in the lower left and its handle extending towards the upper left. The handcuffs are located in the upper right, with one cuff partially open. The background is a neutral, slightly mottled grey.

# BAIL & REMAND

BAIL & REMAND

# RESTRICTION ON BAIL IN UAPA

Section 43-D UAPA

- 1) Notice to PP
- 2) “Reasonable ground” – “prima facie true”
- 3) Not to a foreigner who has illegally entered India except under exceptional circumstances

NOTE: Restriction under Section 43-D inapplicable to section 112 BNS, Section 111/113 BNS. But there are restrictions under section 21(4) MCOCA etc.

# STATISTICS ON BAIL/CONVICTION RATES IN UAPA CASES

Persons on Bail under UAPA			
Year	Persons Arrested	Persons on Bail	% On Bail
2018	1421	232	16.32
2019	1948	625	32.08
2020	1321	223	16.88
Total	4690	1080	-
Source: Reply to Lok Sabha Unstarred Question No. 2531, 14.12.2021			

Conviction Rate under UAPA	
Year	Conviction Rate
2018	27.2
2019	29.2
2020	21.2
2021	32.9
2022	18.2
Source: NCRB – Crime in India: 2022	

# REASON TO BELIEVE THE ACCUSATION IS TRUE

## BAIL vs JAIL IN TERRORISM CASES-

- In *Gurwinder Singh vs State of Punjab*, (2024) 5 SCC 403, the Apex Court observed, '*Bail is the Rule and Jail is the Exception*', does not apply to UAPA cases.
- In a subsequent case, *Jalaluddin vs. Union of India*, 2024 SCC OnLine SC 1945, the Apex Court clarified if materials collected during investigation are irrelevant, patently absurd, inherently improbable, or even if believed to be true do not prima facie establish the facts constituting the crime, the principle '*Bail is the Rule, Jail is the Exception*' will apply to UAPA cases.



## **EXPLORING KEY EXAMPLES**



# SHOMA KANTI SEN VS STATE OF WEST BENGAL

- ❖ Prosecution alleged Shoma was collecting funds for a banned terrorist organization, attending meetings and recruiting individuals.

Court held:-

- A. Mere allegation of receipt of funds in absence of corroborative materials of flow of funds to and from accused does not establish prima facie case (para 36)
  - B. Meetings attended of the organization prior to it being declared terrorist organization is not participating in terrorist activity
  - C. Membership of frontal organization would not constitute prima facie material unless connection to terrorist organization is shown (para 39)
- **Bail Granted**

# JALALUDDIN VS UNION OF INDIA

- ❖ Prosecution allegation that accused let out a room to a banned organization; he received money from the said organization and was seen removing articles prior to search.

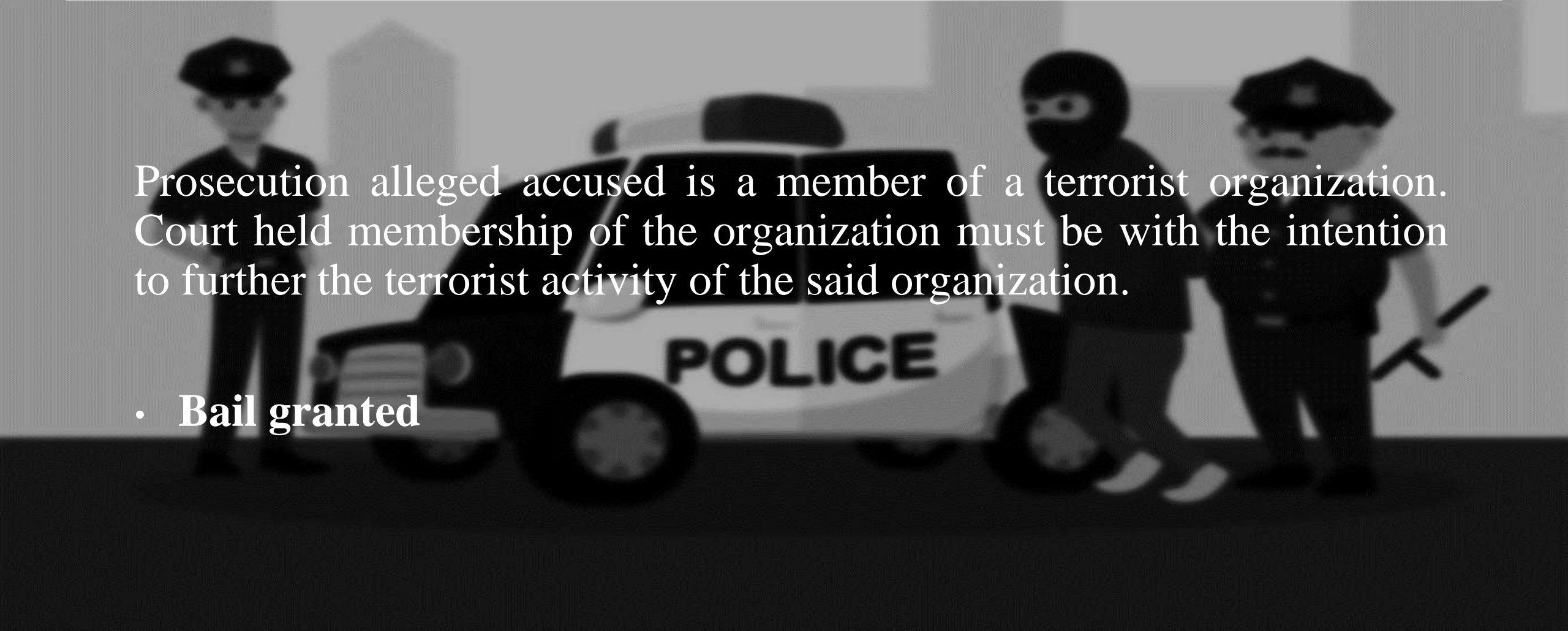
Court held:-

- a) Son of accused had negotiated with the organization and that too when the organization was not a banned one
  - b) Allegation in charge sheet inconsistent with statement of protected witness with regard to accused participating in meetings of terrorist organization
  - c) No incriminating material was removed by accused prior to search
- **Bail granted**

# VERNON VS STATE OF MAHARASHTRA

Prosecution alleged accused is a member of a terrorist organization. Court held membership of the organization must be with the intention to further the terrorist activity of the said organization.

- **Bail granted**





# CAN BAIL APPLICATIONS IN UAPA CASES BE FILED BEFORE HIGH COURT DIRECTLY?

- Bail applications in UAPA cases shall lie before the special court first and not before the High Court under section 439 CrPC. Only appeal arising out of order of Special Court to lie before Division Bench- *In State of AP vs. Md. Hussain alias Saleem*, (2024) 1 SCC 258
- The case of *Shoma Kanti Sen* (*supra*) was distinguished on facts as the offences under UAPA were added when bail application was pending before the High Court. The Apex Court also considered the age of the lady before allowing the bail application.

# OTHER GROUNDS FOR BAIL

## a) ILLEGAL ARREST

- Ground of arrest not communicated- renders arrest illegal. Communication- must disclose materials and details necessitating arrest. Imports the ratio in *Pankaj Bansal* (PMLA case) to UAPA cases

- *Prabir Purkayastha vs. State (NCT of Delhi) 2024 SCC OnLine SC 934*

## b) COOPERATION WITH INVESTIGATION

- If accused was available during investigation and not arrested, there is no need for further arrest at the instance of the court upon submission of charge sheet.

- *Satender Kumar Antil vs CBI, (2022) 10 SCC 51* (Para 89)

- *Tarsem Lal vs Directorate of Enforcement, (2024) 7 SCC 61*

### c) DELAY IN TRIAL

In TADA cases Supreme Court noted protracted incarceration of undertrials and proposed as follows:-

- *“The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly insofar as the former class is concerned and liberally in respect of the latter class. This will release the pressure on the courts in the matter of priority for trial..... A pragmatic approach alone can save the situation for, otherwise, one may find that many of the undertrials may be found to have completed the maximum punishment provided by law by being in jail without a trial. Even in cases where a large number of persons are tied up with the aid of Section 120-B or 147, IPC, the role of each person can certainly be evaluated for the purpose of bail and those whose role is not so serious or menacing can be more liberally considered.”*

*- Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616*

- Inordinate delay – bail may be granted for breach of right to speedy trial under Article 21 of Constitution of India – section 43-D(5) no bar. (para 11 and 17) - *Union of India vs. K.A. Najeeb, (2021) 3 SCC 713*, reiterated in *Sk. Javed Iqbal vs. State of UP*, 2024 SCC OnLine SC 1755 and *Javed Gulam Nabi Shaikh vs. State of Maharashtra and anr*, 2024 SCC OnLine 1693 (UAPA)

# **SPECIAL PROVISIONS REGARDING REMAND**

- Police Remand may be up to 30 days
- Investigating Agency may seek remand from judicial custody on the basis of an affidavit stating the reasons for doing so or explain the delay, if any, requesting police custody
- Period of judicial custody pending investigation may be extended by the court up to 180 days on report of Public Prosecutor indicting progress of investigation and specific reasons for further detention



# STATUTORY BAIL

- Right to Statutory Bail is a facet of Article 21.
- Hyper technical approach to be avoided
  - *Rakesh Kumar Paul vs State of Assam, (2017) 15 SCC 67*
- Default Bail Application may be oral
  - *Bikramjit Singh vs State of Punjab, (2020) 10 SCC 616*
- Extension application to be filed prior to application of default bail.
- If filed earlier must be disposed of before default bail can be availed
  - *M. Ravindran vs Directorate of Revenue Intelligence, (2021) 2 SCC 485*



- Notice of extension application need not be given but it must be considered in presence of accused/ his counsel-

*-Jigar alias Jimmy Pravinchandra Aditya vs State of Gujarat,  
2022 SCC OnLine SC 1290.*

- Statutory Bail may be cancelled on merits for strong/special reasons upon charge-sheet being filed

*-State through CBI v. T. Gangi Reddy @ Yerra Gnagi Reddy,  
2023 SCC OnLine SC 25*

- The Apex Court held Court of Sessions shall be deemed to be Special Court when no court has been set up under Section 11 or 22(1) of the NIA Act. In such cases Magistrate has power to remand an accused up to 90 days.

*- West Bengal vs. Jayeeta Das, 2024 SCC OnLine SC 550*

# INAPPLICABILITY OF ANTICIPATORY BAIL

- Mere reference to offences under UAPA is not sufficient, Court has jurisdiction to examine the allegations in the FIR and materials referred therein to ascertain whether a prima facie case is made out. But cannot go into allegations of malafides.

- *Shajan Skaria vs State of Kerala, 2024 SCC OnLine SC 2249* (Interpreting *pari materia* provision in SC/ST Act)

# OPPRESSIVE CONDITIONS OF BAIL

- In *Frank Vitus vs. NCB and ors* ,2024 SCC OnLine SC 1657, the Apex Court held assurance from embassy to attend court regularly and sharing of Google PIN violative of right to privacy.
- In *Girish Gandhi vs State of Uttar Pradesh and ors*, 2024 SCC OnLine SC 2142, the Apex Court highlighted the maxim '*excessive bail is no bail*' and held sureties across multiple FIRs should be consolidated.

# ARREST AND REMAND PROVISIONS IN BNSS

- ❖ **Section 190-** Mandates if accused is not arrested, police officer shall take security from such person for his appearance.[In accordance to the directions in *Siddharth vs State of UP* reiterated in *Satender Kumar Antil vs CBI*
- ❖ **Section 187(2)-** Police custody may be sought for a maximum period of 15 days but in a staggered manner, if necessary within 40/60 days of detention as the case may be.
- ❖ **Section 187(3)(i)-** prescribes maximum period of detention of 90 days for offence punishable with death or imprisonment for life, inter alia, for a term of 10 years or more instead of imprisonment for a term not less than 10 years



# BAIL PROVISIONS IN BNSS

## Delay in Trial

- **Section 479-** Bail may be granted for first time offender who has undergone detention for one-third of maximum period of imprisonment prescribed in law. In other cases, detention undergone should be half of the maximum period. (Person in charge to make an application for bail to court- Superintendent of Jail)

## Bail shall not be denied in certain cases-

- **Proviso to Section 480-** In case of non bailable offences, bail shall not be denied to an accused on the ground that he may be required to be identified by witnesses during investigation or his police custody is required beyond 15 days, provided he is otherwise entitled to bail and gives an undertaking that he shall comply with the directions of the court or ;
- his specimen signature/handwriting is necessary (Proviso to section 349 BNSS)



THANK YOU