



2026:DHC:5076



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

Reserved on: 18.05.2026/03.06.2026

Pronounced on: 05.06.2026

Uploaded on: 05.06.2026

+ **BAIL APPLN. 4286/2024**

DEEPAK RAMNANI

.....Petitioner

versus

STATE OF DELHI (GOVT. OF NCT OF DELHI)Respondent

+ **BAIL APPLN. 4441/2024**

PRADEEP RAMDANEE

.....Petitioner

versus

STATE NCTOF DELHI

.....Respondent

+ **BAIL APPLN. 4869/2025**

DEEPAK RAMNANI

.....Petitioner

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Appearance:-

Mr. Anant Malik, Mr. Kunal Narwal and Ms. Ananya Chandra, Advocates for Petitioners.

Mr. Sanjay Jain, Sr. Adv. with Mr. Akhand Pratap Singh, SPP, Ms. Samridhi Dobhal, Mr. Krishna Mohan Chandel, Mr. Hritwik Maurya, Mr. Utkarsh Singh, Mr. Apoorv Paliya, Mr. Nishank Tripathi, Ms. Rishika Agarwal, Ms. Harshita Sukhija, Ms. Shreyan Srivastava, Advocates for State with Insp. Shikhar Kadyan in BAIL APPLN. 4286/2024 and BAIL APPLN. 4441/2024.

Mr. Rahul Tyagi, SC for ED with Ms. Priya Rai, Mr. Sangeet Sibou, Mr. Aniket Kumar and Mr. Priyansh Raj Singh, Advocates in BAIL APPLN. 4869/2025.



CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. These three bail applications arise out of allied proceedings, one registered under the Maharashtra Control of Organised Crime Act, 1999 [“MCOCA”] and the Indian Penal Code, 1860 [“IPC”], and the other registered under the Prevention of Money Laundering Act, 2002 [“PMLA”], details whereof are as follows:

- (a) The petitioners in BAIL APPLN. 4286/2024 and BAIL APPLN. 4441/2024, Deepak Ramnani and Pradeep Ramdanee [hereinafter, “Deepak” and “Pradeep”, respectively], are brothers. They seek regular bail in connection with FIR No. 208/2021 dated 07.08.2021, at Police Station Special Cell, Delhi. The FIR was originally registered under Sections 170/ 384/ 385/ 388/ 419/ 420/ 506/ 120B of IPC and Section 66D of the Information Technology Act, 2000 [“IT Act”]. At the time of filing of the chargesheet, Sections 3 and 4 of MCOCA were invoked.
- (b) Deepak is also the petitioner in BAIL APPLN. 4869/2025, wherein he seeks bail in connection with ECIR/54/DLZO-II/2021, dated 08.08.2021, under Sections 3 and 4 of PMLA [“PMLA proceedings”], instituted by the Directorate of Enforcement [“ED”], following the registration of the aforesaid FIR¹.

¹ Pradeep Ramdanee, who is the petitioner in BAIL APPLN. 4441/2024, is also an accused in the PMLA proceedings, but has been granted regular bail therein, by order of the Special Court dated 02.08.2022.



2. It may be noted, at the outset, that by separate judgments dated 05.05.2026, this Court disposed of bail applications filed by co-accused Leena Paulose [hereinafter, “Leena”], both in the proceedings instituted by the State², and in the proceedings instituted by ED³. The application of Leena in the State proceedings was rejected, whereas bail was granted in the PMLA proceedings, subject to various conditions.

3. I have heard Mr. Anant Singh Malik, learned counsel for the petitioners, Mr. Sanjay Jain, learned Senior Counsel for the State, and Mr. Rahul Tyagi, learned Standing Counsel for ED. The State/ED have filed status reports/replies in the respective bail applications, which are on record.

4. Although arguments were concluded on 18.05.2026, the matter was again listed on 03.06.2026, to enable learned counsel to make submissions on certain judgments and orders delivered by the Supreme Court in the interregnum. Learned counsel addressed on the said decisions, and also provided updates as to the status of the proceedings before the Special Court.

A. PROSECUTION CASE:

I. Proceedings instituted by the State

5. The prosecution case in FIR No. 208/2021, as it appears from the material on record, is summarised below:

A. FIR No. 208/2021, dated 07.08.2021, lodged at Police Station
Special Cell, Delhi, under Sections

² BAIL APPLN. 1802/2024, decided on 05.05.2026 [hereinafter, “Leena Paulose-II”]. An earlier application for bail filed by Leena in the State proceedings [BAIL APPLN. 3706/2022] was rejected by judgment dated 11.07.2023 [hereinafter, “Leena Paulose-I”].

³ BAIL APPLN. 4657/2024, decided on 05.05.2026 [hereinafter, “Leena Paulose-ED”].



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170/384/385/388/419/420/506/120B of IPC and Section 66D of the IT Act, has been registered at the instance of one Ms. Aditi Singh.

- B. According to the complaint, on 15.06.2020, the complainant received a call on her mobile phone from a landline number. The caller introduced himself as a senior officer in the Ministry of Law and offered assistance in securing bail for her husband, who was in judicial custody in cases related to M/s Religare Enterprises Ltd.
- C. It is alleged that the caller demanded Rs. 50 crores in exchange for facilitating the bail and explained the method of delivering the money.
- D. Subsequently, through his associates, the caller allegedly extorted money from the complainant on multiple occasions between June 2020 and August 2021, amounting to a total of Rs. 217 crores. There are further allegations with regard to impersonation of senior officials, including the Home Secretary, Government of India, and misrepresenting the involvement of other government functionaries, including the Home Minister.
- E. Acting on the said information, on 07.08.2021, the police laid a trap and apprehended Pradeep, while he was receiving the extorted amount. He was arrested on the same day. During interrogation, he disclosed that he was acting on the instructions of his brother, Deepak, who was subsequently arrested on 08.08.2021.
- F. Using technical surveillance of the mobile phone used for making the calls, and the statements of co-accused, the caller was identified as one Sukesh Chandra Shekhar @ Sukash Chandra Shekhar [hereinafter, "Sukesh"].



- G. At this time, Sukesh was already lodged in Tihar Jail as an undertrial prisoner in a separate case, involving allegations of collecting money from a political leader on the pretext of helping him retain a particular election symbol. He was later shifted to Rohini Jail.
- H. A raid was conducted on the intervening night of 07/08.08.2021 by the Special Cell, during which two mobile phones were recovered from Sukesh, while he was in custody, and he was formally arrested in connection with the present FIR. His interrogation led to the identification and arrest of other associates and co-conspirators.
- I. During investigation, it was found that Sukesh was involved in multiple cases, including attempt to murder, criminal intimidation, cheating, and extortion, often by impersonating high-ranking officials.
- J. As far as Deepak is concerned, it is alleged that:
- i. He played a role in planning the illegal activities of the Organised Crime Syndicate [“OCS”] led by Sukesh and his wife, Leena, and in execution thereof.
 - ii. He was introduced to Sukesh by Chandra Brothers of Unitech, who were also incarcerated in the same jail as Sukesh, and were already known to him.
 - iii. He, thereafter, participated in the activities of the OCS by assisting Sukesh in formulation of the extortion scheme and identifying the complainant as a potential victim.
 - iv. Deepak was instrumental in collecting and in disposing of the extorted amounts for a commission.



- v. He was conscious of the fact that the amounts being collected by him, and/or his brother Pradeep, on his instructions, were extorted funds.
- vi. Deepak also, knowing the illegal nature of the activities, misidentified himself to the complainant as “Rohit”, and misidentified Pradeep as “Rajesh”.
- vii. It was Deepak who engaged the services of co-accused Avtar Singh Kocchar @ Dolly [since deceased] [hereinafter, “Avtar”], as a *hawala* operator, whose services were being used to transmit the extorted amount to intended recipients, including Leena.
- viii. He was thus not only abetting the activities of the OCS, but also directly involved in selection of the victim, formulation of the modus operandi of the crime, and execution thereof.
- ix. Deepak participated in approximately 50 such transfers of funds, despite knowing that the funds were derived and obtained from commission of an organised crime, and is guilty of various offences enumerated in Section 3 of MCOCA, including the commission of organised crime, abetment or knowing facilitation of an organised crime, as well as membership of an OCS.
- x. Reliance is placed upon the disclosure statements under Section 18 of MCOCA of co-accused Sukesh, Dharam Singh Meena, Avtar, and Deepak himself, as well as the statements [not under section 18 of MCOCA] of complainant and her sister Arundhati Singh Khanna.



- K. As far as Pradeep is concerned, the prosecution case is that he participated in the activities of the OCS by personally collecting the extorted funds from the complainant and her sister, Arundhati Singh Khanna, on the instructions of Deepak. Such activity was carried out by misrepresenting himself as “Rajesh”, and his brother Deepak, as “Rohit”. The prosecution case against Pradeep is also based upon the statements under Section 18 of MCOCA of Deepak, and the statements of the complainant and Arundati Singh Khanna.
- L. In the chargesheet, the roles of Deepak and Pradeep, and the material against them, is summarized as follows:

“12. Accused Deepak Ramnani:

- *Arrest of his brother Pradeep Ramdani in a trap by police.*
- *Statements u/s 18(1) MCOC Act of Sukash, B. Mohan Raj, Deepak Ramnani and Avtar Singh Kochar@Dolly.*
- *Details recovered of M/S Evernice International Trading Company Pvt. Ltd. from Deepak Ramnani’s phone. Money extorted from Japna was transferred to A/C of this company based in Hongkong. Particulars of this company were given by Dolly to Deepak Ramnani who gave it to Sukash and Sukash gave it to Japna.*
- *The residence and hotels addresses and hideouts of Avtar Singh Kochar@Dolly were pointed out on his disclosure and lead to arrest of accused Avar Singh Kochar@Dolly.*
- *Arrest of D. S. Meena and seizure of his car on his disclosure.*
- *One Token number - 98V88j602, Jitendera +919953839944 Delhi 75 L image was found in Redmi mobile of Deepak*
- *In Contact list of Redmi phone of Deepak, mobile contacts of Sonu, Raju, &Avtar Singh Kochar@Dollywere found.*
- *Some telegraphic transfer of USD 83000/- & USD 45000 to NICKO SERVICES PTE Ltd was found in Redmi mobile of Deepak.*
- *It was further ascertained that one telegram number used by Sukash +16692594162 is found saved in contact list of Deepak’s phone. In this way, Sukash found connected with Deepak.*



- *Name of Co-accused Leena & her mother name –Lissy Paul was found mentioned at transancation no. 519156. This show that accused Deepak was in touch with Sukash& his wife Leena.*
- *One location of Wazirpur at transaction number 893986 of whatsapp chat was found. It is the same locality where delivery was given to accused D.S Meena by Accused Deepak.*
- *Pappu, delivery man of Avatar Singh Kochhar@ Dolly contact found in the phone of Deepak.*
- *Avatar Singh Kochhar name reflected in contact list of Deepak found in Redmi Phone.*
- *One suspicious swift transaction in name of Trendy Ace Limited of USD 52945 found in phone of Deepak & the same was confirmed by Avtar Singh Kocchar@Dolly.*

13. Accused Pradeep Ramdani:

- *He was arrested in a trap while he came to collect money from the victim on behalf of' Sukash.*
- *Arrest of Deepak Ramdani on his disclosure.*
- *Seizure of his car and recovery of complainant's money from his possession.*
- *Statements u/s 18(1) MCOC Act of Sukash, B. Mohan Raj, Avatar Singh Kochhar@ Dolly and Deepak Ramnani.*
- *One hand written note dated 29/7/2021 consisting some calculation of huge amount in name of Sardarji, Kohli, PizzaHUt, Jor Bagh, Kumar was found in mirrior image of Mobile Honor 7X of Pardeep Ramdani.”*

II. Proceedings instituted by ED

6. The prosecution case against Deepak in the PMLA proceedings, as it appears from the material on record, is summarised below:

- A. Pursuant to registration of FIR No. 208/2021, and having regard to the fact that Sections 384/386/419/420/120B of IPC are scheduled offences, ECIR/54/DLZO-II/2021, dated 08.08.2021, was registered under Sections 3 and 4 of PMLA.
- B. During investigation, it was found that Deepak was a trusted associate of Sukesh, and was responsible for collecting the cash extorted by him and delivering the same to various destinations for



its utilization. He was fully aware of Sukesh's incarceration, having performed a puja for securing his bail. Further, contact details of Leena and her mother were found stored in his mobile phone.

- C. Deepak allegedly admitted that he carried out cash transactions on behalf of Sukesh, not only during the period relevant to the present offence, but also on prior occasions.
- D. Deepak further acknowledged the quantum of cash collected on various occasions. Significantly, the technical evidence in the form of his Internet Protocol Detail Records corroborated the dates and timings of several such deliveries. Deepak was able to identify and remember all individuals who delivered cash on behalf of the complainant.
- E. Investigation further revealed that Deepak remained in regular contact with Sukesh and actively assisted in laundering the proceeds of crime, not only within Delhi but also across different States in India and abroad.
- F. Deepak used token-based mechanisms for collection of cash, copies of which were subsequently produced before the Economic Offences Wing ["EOW"] by the complainant. The circumstances demonstrate that he was fully aware that these were not legitimate commercial transactions undertaken for lawful commission.
- G. In order to avoid suspicion and evade scrutiny during COVID-19 restrictions, Deepak often ensured the presence of his wife in the vehicle while transporting the cash. He allegedly personally counted, transported, and delivered substantial amounts of cash to various locations in accordance with the instructions of Sukesh. On



occasions when Deepak was unavailable, he deputed his brother Pradeep to coordinate and execute the collection and delivery of cash.

H. He ensured continuity of the operation even in his absence, and remained in constant touch with Sukesh for the purpose of collecting the extorted funds and delivering them to the intended beneficiaries.

I. In connection with the PMLA proceedings, Deepak was arrested on 05.10.2021, and was sent to judicial custody on 19.10.2021.

B. STATEMENTS UNDER SECTION 18 MCOCA:

7. The statements under Section 18 MCOCA, relied upon by the prosecution to the extent relevant in respect of the present petitioners, have been summarised in the status report filed by the State in BAIL APPLN. 4286/2024. The extracts of the said status report are reproduced hereinbelow:

“Confessional statement of Deepak Ramnani recorded u/s 18 MCOC Act

During investigation, confessional statement U/s 18(1) MCOC Act of accused Deepak Ramnani was recorded and it was confessed by him that he and his brother Pradeep Ramdanee were part and parcel of syndicate led by accused Sukash Chandra Shekar and it was well within the knowledge of accused Deepak Ramnani that money collected from various places and further transmitting the same through Hawala Channel on the direction of Sukash Chandra Shekar, was crime proceeds. Deepak Ramnani apprised discussed with Avtar Singh Kochar@Dolly about the plan of Sukash, lodged in the Delhi jail, for transfer of heavy cash in India and abroad through Hawala. He also told him that Sukash Chandra Shekar is a big cheat and he would give big cut in cheated/extorted amount if they transfer his funds. As the money is generated from crime, hence Avtar Singh Kochar@Dolly demanded 7% commission on each transaction. Deepak also instructed Avtar Singh Kochar@Dolly for taking precaution while working for Sukash Chandra Shekar. Deepak further disclosed that with the help of Avtar Singh Kochar@Dolly, he sent money abroad several times through Hawala and sometimes through banking channel using shell companies. He also



disclosed that in his absence, his brother Pradeep Ramdani used to collect cash from complainant and her family members and further handed over to persons as per directions of Sukash Chandra Shekar.

Confessional statement of Avtar Singh Kochar recorded u/s18 MCOC Act:

Accused Avtar Singh Kochar@Dolly confessed that he was engaged in the business of Hawala transactions. He knew Deepak Ramnani for last 15 years and Deepak had sent money abroad of several corporate houses through Hawala Channels. In the year May-June 2020, accused Deepak told him that one Sukash Chandra Shekhar who was in the Rohini Jail and he wanted to send his money abroad which was gained through extortion and in other parts of India. Avtar Singh Kochar@Dolly was informed by accused Deepak Ramnani about the criminal past of the Sukash Chandra Shekhar and the money to be transferred was crime proceed. Hence, Avtar Singh Kochar@Dolly asked for hefty commission. After that from July-2020 to July 2021, he transferred about 90-100 crores to abroad in addition to the 10-12 crores to Pune, Chennai, Hyderabad etc.

Confessional statement of Sukash Chandra Shekar recorded u/s18 MCOC Act:

While Sukash Chandra Shekhar was regularly meeting Chandra brothers of Unitech, he came in contact with Deepak Ramnani, a person close to Chandra brothers. Deepak Ramnani was handling funds of Chandra brothers. They introduced Deepak Ramnani to him and told that he was a person who can be relied upon in the management of funds.

Confessional statement of Dharam Singh Meena recorded u/s18 MCOC Act:

During investigation both the brothers namely Deepak Ramnani and Pradeep Ramdane were correctly identified by the co accused Dharam Singh Meena. It is confessed by Dharam Singh Meena in his confessional statement recorded u/s 18 MCOC Act that both the brothers delivered him cash on numerous occasions at the behest of the Syndicate head Suresh Chandra Shekhar. Dharam Singh Meena further disclosed that both the brothers used to meet him with different names.”

C. SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

I. Submissions in the State Case

8. The submissions advanced by Mr. Malik, in support of these applications, may be summarized as follows:



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- a. The principal argument of Mr. Malik was based upon the period of custody of the petitioners. Deepak was arrested on 08.08.2021, and Pradeep on 07.08.2021. They have thus spent a period of approximately 4 years and 10 months in custody. An order on charge was passed by the Special Court on 30.05.2026, but, at the time of the last hearing on 03.06.2026, charges were yet to be formally framed.
- b. The prosecution filed the first chargesheet in November 2021, but also filed five supplementary chargesheets thereafter, the last of which was filed only on 04.10.2024. Thus, filing of chargesheets itself took a period of almost three years. The arguments on charge were commenced upon filing of each of the chargesheets, but were disrupted on account of filing of successive chargesheets. Mr. Malik submitted that, even after the filing of the last chargesheet, arguments were addressed, but there was a change in the Presiding Officer of the Special Court on 05.12.2025, after which arguments recommenced. The case involves 23 accused persons, 403 witnesses, and chargesheets collectively exceed 10,000 pages. Even after formal framing of charges, Mr. Malik submitted that the trial is likely to take considerable time.
- c. He further submitted that trial is now likely to be further delayed, as another co-accused Nivaas KL has been arrested only on 04.05.2026.



- d. In *Union of India v. K.A. Najeeb*⁴, and several later cases, the Supreme Court has clearly held that the mandate under Article 21 of the Constitution prohibits prolonged pre-trial incarceration of an accused, particularly when there is no reasonable likelihood of expeditious conclusion of proceedings. He submitted that, in *K.A. Najeeb*, this principle was applied even to the Unlawful Activities (Prevention) Act, 1967 [“UAPA”], which also, like MCOCA, incorporates stringent conditions for the grant of bail. Mr. Malik also drew my attention to several judgments and orders of the Supreme Court and this Court, in which bail has been granted on this ground, even in cases under MCOCA.
- e. Relying upon Section 479 of the Bharatiya Nagarik Suraksha Sanhita [“BNSS”] (corresponding to Section 436A of the Code of Criminal Procedure, 1973 [“CrPC”]), Mr. Malik submitted that the petitioner has already been in custody for close to the minimum period of sentence under Section 3(1) of MCOCA, which is five years.
- f. This Court has dealt with similar submissions advanced on behalf of Leena in *Leena Paulose-II*. Mr. Malik submitted that the judgment in *Leena Palouse-II* proceeds on the basis of the interpretation of *K.A. Najeeb* in *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*⁵, which has itself been doubted in *Syed Iftikhar Andrabi v. National Investigation Agency*⁶. *Syed Iftikhar Andrabi* expresses concern regarding the “*hollowing out*” of the ratio of

⁴ (2021) 3 SCC 713 [hereinafter, “*K.A. Najeeb*”].

⁵ 2026 SCC OnLine SC 10 [hereinafter, “*Gulfisha Fatima*”].



K.A. Najeeb in Gulfisha Fatima, and holds that constitutional rights under Article 21 must prevail over any statutory restrictions on the grant of bail⁷. Mr. Malik urged this Court, in the face of the aforesaid conflict between *Gulfisha Fatima* and *Syed Iftikhar Andrabi*, to apply the law laid down in *K.A. Najeeb*.

- g. Although bail was declined to Leena in *Leena Palouse-II*, he submitted that the present petitioners would be entitled to bail, even on the basis of legal principles, as understood in *Leena Palouse-II*.
- h. Taking the prosecution case at the highest, the role of Deepak and Pradeep can be described as financial and logistical support without any participation in conceptualisation or strategic command. In the judgment of the Supreme Court in *Gulfisha Fatima*, five accused in the proceedings under UAPA, whose roles were of a similar or graver nature, were granted bail. Mr. Malik also relied upon a judgment of this Court in *Haris Nisar Langoo v. National Investigation Agency*⁸, in this connection.
- i. Neither Deepak nor Pradeep, even on the prosecution's highest showing, were involved in the activity of OCS as statutorily defined, nor in Sukesh's activities in jail. They were also not part of any contact with the victims, except for the purposes of collection of the extorted amount, on the instructions of Sukesh.

⁶ 2026 SCC OnLine SC 881 [hereinafter, "*Syed Iftikhar Andrabi*"].

⁷ Paragraphs 29 to 33.

⁸ CRL.A. 406/2023 and connected matter, decided on 20.03.2026 [hereinafter, "*Haris Nisar Langoo*"], paragraphs 50 to 60.



- j. The role ascribed to the petitioners is essentially that of cash couriers. Deepak was acting only on the instructions of Sukesh, and had no role in ascertaining the amount to be collected, modalities of collection or the destination to which the funds were to be sent. He was not the “controlling mind” of the conspiracy, or even a decision-making participant. Pradeep’s role was even more limited, acting only as a field agent on behalf of Deepak.
- k. The statements under Section 18 of MCOCA relied upon by the prosecution have all been retracted by the makers at the first available opportunity. However, even taking the statements at face value, they only reveal that Deepak was acting upon the instructions of Sukesh, and Pradeep was acting upon the instructions of Deepak.
- l. Mr. Malik disputed the prosecution’s characterisation of the alleged role played by Deepak, drawing my attention to the reply filed by the prosecution in the Special Court, wherein Deepak was treated only as an alleged facilitator, without any role being attributed to him in conceptualisation or controlling the activities of OCS.
- m. Reliance upon Call Detail Records, in the absence of any transcript or recording of alleged conversations between the accused, cannot be considered inculpatory at the stage of consideration of bail. To this effect, Mr. Malik relied upon a judgment of the High Court of



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Jammu & Kashmir and Ladakh in *Sareed Ahmed Ganie v. Union of India*⁹.

- n. The allegations in the chargesheet relating to a company by the name of Evernice International do not concern FIR No. 208/2021 at all, but relate only to FIR No. 124/2021, registered at EOW.
- o. The provisions of MCOCA were invoked on 04.09.2021, i.e. almost one month after the registration of the subject FIR, which shows that, at the outset, the activity was not considered relatable to OCS at all.
- p. Pradeep was arrested on 07.08.2021 in a trap laid by the Special Cell, but Deepak remained available for interrogation and reported to the Investigating Officer when summoned. He was arrested on the next date on 08.08.2021.
- q. The petitioners have no prior criminal involvements other than the two proceedings involved in these applications, they are accused in FIR No. 124/2021 registered at Police Station EOW, under Sections 170/384/386/419/420/506 IPC and Section 66D IT Act, in a similar claim of extortion registered at the instance of the sister-in-law of the complainant, whose husband was also in jail in connection with the same offence as the complainant's husband. Deepak is also an accused in proceedings under PMLA, in connection with FIR No. 124/2021¹⁰.
- r. Lastly, Mr. Malik submitted that the petitioners are both senior citizens, Deepak being aged 68 years and Pradeep around 58 years.

⁹ 2025 SCC OnLine J&K 1026 [hereinafter, "*Sareed Ahmed Ganie*"].

¹⁰ ECIR No. 55/DLZO-II/2021 under Sections 3 and 4 of PMLA.



9. Mr. Jain, on the other hand, opposed the applications, arguing as follows:

- a. On the legal issue concerning the interplay between the Article 21 rights of an accused and statutory restrictions on the grant of bail, Mr. Jain submitted that the judgment in *Gulfisha Fatima* remains good law, and this Court ought to proceed on the basis of the law laid down therein, as interpreted in *Leena Palouse-II*.
- b. Although a Bench of co-equal strength in *Syed Iftikhar Andrabi* has expressed reservations, such reservations do not tantamount to denuding *Gulfisha Fatima* of binding force, or diluting it in any manner. Reference to a larger Bench does not diminish the authority of an earlier decision of a coordinate Bench of the Supreme Court. For this purpose, Mr. Jain referred to the Constitution Bench decision of the Supreme Court in *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.*¹¹.
- c. Mr. Jain also drew my attention to two judgments of the Supreme Court in *Sheikh Mehmood v. Union Territory of Jammu and Kashmir and Ors.*¹² and *State of Punjab v. Balraj Singh @ Billa*¹³, delivered on 01.06.2026 and 02.06.2026, respectively, which also guide the Court, as to the relevant considerations in adjudicating a bail application.
- d. Deepak was not a mere facilitator or logistics provider, but a principal participant in conceptualizing and executing the criminal

¹¹ (2005) 2 SCC 673, paragraph 12.

¹² SLP (CRL.) No. 19036/2025 [hereinafter, "*Sheikh Mehmood*"].



activities of the OCS. He was introduced to Sukesh while Sukesh was already lodged in jail, and offered his services for arranging *hawala* operations through Avtar. Deepak involved himself in these transactions after satisfying himself as to Sukesh's credentials and operations of the OCS. He was constantly in touch with Sukesh, who directed both the collection of funds and utilization of funds. Deepak was fully aware that the funds he was collecting were, in fact, derived from the activities of the OCS.

- e. Deepak facilitated the transfer of money through his network of *hawala* operators [including Avtar] to Sukesh's wife and other recipients, and also directly made payments to jail officials, including co-accused Dharam Singh Meena, who would then distribute the money to other jail officials.
- f. Deepak has been involved in multiple transactions of collection and transmitting the extorted funds. Both the quantum and the relatively higher commission being paid in respect of these transactions was on account of the high level of mutual trust between Sukesh and Deepak, as well as the illicit nature of the activity, which was known to Deepak and Pradeep.
- g. Mr. Jain submitted that, although Pradeep was acting on the instructions of Deepak, he was also aware of the nature of the transactions and was, in fact, the first of the accused to be arrested, when he was caught red-handed receiving an amount of Rs. 1 crore from the complainant.

¹³ SLP (CRL.) No. 896/2026 [hereinafter, "*Balraj Singh*"].



- h. Both the petitioners identified themselves to the victim by pseudonyms, revealing their knowledge of the illegal nature of the activities and the transactions in question.
- i. The record reveals telephone connectivity between Deepak and Sukesh, as well as Deepak and Dharam Singh Meena.
- j. Mr. Jain submitted that, at the stage of bail, Section 18 MCOCA statements cannot be disregarded, and the effect of the alleged retraction would be a matter for trial. He relied upon the judgments of this Court rejecting two bail applications filed by co-accused Leena – *Leena Palouse-I* and *Leena Palouse-II*. He emphasised that Deepak was a key participant in identification of Complainant as a potential victim of extortion, relying upon the Section 18 MCOCA statements of Sukesh and Deepak himself.
- k. Mr. Jain also submitted that Deepak and Pradeep both conducted activities which fall within the definition of Sections 3(1)(ii) and 3(1)(2) of MCOCA, and their activities clearly reveal “membership” of OCS under Section 3(1)(4) of MCOCA as interpreted by Bombay High Court in *Sachin Bansilal Ghaiwal v. State of Maharashtra*¹⁴.
- l. Mr. Jain also drew my attention to an order of the Supreme Court dated 08.05.2026¹⁵, which was directed against orders of this Court granting bail to some of the co-accused in FIR No. 208/2021¹⁶. He

¹⁴ (2014) SCC OnLine Bom 725.

¹⁵ In SLP(CRL.) No. 5659/2024 [Pinky Irani]; SLP(CRL.) No. 9306/2024 [Sunil Kumar]; and SLP(CRL.) No. 6651/2024 [Avtar Singh Kocchar].

¹⁶ *Avtar Singh Kocchar v. State of NCT of Delhi* [BAIL APPLN 1811/2023, decided on 29.11.2023]; *Pinky Irani v. Govt. of NCT of Delhi* [BAIL APPLN 1127/2023, decided on 20.10.2023]; *Sunil Kumar v. State of NCT of Delhi* [BAIL APPLN. 1130/2023, decided on 02.04.2024].



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submitted that this Court had *inter alia* proceeded on the basis that the accused were only financial facilitators, and were entitled to bail. However, the Supreme Court set aside all observations made in those orders, while directing that the accused therein shall remain on bail. The Supreme Court specifically declared that the observations in the impugned orders are irrelevant for the purposes of the ongoing trial. As far as the SLP against the order granting bail to Avtar is concerned, the petition was disposed of as infructuous, in view of the fact that the accused had since passed away.

II. Submissions in the ED Case

10. Mr. Malik submitted that Deepak has already undergone custody in the PMLA complaint, for a period over 4 years and 8 months, and is therefore liable to be released on bail on the ground of prolonged incarceration. His arguments in this regard, were similar to those advanced in the State case. He further submitted that the period of custody undergone exceeds half of the maximum sentence of seven years, under Section 4 PMLA, and the petitioner is therefore entitled to the benefit of Section 479 BNSS. He submitted that the twin conditions prescribed in Section 45 PMLA would not be applicable, in view of the lapse of time provided in Section 479 BNSS. In connection with this submission, he relied upon *Vijay Madanlal Chaudhary v. Union of*



*India*¹⁷ and *Ajay Ajit Peter Kelkar v. Directorate of Enforcement & Ors.*¹⁸.

11. Mr. Malik also submitted that the petitioner is entitled to the benefit of parity. He stated that out of the 18 accused persons in the present ECIR, 13 have already been granted bail, four by this Court and nine by the Special Court. These orders were not challenged by the ED. It was submitted that both co-accused Arun Muthu and Avtar were granted bail in the PMLA case, despite the rigours of Section 45 of the PMLA being applicable to them, and the petitioner's case stands on an even better footing on facts.

12. Mr. Tyagi submitted that a *prima facie* case of money laundering was made out against Deepak. However, on the question of prolonged incarceration, he accepted that Deepak would be entitled to parity with co-accused Leena, whose bail application in the ED case was allowed¹⁹. The aforesaid submission was expressly made without prejudice to the rights and contentions of ED, in the event it chooses to challenge the judgment of this Court in *Leena Paulose-ED*.

D. RELEVANT PROVISIONS:

13. Statutory provisions referred to by learned counsel for the parties in the course of their arguments are set out below for ease of reference²⁰.

a. **MCOCA:**

“Section 2: Definitions.

¹⁷ (2023) 12 SCC 1 [hereinafter, “*Vijay Madanlal Chaudhary*”].

¹⁸ Criminal Appeal Nos. 2601-2602/2024, decided on 16.05.2024 [hereinafter, “*Ajay Ajit Peter Kelkar*”].

¹⁹ *Leena Paulose-ED*.

²⁰ Learned counsel for the parties also referred to the bail provisions in Narcotic Drugs and Psychotropic Substances Act, 1985 [Section 37], and Prevention of Money-Laundering Act, 2002 [Section 45]. These are not separately reproduced as they are *pari materia* to Section 21(4) MCOCA.



(1) In this Act, unless the context otherwise requires,-

(a) “**abet**”, with its grammatical variations and cognate expression, includes,

(i) **the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;**

(ii) **the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and**

(iii) **the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;**

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(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;**

(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;**

(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;**

Section 3: Punishment for organized crime.

(1) Whoever commits an offence of organised crime shall,—

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(ii) **in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.**

(2) **Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with**



imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

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(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

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Section 17: Special rules of evidence.

(1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872 (I of 1872), for the purposes of trial and punishment for offences under this Act or connected offences, the Court may take into consideration as having probative value, the fact that the accused was,-

(a) on any previous occasion bound under section 107 or section 110 of the Code;

(b) detained under any law relating to preventive detention; or

(c) on any previous occasion was prosecuted in the Special Court under this Act.

(2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.

Section 18: Certain confessions made to the police officer to be taken into consideration.

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (I of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in



writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) *The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.*

(3) *The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.*

(4) *Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.*

(5) *The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.*

(6) *The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.*

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Section 21: Modified application of certain provisions of the Code.

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(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.



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Section 23: Cognizance of, and investigation into, an offence.

(1) Notwithstanding anything contained in the Code,-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.”²¹

b. UAPA:

“Section 43-D: Modified application of certain provisions of the Code.

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(5) **Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:**

*Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code **is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.***”²²

E. LEGAL POSITION REGARDING INTERPLAY BETWEEN THE CONSTITUTIONAL GUARANTEE UNDER ARTICLE 21 AND THE BAIL RESTRICTIONS UNDER SPECIAL STATUTES

14. A fundamental question which requires consideration in these cases concerns the petitioners’ entitlement to bail on the ground of prolonged period spent in custody as under-trials, particularly having regard to the

²¹ Emphasis supplied.

²² Emphasis supplied.



twin restrictions on the grant of bail, provided in Section 21(4) of MCOCA and Section 45 of PMLA.

15. In *Leena Paulose-II*, I have considered this question, in the light of several judgments and orders of the Supreme Court, both under MCOCA and UAPA, which contains similar [but not identical] restrictions in Section 43-D(5).

16. The argument advanced on behalf of the petitioner therein was that, even in several cases under MCOCA²³, the Supreme Court has released the accused on bail upon consideration of the period of custody and stage of trial, following the principles laid down in *K.A. Najeeb*. The same position obtains in various decision of this Court²⁴.

17. In contrast to these decisions, the prosecution relied upon some decisions of the Supreme Court and of this Court which declined to extend the concession of bail to persons accused under MCOCA, holding *inter alia* that delay in trial cannot by itself be determinative, and each case must be analysed on its own facts²⁵. My attention was also drawn to the judgment of Supreme Court in *Gulfisha Fatima*, and judgments of the Division Bench of this Court in *Tasleem Ahmed v. State Govt. of NCT of*

²³ *Rockysingh Jalindersingh Kalyani v. State of Maharashtra* [Criminal Appeal No. 176/2022, decided on 03.02.2022]; *Ranjana Tanaji Wanve v. State of Maharashtra* [SLP (Crl.) No. 12740/2024, decided on 22.10.2024]; *Siddhant v. State of Maharashtra* [2024 SCC OnLine SC 3798]; *Vinod v. State of Maharashtra* [SLP (Crl.) No. 14166/2024, dated 08.01.2025]; *Vivek @ Vicky Janak Paneri v. State of Maharashtra* [SLP (Crl.) No. 2677-2678/2025, dated 15.04.2025]; *Kailash Ramchandani v. State of Maharashtra & Anr.* [SLP (Crl.) No. 4276/2025, dated 06.01.2026]; *Jagruti Dhanesh Thorat v. State of Maharashtra* [SLP (Crl.) No. 17295/2025, dated 13.01.2026].

²⁴ *Arun v. State (Government of NCT of Delhi)* [BAIL APPLN. 3348/2023, dated 07.04.2025]; *Ashish @ Deva v. State (NCT of Delhi)* [BAIL APPLN. 1618/2024, dated 29.04.2025]; *Rajesh Kumar v. State (Government of NCT of Delhi)* [BAIL APPLN. 2986/2023, dated 08.05.2025]; and *Jitender Dixit @ Bantu v. The State (Government of NCT of Delhi)* [BAIL APPLN. 3831/2023, dated 19.05.2025].

²⁵ *Jayashree Kanbar v. State of Maharashtra & Ors.* [(2025) 2 SCC 797]; *Dheerpal v State (Govt. of NCT of Delhi)* [2024 SCC OnLine Del 4106]; *Umesh @ Kala v. State* [2025 SCC OnLine Del 6573]; *Dheerpal v. Govt. of NCT of Delhi* [2026 SCC OnLine Del 909].



*Delhi*²⁶ and *Haris Nisar Langoo*, all of which arose under UAPA. In *Gulfisha Fatima*, the Supreme Court granted bail to some of the applicants, while rejecting the applications of other accused. In *Tasleem Ahmed*, the Division Bench of this Court found the applicant not entitled to bail, whereas in *Haris Nisar Langoo*, the applicant was granted bail.

18. In view of the above decisions, this Court held as follows in *Leena Paulose-II*, as to the proper approach in such cases:

“29. *The decision in Gulfisha Fatima, in my view, provides guidance on the approach to be adopted while adjudicating bail application under MCOCA also. Section 21(4) of MCOCA being on a “higher pedestal” than Section 43D(5) of UAPA, I agree with Mr Jain that, at the very least, the same principles would govern the interplay between Section 21(4) of MCOCA and the Article 21 rights of an accused. The apparently distinct lines of authority cited above can, in my view, be reconciled, by applying the ratio of Gulfisha Fatima.*

30. *The position which emerges therefrom is that **statutory restrictions on grant of bail cannot preclude constitutionally protected claims, referable to Article 21 of the Constitution.** The ground of prolonged pre-trial incarceration without likelihood of culmination of proceedings must therefore be considered, even in cases involving special statutes. **However, these are not stand-alone considerations, but require to be analysed along with the nature of the offence and the prima facie material on record.** Conversely, while adjudicating the satisfaction required in terms of the statutory conditions, the material must be assessed through the lens of the right under Article 21 of the Constitution. **In order to adjudicate such a question, the factors to be borne in mind include the length of custody already undergone, the possible sentence for the offence, the possibility of concluding the proceedings within a reasonable time, whether delay in proceedings is attributable to the prosecution or the defence, and the nature of the prima facie case made out against the accused.***

31. *Haris Nisar Langoo, in my view, does not depart from the above principles, but provides an example in which the Court was satisfied that the petitioner was entitled to bail, even after applying Section 43D(5) of UAPA. In fact, it may be noted that, even in Gulfisha Fatima, some of the*

²⁶ 2025 SCC OnLine Del 5754 [hereinafter, “*Tasleem Ahmed*”].



accused were granted bail, having regard to the specific facts of their cases.”²⁷

19. There have, however been some further developments in the few weeks that have passed since *Leena Paulose-II* was delivered. The Supreme Court, in *Syed Iftikhar Andrabi*, has doubted the interpretation placed upon *K.A. Najeeb* in *Gulfisha Fatima*. The petitioner in *Syed Iftikhar Andrabi* was accused of offences under Sections 17, 38 and 40 of UAPA read with Sections 8, 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”], as well as Section 120-B of IPC. The Supreme Court framed the following question for consideration:

“2. The present case raises an important question concerning the interface between Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 and the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. More particularly, the issue concerns the propriety of smaller Benches progressively hollowing out the constitutional force of a larger Bench decision without ever expressly disagreeing with it.”

20. Having regard to the restrictions on grant of bail in UAPA and particularly the judgment of the three-Judge Bench in *K.A. Najeeb*, as well the decisions in *Javed Gulam Nabi Shaikh v. State of Maharashtra*²⁸, *Sheikh Javed Iqbal v. State of U.P.*²⁹ and *Arvind Dham v. Directorate of Enforcement*³⁰ [under the PMLA], the Supreme Court in *Syed Iftikhar Andrabi* held that two of its judgments – *Gurwinder Singh v. State (Govt. of NCT of Delhi)*³¹ and *Gulfisha Fatima* – “have taken a somewhat

²⁷ Emphasis supplied.

²⁸ (2024) 9 SCC 813.

²⁹ (2024) 8 SCC 293.

³⁰ 2026 SCC OnLine SC 30.

³¹ (2024) 5 SCC 403 [hereinafter, “*Syed Iftikhar Andrabi*”].



*divergent view from the clear distinctive trajectory taken by this Court qua grant of bail even under special enactments like TADA³², UAP Act and NDPS Act.”³³. The Court has expressed its reservation about the decisions in *Gurwinder Singh* and *Gulfisha Fatima*, as follows:*

“27.2. In our view, the decision in *Gurwinder* inasmuch as it refuses to be bound by *Najeeb*, is difficult to be followed by us as a matter of precedent. It is plain that a judgment rendered by a Bench of lesser strength is bound by the law declared by a Bench of greater strength. Judicial discipline mandates that such binding precedent must either be followed or, in case of doubt, be referred to a larger Bench. A smaller Bench cannot dilute, circumvent, or disregard the ratio of a larger Bench.

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27.7. We also note that the Bench in *Gurwinder* formulated the so-called ‘twin-prong test’ governing grant of bail under the UAP Act. It held that the inquiry under Section 43-D(5) must proceed in two sequential stages: first, whether the accusation is *prima facie* true; and second, only if the first question is answered in favour of the accused, whether ordinary bail considerations, such as, flight risk, tampering with evidence, or influencing witnesses, justify release. If the first stage of this twin-prong test is satisfied against the accused, bail becomes absolutely impermissible.

27.8. With respect, this test flows neither from the text of Section 43-D(5) of the UAP Act nor from *Najeeb*. In fact, on the contrary, it is in teeth of *Najeeb* which categorically stated that Section 43-D(5) of the UAP Act provides no more than another possible ground, namely that the accusations against the accused are *prima facie* true, for the competent court to refuse bail, in addition to the well-settled considerations like possibility of tampering with evidence, influencing the witnesses, or the accused evading the trial by absconding etc. If this twin-prong test is accepted, the State need only satisfy a low *prima facie* threshold while the trial may continue for years with the result that pre-trial incarceration begins to acquire a post-trial punitive character and even then, no court could ever grant bail no matter the length of period of such incarceration because the case stood *prima facie* made out against the accused. A plain reading of *Najeeb* will show that it was trying to prevent precisely this possibility from arising when it cautioned that Section 43-D(5) must not

³² Terrorist And Disruptive Activities (Prevention) Act, 1987.

³³ *Syed Iftikhar Andrabi*, paragraph 26.



become 'the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.'

27.9. **Therefore, the caution of Najeeb is that continued incarceration cannot go unabated by a mere discharge by the State of the prima facie standard under Section 43-D(5). The judgment explicitly held that Section 43-D(5) will 'melt down' where prolonged incarceration and delayed trial produce a violation of Article 21. The constitutional inquiry in Najeeb therefore operated independent of, and notwithstanding, the statutory embargo of Section 43-D(5) in the realm of constitutional principles. That being the case, the formulation of Gurwinder becomes difficult to follow.** Once the three-Judge Bench in Najeeb recognised that constitutional courts retain the authority to intervene despite the existence of a prima facie case against the accused where prolonged incarceration and delayed trial would breach Article 21, the statutory embargo of Section 43-D(5) could no longer be treated as the gateway through which the prayer of bail must first pass.

27.10. As a matter of law, nothing further need be said except that **in any case, constitutional courts can always intervene to grant bail despite satisfaction of prima facie threshold under Section 43-D(5), and the section need not control the grant of bail if the accused person's liberty is infringed for a prolonged period of time. The power of the constitutional court to grant such a prayer cannot in our view be diminished by exercise of legislative power.**

27.11. The holding in Najeeb was never that mere passage of time automatically entitles the accused to bail. Instead, the larger Bench recognised that where incarceration becomes unduly prolonged and the trial is unlikely to conclude within a reasonable time, the continued application of Section 43-D(5) becomes constitutionally suspect given the mandate of Article 21. In that sense, Najeeb articulated a constitutional limitation on the operation of the statutory embargo of Section 43-D(5).

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29. **We have serious reservations on various aspects of the judgment in Gulfisha Fatima,** including foreclosing the right of the two appellants to seek bail for a period of one year. The judgment in Gulfisha Fatima would have us believe that Najeeb is only a narrow and exceptional departure from Section 43-D(5) justified in extreme factual situations. It is this hollowing out of the import of the observations in Najeeb that we are concerned with.

30. **No reading of Najeeb suggests that the mere passage of time, divorced from all surrounding circumstances, mechanically entitles an accused to release.** The real concern addressed in Najeeb lay elsewhere. This Court was concerned with the manner in which Section 43-D(5) was,



in practice, being deployed as an almost conclusive basis for denial of bail notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that **this Court observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence.** This Court in *Najeeb* cautioned that such an approach was necessary to prevent provisions like Section 43-D(5) from being used as 'the sole metric for denial of bail or for wholesale breach of the constitutional right to speedy trial.'

31. In *K.A. Najeeb*, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. **Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will 'melt down' where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.** In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.

32. The reasoning first in *Gurwinder* and then in *Gulfisha Fatima*, appears to proceed against something invented and then destroyed. We are constrained to reiterate **that Najeeb was not warning courts against treating incarceration as the sole factor favouring bail. Instead, it was warning against treating the statutory embargo as the sole factor justifying continued detention by ignoring constitutional principles.** Therefore, the subsequent reading that *Najeeb* does not create an automatic entitlement to bail on account of delay answers a proposition that *Najeeb* itself never advanced.

33. The emphasis in *Najeeb* was constitutional in nature: it was directed towards preventing Section 43-D(5) from overpowering Article 21 considerations in cases of gross delay and prolonged incarceration. The



constitutional force of Najeed lies in its restoration of the hierarchy between a statute, namely, the UAP Act, and the Constitution. Section 43-D(5) remains subordinate to Article 21 at all times and a constitutional court need not hold back bail to the accused in the garb of Section 43-D(5). As this Court held in Sk. Javed Iqbal :

31. ... Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

34. Therefore, Jalaluddin Khan Vs. Union of India³⁴, is a timely warning to the courts. It says that when a case is made out for grant of bail, the courts should not have any hesitation in granting bail. The allegation of the prosecution may be very serious; but the duty of the courts is to consider a case for grant of bail in accordance with law. 'Bail is the rule and jail is the exception' is a settled law. The Bench cautioned that if the courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

*35. The often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. **The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution. Therefore, we have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.***

Having so held, the Supreme Court, in *Syed Iftikhar Andrabi*, examined the case of the accused on merits, and directed that he was entitled to be released on bail.

³⁴ (2024) 10 SCC 574.



21. Pursuant to *Syed Iftikhar Andrabi*, the Supreme Court has once again engaged with this issue in *Tasleem Ahmad v. State Govt. of NCT of Delhi*³⁵, which concerned a challenge to the Division Bench decision of this Court referred to above. While recounting the position laid down in *Gulfisha Fatima*, and the reservations expressed in *Syed Iftikhar Andrabi*, the Court referred the issue for consideration by a larger bench, with the following observations:

“15. We do not propose to enter into any adjudication on the correctness of observations made by a coordinate Bench. Judgments of this Court are not to be answered by counter-observations from another Bench of equal strength. The discipline of precedent demands a higher institutional method.

16. However, where a coordinate Bench entertains reservations about the reasoning of an earlier coordinate Bench, particularly on the application of a binding three-Judge Bench decision, the proper course is well settled. The matter must ordinarily be placed before Hon'ble the Chief Justice of India for constitution of an appropriate Bench. A coordinate Bench cannot, by strong observations, effectively unsettle the ratio of an earlier coordinate Bench while continuing to sit in equal strength.

17. We deem it necessary to observe that disagreement between coordinate Benches, by itself, is neither unusual nor undesirable. The law has often grown through reasoned difference. What the discipline of precedent does not countenance, however, is a course by which an earlier coordinate Bench is subjected to reservations of a fundamental character, particularly on the alleged misapplication of a larger Bench decision, without the matter being placed before a Bench competent in strength to resolve the perceived conflict. A coordinate Bench may distinguish an earlier decision, may explain its own understanding of the law, and may, in an appropriate case, express doubt. But where the doubt goes to the root of the legal principle applied, the matter cannot be left at the stage of criticism. A doubt expressed in emphatic terms is still a doubt; it is not a declaration of law. Unless resolved by a Bench of appropriate strength, it only introduces uncertainty in the administration of justice.

18. The obligation of judicial discipline is, therefore, not discharged

³⁵ SLP (CRL.) No. 3867/2026, dated 22.05.2026 [hereinafter, “*Tasleem Ahmed 2*”].



by merely stating it. It lies in adopting the course which the institution requires. A Bench of equal strength cannot achieve, by language of reservation, what it cannot achieve by declaration of law. If the earlier view is thought to be inconsistent with a larger Bench decision, the proper course is reference. That course protects not merely the judgment doubted, but the authority of this Court itself. In matters touching personal liberty, national security, statutory restrictions on bail and prolonged incarceration, uncertainty in the law is itself an institutional cost. We, therefore, consider it our duty not to add another competing formulation to the field, but to place the perceived conflict before a Bench of appropriate strength so that the law may speak with the clarity and authority expected of this Court.

19. *It is possible for Benches of this Court to differ in emphasis. It is equally possible that two decisions may proceed on the same constitutional foundation but apply it differently to distinct factual settings. But where the difference is projected as one concerning the binding force of a three-Judge Bench decision, and where such difference is likely to affect pending trials under special statutes across the country, the matter cannot be left to uncertain application by courts.*

20. **We are also conscious that an unqualified reading of the proposition that lapse of time by itself must compel bail in every case under the UAPA may have serious consequences. Such an approach may leave little room for courts to examine the nature of allegations, centrality of role, protected witnesses, risk of intimidation, possibility of reactivation of networks, nature of delay and whether such delay is attributable to the accused himself/herself, public order concerns and national security implications. On the other hand, an equally unqualified insistence on Section 43D(5) without regard to prolonged incarceration would imperil Article 21. The Constitution does not command either extreme. It is this precise issue that may warrant attention of the appropriate bench dealing with the issues.**

21. **The question, therefore, is not whether Article 21 survives Section 43D(5). It undoubtedly does. The true question is how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life.**

22. We clarify that nothing in this order is intended to whittle down, dilute, read narrowly, or detract from the authority of K.A. Najeeb. On the contrary, the present reference is necessitated because K.A. Najeeb deserves application with the clarity, consistency and institutional fidelity which a binding three-Judge Bench decision commands. If a coordinate



Bench has expressed reservations on the manner in which another coordinate Bench has applied K.A. Najeeb, the proper answer is not further reservation. The proper answer is authoritative resolution.”

22. The question that arises before this Court, in light of the aforesaid decisions, is to determine the approach which must be adopted in adjudication of the present applications. Needless to say, the differing approaches expounded by the Supreme Court in *Gulfisha Fatima* and *Syed Iftikhar Andrabi*, are both binding upon this Court. Although the question has been referred to a larger bench in *Tasleem Ahmed 2*, the factum of reference itself does not denude a Supreme Court decision of its binding authority³⁶.

23. The possible course of awaiting an authoritative decision by the larger bench of the Supreme Court does not commend to me, in the context of these applications for bail, which by their very nature require expeditious resolution. Instead, having considered the judgments cited by both sides, which were rendered after *Gulfisha Fatima*, I am of the view that a practical approach must be adopted, at least until the reference is answered by a larger bench. In the present case, such an approach requires this Court first to adjudicate upon Mr. Malik’s submission that, even in terms of the interpretation of *K.A. Najeeb* in *Gulfisha Fatima*, as understood by this Court in *Leena Palouse-II*, the petitioners are entitled to bail. If this contention is accepted, it is unnecessary to delve further into the exercise of reconciliation between the views expressed in

³⁶ *Harbhajan Singh and Another v. State of Punjab*, (2009) 13 SCC 608, paragraph 15; *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680; *Union Territory of Ladakh and Ors. v. Jammu and Kashmir National Conference and Anr.*, (2024) 18 SCC 643, paragraph 35.



Gulfisha Fatima and *Syed Iftikhar Andrabi*, with regard to the competing interpretation of *K.A. Najeeb*.

24. Before embarking upon this exercise, I may only add that this course is also not, in my view, inconsistent with the interpretation of *K.A. Najeeb* in *Syed Iftikhar Andrabi*. The position of law laid down in *Gulfisha Fatima*, as I have understood it in *Leena Paulose-II*, was that the ground of prolonged incarceration without likelihood of culmination of proceedings, must be considered even in cases involving statutory restrictions on grant of bail. However, these must be analysed, alongwith the nature of offence, and the *prima-facie* material available against the accused. The articulation in *Syed Iftikhar Andrabi*, is that the statutory limitation on the grant of bail cannot override rights under Article 21, but that “*of course, in an appropriate case, bail can be denied having regard to the facts of that particular case*”³⁷. *Syed Iftikhar Andrabi* therefore also requires a factual examination, to determine whether a particular accused is to be granted bail, despite an argument based upon his/her Article 21 rights. It may be noted that, both in *Gulfisha Fatima* and in *Syed Iftikhar Andrabi*, the Supreme Court examined the case of accused on merits, in the backdrop of period of incarceration and the likely length of trial. In *Gulfisha Fatima*, five of the seven accused were granted bail, as was the sole accused in *Syed Iftikhar Andrabi*.

25. Mr. Jain relied on two other very recent judgments, which must be dealt with at this stage:

- a. *Sheikh Mehmood* was rendered in the context of an FIR under Section 302 IPC. Mr. Jain referred to the following observations:



“31. Evidence on record before the Sessions Court till now has been noticed by us. **“Bail is the rule and jail is an exception”, although is a cardinal principle of bail jurisprudence in India, it is not an absolute rule. The rule is sort of a guiding principle that should be kept in mind along with the facts of each case and statutory restrictions, if any, while considering a prayer for bail.** In relation to offences such as the one under consideration, murder and conspiracy are serious offences. Section 437(1) of the CrPC bars grant of bail if reasonable grounds exist that the accused has committed an offence which is punishable with either death or life imprisonment. **The cardinal rule has to be balanced with factors like prima facie case, gravity of offence, nature of evidence, antecedents, differentiation of roles, parity, delay in conclusion of trial, age of the accused, medical grounds, etc.** However, bail could be declined if the offence is heinous and premeditated, there is grave apprehension of the witnesses being influenced or the evidence being tampered, a possibility of the accused absconding should he be granted bail and thereby evading trial, etc.”

- b. Mr. Jain also placed reliance upon *Balraj Singh*, wherein the Court was concerned with a case in which twin restrictions on the grant of bail under Section 37 of the NDPS Act were applicable. Although the Court found, in the facts of that case, that incarceration of the accused of 1 year and 7 months did not constitute incarceration for a long period, it also observed that the quantum of custody which would constitute prolonged incarceration for the purposes of bail has not been expounded by the Supreme Court. Mr. Jain particularly relied upon the following observation:

“22. However, we note that recently this Court in *Tasleem Ahmed v. State Govt. of NCT of Delhi* has referred the question concerning the approach of constitutional Courts in bail matters under special statutes, where “Article 21, prolonged incarceration and statutory restrictions intersect”. **In view of the**

³⁷ Syed Iftikhar Andrabi, paragraph 35.



said reference, we do not wish to deliberate on this issue further, save and except that in our view paramount consideration is nothing but interest of justice for all. Should there be any conflict between the sovereignty of country and personal liberty, undoubtedly, the former shall prevail, particularly, when a war is waged against the nation, be it in the form of supply of drugs, which vitally affects the national economy and health of the people.”

26. The judgments in *Sheikh Mehmood* and *Balraj Singh*, to the extent that they provide guidance on the proper approach in bail cases, do not, in my view, require a different approach from the one I propose to adopt. The Court, in *Sheikh Mehmood*, held that “*bail is the rule and jail is an exception*” is a cardinal principle of bail jurisprudence in India, but not an absolute rule. Mr. Jain emphasised that the Court has mandated consideration *inter alia* of statutory restrictions, which would include Section 21(4) MCOCA. While that is true, it bears notice that the Court has also delineated several other factors, including *prima facie* case, gravity of offence, nature of evidence, antecedents, differentiation of roles, parity, delay in conclusion of trial, age of the accused, medical grounds, etc. *Balraj Singh* stands on a somewhat different footing than the present case, as the Court found that the period of custody in that case was not such as to warrant interference in view of Article 21 of the Constitution. In the present case, however, the period of custody is close to five years, and the charges have just been framed. The petitioners’ Article 21 rights are therefore, in my view, clearly implicated.

27. As noted above, the judgments of this Court granting bail to Pinky Irani, Sunil Kumar and Avtar in the State case, were carried in appeal to the Supreme Court. As the reasoning in those judgments has been set



aside by the Supreme Court, and the State's appeal in the case of Avtar was rendered infructuous by his demise, I have not considered the ground of parity in the State cases at all, or relied upon the judgments of this Court in those cases. This judgment proceeds on an independent analysis on the merits of each case.

F. APPLICATION TO THE FACTS OF THE PRESENT CASES:

I. Analysis in the State cases

28. Turning to the facts of the present cases, following the aforesaid approach, I am of the view that the petitioners herein are entitled to bail, even if the issue is considered on the basis of the law laid down in *Gulfisha Fatima*, as understood in *Leena Palouse-II*. My reasons are as follows:

- A. The period of custody of both the accused, as undertrials in the State case, is substantial - almost 4 years and 10 months.
- B. The stage of trial is that charges had not been formally framed at the time of the last hearing on 03.06.2026, but an order on charge had been passed. One co-accused, Navas KL, has recently been arrested and a supplementary chargesheet [the sixth supplementary chargesheet] will have to be filed to deal with his case.
- C. There are 23 accused and 403 witnesses cited in the chargesheets already filed, which clearly implies that even after framing of charges, the trial will take a considerable period.
- D. As far as the attribution for delay is concerned, however, I have held in *Leena Paulose-II* that the delay is not attributable to prosecutorial inaction or court delays alone, without the



contribution of the accused. The pace of trial is impacted by the complexity of the case, number of accused and various institutional factors.

- E. The period of sentence for the offence under section 3 of MCOCA is five years to life imprisonment, alongwith minimum fine of Rs. 5 lakhs.
- F. Despite the aforesaid findings with regard to responsibility for the delay in the trial and the maximum sentence prescribed for the offence, I am of the view that the role attributed to the petitioners in the commission of the offence does not justify their further incarceration pending trial. For this purpose, it may be noted that, even in *Gulfisha Fatima*, the Court found that responsibility for delay was not attributable to the prosecution or court delays alone³⁸. Nonetheless, those individuals who were alleged to have contributed to mobilization of financial and human resources, were granted bail³⁹. Specifically, in the case of Shifa-ur-Rehman, who was primarily alleged to be collecting funds and distributing the same for the purpose of mobilizing crowds, the Supreme Court held as follows:

*“266. According to the charge-sheet, Shifa-ur-Rehman, stated to be the President of the Alumni Association of Jamia Millia Islamia (AAJMI), **is alleged to have played an active role in the funding and execution of the riots in Delhi**. The charge-sheet alleges that Shifa-ur-Rehman was entrusted with significant responsibilities in furtherance of the alleged conspiracy hatched by Umar Khalid and Sharjeel Imam. It is further alleged that **he collected funds and***

³⁸ *Gulfisha Fatima*, paragraph 38.

³⁹ Mareen Haider, who was alleged to be an active conspirator who organised and administered multiple permanent protest sites and collected, managed, and channelled funds, was also granted bail in the said judgment [Paragraphs 345 to 360].



distributed the amounts so collected for the purpose of engaging women, children, and girls to assemble at protest sites, with the intent that the presence of such groups would deter the police from taking stringent action at the protest locations.

267. The charge-sheet further alleges that Shifa-ur-Rehman **was closely associated with Umar Khalid, described as the principal conspirator, and that he remained in constant contact with him.** It is alleged that Shifa-ur-Rehman also **attended secret conspiratorial meetings.** The charge-sheet records several instances of fund-raising activities conducted at the office of AAJMI in connection with the protests.

268. It is further alleged that Shifa-ur-Rehman, along with other co-accused, was **instrumental in the establishment of 24 × 7 protest sites.** According to the charge-sheet, he regularly visited these protest sites and **instigated participants** to organise chakka jams under the guise of peaceful protests. Call Detail Records (CDRs) are relied upon to assert his frequent presence at the protest sites.

269. Statements of protected witnesses “Alpha”, “Bond”, “James”, and “Hector” are relied upon to allege that, in his capacity as President of AAJMI, Shifa-ur-Rehman **was responsible for raising substantial funds to finance the protests.** The charge-sheet further alleges that, in order to avoid detection and to leave no financial trail, Shifa-ur-Rehman **fabricated false bills of expenditure in the name of AAJMI.** Copies of the purportedly fabricated bills have been produced along with the charge-sheet. It is alleged that Shifa-ur-Rehman collected a minimum amount of Rs. 7-8 lakhs, the majority of which was received in cash.

270. The charge-sheet further alleges that Shifa-ur-Rehman was **among the principal individuals responsible for sourcing and sustaining the protests.** Apart from his alleged role in funding, it is stated that he participated in a conspiratorial meeting held on 22.02.2020, wherein it was purportedly agreed that the protests should be escalated to the next stage by enforcing chakka jams and engineering violent riots.

271. According to the prosecution, **the primary role attributed to Shifa-ur-Rehman was to provide financial and logistical support to all protest sites.** The charge-sheet asserts that the funding and logistical assistance allegedly provided by him played an instrumental role in the riots that occurred in Delhi between 23.02.2020 and 26.02.2020, under the ostensible cover of protests against the CAA/NRC.



272. Upon a prima facie consideration of the material presently relied upon by the prosecution, **the role attributed to Shifa-ur-Rehman does not disclose participation at the level of conceptualisation or strategic command of the alleged conspiracy. The allegations principally pertain to logistical facilitation, fund-raising, and coordination at identified protest sites, premised upon directions purportedly originating from persons situating themselves above him in the asserted hierarchy. In the absence of demonstrable material suggesting that he exercised autonomous decision-making authority over the alleged broader design, his continued incarceration as a pre-trial measure does not presently appear warranted.**

273. The prosecution asserts that Shifa-ur-Rehman was associated with fund-raising activities and implementation of protest-site requirements however, **the evidentiary material does not indicate that he retained control over the deployment of such funds, nor that he exercised selective discretion over strategic decisions concerning escalation.** The record discloses that the appellant's actions were derivative in nature, aligned to instructions transmitted by others, and largely confined to sustaining logistics rather than shaping the trajectory of the protests. Such attribution, while relevant to trial, does not justify indefinite pre-trial detention when weighed against the limited and executory nature of his alleged role.

274. The State's apprehension that the appellant may re-establish operational linkages or interfere with witnesses must be evaluated in light of present circumstances. There is no material to demonstrate that the appellant retains any functional capacity to mobilise resources or coordinate activities independent of the structures that, according to the prosecution itself, acted under higher-level guidance and have since ceased to exist in the form alleged. The risks articulated by the State can be effectively neutralised through conditions restricting public engagement pertaining to the case, prohibiting contact with witnesses, and mandating regular court attendance.

275. While the seriousness of the events culminating in violence during the relevant period cannot be discounted, this Court is mindful that gravity alone cannot eclipse the constitutional requirement of individualized examination of the necessity of pre-trial detention. **The appellant's role, as narrated, is not linked to instigation of violence, procurement of weapons, or direct involvement in acts of physical aggression.** In the absence of a proximate and continuing nexus between the appellant and the



capacity to compromise the integrity of the proceedings, further incarceration would assume a punitive character incompatible with settled constitutional jurisprudence under Article 21.

276. The Court is also conscious that pre-trial detention serves limited and clearly defined purposes securing the presence of the accused, preventing obstruction of justice, and safeguarding public interest where demonstrable risk persists. In the present case, none of these objectives appear incapable of being achieved through calibrated restrictions short of incarceration. The absence of material suggesting an enduring organisational infrastructure capable of being reactivated through the appellant's efforts weighs significantly against the necessity of continued custody.

277. It is further noted that the prosecution's submissions rely substantially on the appellant's positional proximity to individuals alleged to have played a strategic role. **Mere associative proximity, without corresponding evidence demonstrating capacity to exert influence or direction, does not satisfy the threshold required to curtail liberty at the post-investigative stage. The appellant's purported involvement in facilitative tasks, while forming part of the evidentiary matrix to be assessed at trial, cannot be a standalone basis for extending pre-trial detention where imposition of protective conditions offers an adequate safeguard.**

278. Where **the prosecution narrative itself draws a distinction between strategic architects and operational facilitators, judicial scrutiny at the bail stage must remain attentive to proportionality in attribution. The material presently relied upon depicts the appellant as a conduit within a hierarchically structured mobilisation, rather than as a node of independent initiative. Elevating such a role to one warranting prolonged custodial deprivation would risk diluting the constitutionally embedded principle that pre-trial restraint must correlate to demonstrated necessity rather than inferred association.**

279. Finally, while the evidentiary record merits thorough adjudication at trial, the Constitution mandates that liberty be curtailed only where compelling grounds grounded in present necessity exist. **The prosecutorial hypothesis of a broader conspiracy, though serious, cannot become a charter for undifferentiated incarceration of all alleged participants irrespective of their individual function or continuing capacity.** In the circumstances disclosed, and given the availability of stringent safeguards to address the apprehensions raised, the balance of constitutional considerations favours the appellant's



release on terms ensuring non-interference with the proceedings and adherence to all conditions imposed by the Court.

280. Having regard to the differentiated standing that the prosecution narrative itself assigns to the appellant, particularly when contrasted with the alleged principal conspirators Umar Khalid and Sharjeel Imam, and in view of the absence of any present investigative requirement necessitating custodial detention, this Court finds that pre-trial liberty can be secured without prejudicing the administration of justice. Accordingly, subject to conditions designed to ensure his availability for trial, prevent any contact with prosecution witnesses, and restrain public commentary bearing upon the merits, the appellant is held entitled to be enlarged on bail. It is clarified that the observations herein are confined to the determination of bail and shall not be construed as expressing a view on the merits of the prosecution's case."⁴⁰

- G. While I am conscious of the fact-intensive nature of a bail adjudication, I am of the considered view that the roles ascribed to Deepak and Pradeep in the present case are, at the highest, in *pari materia* with the aforesaid analysis in *Gulfisha Fatima*.
- H. In Deepak's case, the prosecution alleges an active role in identification of the complainant, establishment of conspiracy with Sukesh, and implementation thereof, by directly or indirectly collecting the extorted funds, and remitting them to *hawala* operators, and distributing it to jail officials and other beneficiaries. The aspect of collection of money from the complainant or her representatives, directly or through Pradeep, and distribution thereof to Leena and others through *hawala* operators, or to Dharam Singh Meena and other beneficiaries directly, falls within the scope of logistical facilitation. These activities were, even according to the prosecution, undertaken

⁴⁰ Emphasis supplied.



strictly on Sukesh's instructions; it is not alleged that Deepak exercised any autonomy in determining the quantum of collection or its destination.

- I. Mr. Jain additionally argued that Deepak exercised an important role in the planning of the foundational offence, particularly in identifying the potential victim, and gathering information about her, and that he was in direct contact with Sukesh. While these are matters for trial, I do not find the *prima facie* material such as to imply strategic command or conceptualization of the foundational offence. The legal position with regard to the Section 18 statements relied upon by the prosecution, are also a matter for trial. However, even taken at face value, the statements do not *prima facie* suggest anything other than information gathering by Deepak, which was passed on to Sukesh. "Associative proximity", by way of frequent contact with Sukesh and Leena, has also been held in the aforesaid extracts of *Gulfisha*, to be insufficient to justify prolonged pre-trial incarceration of the accused.
- J. Even according to the prosecution, Pradeep's role was more limited. He was tasked only with collecting the extorted amount from the complainant or her representatives on the instructions of Deepak, who in turn obtained instructions from Sukesh. Such a role clearly falls within the scope of "*financial facilitation*".
- K. Although Mr. Jain submitted that both Deepak and Pradeep were members of the OCS, and therefore liable under Section 3(4) MCOCA, this allegation is also *prima facie* derived from the



allegation with regard to their roles in the activities of the OCS, which I have dealt with above.

II. Analysis in the ED case

29. As far as the ED case is concerned, the period of custody of 4 years and 9 months, juxtaposed with maximum sentence of 7 years under Section 4 PMLA, in my view, indicates that further pre-trial incarceration is unjustified. Charges have been framed only recently, i.e. on 03.06.2021, and given the number of witnesses [311 proposed witnesses] and the volume of documents, it is unlikely that the trial will conclude in the near future. In fact, it is not implausible that, if denied bail, Deepak will even serve the maximum period of imprisonment, before the trial is concluded.

30. This period of incarceration is also significantly beyond the threshold contemplated under Section 479 BNSS, i.e. one-half of the maximum sentence for the offence. Further, although Deepak is involved in two other cases⁴¹, they arise out of the same substantive allegations. In FIR No. 124/2021, which is the predicate offence, he is on bail. In *Vijay Madanlal Chaudhary*⁴² and *Ajay Ajit Peter Kelkar*⁴³, the Supreme Court has clearly held that Section 436A CrPC [corresponding to Section 479 BNSS] is applicable to PMLA cases also. In view thereof, Deepak, in my view, is entitled to the benefit of Section 479 BNSS, despite the rigours of Section 45 PMLA.

31. Further, out of the 18 accused persons arrayed in the present ECIR, 13 have already been enlarged on bail, four by this Court and nine by the

⁴¹ FIR No. 124/2021 and ECIR No. 55/DLZO-II/2021.

⁴² Paragraph 321.



Special Court. None of these orders were challenged by the ED. In particular, reliance has been placed on the order granting bail to co-accused Leena by this Court in *Leena Paulose-ED*, who was allegedly handling, utilising, and enjoying the proceeds of crime. The Court granted bail, having regard to Section 479 BNSS, and the proviso to Section 45 PMLA, which exempts a women-accused from the twin conditions.

32. Bail was also granted to co-accused Arun Muthu by this Court⁴⁴, who was allegedly involved in assisting Sukesh in laundering and layering the proceeds of crime. While granting bail, this Court had also extended to him the benefit of Section 436A of the CrPC (corresponding to Section 479 BNSS). Bail was also granted by this Court to co-accused Avtar⁴⁵, who was alleged to be the principal *hawala* operator facilitating the movement of the proceeds of crime, though his age and medical ailments were also relevant considerations. Both Arun Muthu and Avtar were thus granted bail, despite the rigours of Section 45 of the PMLA being applicable to them.

33. The role attributed to the petitioner in the present case under PMLA, is primarily that of collecting, transporting, and delivering the proceeds of crime allegedly generated through the extortion activities of Sukesh. The prosecution alleges that Deepak routinely handled large cash transactions on Sukesh's behalf, including the collection of substantial sums from various individuals and their subsequent delivery to designated beneficiaries in India and abroad. The prosecution also alleges

⁴³ Paragraph 3.

⁴⁴ BAIL APPLN 1821/2024, decided on 20.02.2025.



that, whenever unavailable, he deputed his brother, Pradeep, to carry out the collection and delivery of cash, thereby ensuring continuity of the operation. According to the prosecution, these acts demonstrate his active involvement in the handling and movement of the proceeds of crime and his assistance in their concealment, transfer, and utilisation.

34. Having regard to the fact that 13 co-accused have already been granted bail, I am of the view that the Deepak's case cannot be said to stand on a graver footing than theirs. Deepak is, therefore, also entitled to the benefit of parity with the co-accused in the PMLA proceedings.

G. CONCLUSION:

35. Having regard to the period of custody undergone by Deepak and Pradeep in light of their roles in the alleged offences, I am of the considered view that they are entitled to be released on bail in FIR No. 208/2021. Additionally, in connection with the ED case, having regard to Section 479 BNSS and the benefit of parity with similarly placed co-accused, I am of the view that Deepak is entitled to be released on bail in the said proceedings as well.

36. In view of the above discussion, the applications are allowed, and it is directed that:

- A. Pradeep and Deepak be released on bail in connection with FIR No. 208/2021 dated 07.08.2021, registered at Police Station Special Cell, Delhi, under Sections 170/384/385/388/419/420/506/120B of the IPC, and Section 66D of the IT Act, subject to furnishing a personal bond of Rs. 2,50,000/- each, alongwith two sureties each in the like amount, to

⁴⁵ BAIL APPLN 1814/2022, decided on 29.11.2023.



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the satisfaction of the concerned Special Court/Duty Magistrate;
and

B. Deepak be also released on bail in connection with ECIR/54/DLZO-II/2021 dated 08.08.2021, under Sections 3 and 4 of PMLA, subject to furnishing a personal bond of Rs. 2,50,000/-, alongwith two sureties in the like amount, to the satisfaction of the concerned Special Court/Duty Magistrate.

38. The grant of bail to the petitioners is subject to the further following conditions:

- a. The petitioners shall appear before the Special Court on each and every date of hearing;
- b. The petitioners shall surrender their passport(s) before the Special Court, and shall not leave the country without prior permission of the concerned Court;
- c. The petitioners shall provide their permanent addresses to the concerned Court, as also the address where they are residing during the pendency of the case. The petitioners shall intimate the Investigating Officer [“IO”], and file affidavits before the Special Court, regarding any change in residential address;
- d. The petitioners shall provide their mobile numbers to the concerned IO/Station House Officer, which shall be kept in working condition at all times. The mobile phones shall not be switched off or changed without prior intimation to the IO during the pendency of the trial;
- e. The petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the



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facts of the case or tamper with the evidence of the case, in any manner whatsoever;

f. The petitioners shall not commit any offence during the period of their release.

37. The bail applications are disposed of in terms of the above.

38. It is clarified that any observations made in the present judgment are solely for the purpose of deciding the present bail applications, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.

39. Copy of the judgment be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

PRATEEK JALAN, J

JUNE 05, 2026
PV/AD/KA/