

Bail under UAPA

Evaluation of Judicial Reasoning from

K.A. Najeeb (MANU/SC/0046/2021)

to

Syed Iftikhar Andrabi (MANU/SC/0490/2026)



The judicial interpretation of **Section 43D(5) of the Unlawful Activities (Prevention) Act (UAPA), 1967**, has undergone a significant evolution between 2021 and 2026. This trajectory reflects a struggle to balance the Union's interest in preventing terrorism with the individual's fundamental right to a speedy trial under Article 21.

***K.A. Najeeb** : The Foundation of the "Meltdown" Doctrine**

Ratio : Statutory bars on bail must yield to Constitutional guarantees when trials are inordinately delayed.

The Conflict

The Court addressed whether the stringent *prima facie* truth test under Section 43D(5) (as interpreted in *Watali* (**MANU/SC/0458/2019**)) could be bypassed due to trial delay.

The Reasoning

A three-judge bench held that while Special Courts are bound by Section 43D(5), Constitutional Courts retain the power to grant bail if Article 21 rights are violated.

The Balance

The Court famously observed that the rigours of statutory provisions "**melt down**" when there is no likelihood of the trial being completed in a reasonable time. In *Najeeb*, the fact that the accused had served nearly two-thirds of the likely sentence was a decisive factor.

* *UoI v K.A. Najeeb*, MANU/SC/0046/2021

Gulfisha Fatima* : The "Hollowing Out" / Calibration Phase

Ratio : Article 21 does not operate in isolation; delay must be balanced against the gravity of the role and the "procedure established by law."

The Shift

This decision (by a two-judge bench) attempted to restrict *Najeeb* to "exceptional" or "extreme" cases. It introduced a **calibrated approach** based on the hierarchy of the accused within a conspiracy.

The Reasoning

The Court held that for "masterminds" or "ideologues" (like Umar Khalid or Sharjeel Imam), the statutory bar remains high because their strategic command poses a greater threat to societal security. For "local facilitators" (like Gulfisha Fatima), prolonged incarceration more easily assumes a "punitive" character.

The Balance

It prioritized the "procedure established by law" (Section 43D(5)), suggesting that mere passage of time cannot dissolve the statutory embargo if the *prima facie* threshold is met for high-ranking conspirators.

**Gulfisha Fatima v State (Govt. of NCT of Delhi)*, MANU/SC/0009/2026

***Syed Iftikhar Andrabi* *: The Restoration of Article 21 Supremacy**

Ratio : Section 43D(5) is at all times subordinate to Article 21; smaller benches cannot dilute the ratio of larger benches.

The Reconciliation

The Court expressed "serious reservations" regarding the reasoning in *Gulfisha Fatima* and *Gurwinder Singh*, accusing them of "**hollowing out**" the constitutional force of *Najeeb*.

The Reasoning

Justice Ujjal Bhuyan reaffirmed that the right to a speedy trial is not eclipsed by the nature of the crime. The Court rejected the "twin-prong test" (clearing the *prima facie* hurdle before considering delay) as having no basis in the UAPA text or *Najeeb*.

The Resolution

The Court took judicial notice of abysmal conviction rates in UAPA cases (often <1% in J&K) and held that detaining individuals for years when acquittal is statistically probable is unconstitutional. It ruled that once a timely trial is impossible and custody is significant, bail is the rule and jail is the exception, even under the UAPA.

****Syed Iftikhar Andrabi v National Investigation Agency, Jammu, MANU/SC/0490/2026***

Summary of the Judicial Evolution

Feature	<i>K.A. Najeeb (2021)</i>	<i>Gulfisha Fatima (2026)</i>	<i>Syed I. Andrabi (2026)</i>
Primary Authority	Article 21 (Constitutional)	Section 43D(5) (Statutory)	Article 21 (Constitutional)
View on Delay	Dissolves statutory bars ("Meltdown")	Merely a factor; not an automatic ground for bail.	Overrides statutory bars once trial is "well-nigh impossible."
Role of Accused	Relevant to proportionality	Decisive (Mastermind vs. Facilitator)	Subordinate to the fact of prolonged incarceration
Judicial Tone	Protective/ Pragmatic	Restrictive/ Calibrated.	Corrective/ Constitutionalist.

Final Resolution of the Conflict

As of the decision in *Syed Iftikhar Andrabi (2026)*, the Court has resolved the conflict by reinforcing the **hierarchical supremacy of Article 21**. It established that while Section 43D(5) is a valid "procedure established by law," it cannot be interpreted in a way that renders the right to a speedy trial illusory. The Court effectively restored the *Najeeb* doctrine, clarifying that the "meltdown" of statutory rigours is not an exception but a mandatory constitutional response to systemic trial delays.