



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

**Cr1A(D) No. 31/2025**

*Reserved on:* 04.05.2026  
*Pronounced on:* 12.05.2026  
*Uploaded on:* 12.05.2026  
*Whether the operative part or full judgment is pronounced: Full*

**Syed Irfan Ahmed S/O Late  
Syed Mushtaq Ahmad R/O  
Nazneen Pora, Keegam District  
Shopian, Kashmir Through his  
mother, namely Mst. Shafiq  
Akhter W/o Late Mushtaq  
Ahmad Shah R/o Nazneenpora  
Keegam District Shopian  
Kashmir.**

.... Petitioner/Appellant(s)

Through:- Mr. Molvi Aijaz Ahmad,  
Advocate.

**Vs.**

**NIA Jammu.**

.....Respondent(s)

Through:- Mr. Vishal Sharma, DSGI with  
Mr Eishan Dadhichi, CGSC &  
Mr. Sumant Sudan, Advocate  
Mr. Chandan Kr. Singh, PP, NIA  
Mr. Ashwani Verma, PP, NIA.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE  
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

**JUDGMENT**

**SHAHZAD AZEEM-J**

1. This appeal under Section 21 of the National Investigation Agency Act, 2008 is directed against the order dated 22 April 2025 passed by the learned Special Judge



NIA Cases, Jammu (“the trial Court”) in File No. 217/2024/Misc. titled Syed Irfan Ahmad Vs. National Investigation Agency, whereby the bail application of the appellant for offences under Sections 120-B, 121, 121-A & 122 IPC and 17, 18, 19, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 [“UA (P) Act”], came to be dismissed.

### **BRIEF FACTS**

**2.** Syed Irfan Ahmad (A-6) has been sent up for trial along with 10 co-accused in a Hizb-ul-Mujahideen [HM] terror conspiracy case involving arms and ammunition recovery, fund raising/transferring, waging of war against India etc. The appellant along with the co-accused stand formally charge-sheeted by the trial Court vide order dated 16 December 2022 for the commission of aforesaid offences.

**3.** By now, prosecution has examined 25 witnesses. It is also noteworthy that the prosecution has filed two supplementary charge-sheets on 23 October 2020 and 22 March 2021 respectively.

**4.** The prosecution case proceeds on the basis of a larger conspiracy hatched by the accused to wage war against India by procuring arms and ammunition. There are also allegation of murder, attempt to murder, kidnapping, dacoity, and robbery etc.



5. The accused Syed Irfan Ahmad (A-6) alleged to have been the part of this larger conspiracy and acted as an intermediary between the accused Naveed Mushtaq (A-1), his elder brother, Irfan Shafi Mir (A-2) and Devender Singh (A-3), respectively for extending support to the banned terrorist organization-Hizb-ul-Mujahideen in furtherance of conspiracy to wage war against Government of India.

6. The evidence collected during investigation reveals that the accused, Devender Singh (A-3) was in constant touch with the co-accused for providing all kinds of support including supply of arms and ammunition, for which he had also received funds at different points of time.

#### **FINDINGS OF THE TRIAL COURT**

7. The trial Court, while dismissing the application, observed that the trial is at the initial stage and a large number of material witnesses are yet to be examined, including the concerned Bank Manager to prove the transfer of amount from the account of the appellant (A-6) to A-3 in the month of February; FSL report regarding voice sample; statements of I/O; disclosure memo by the witnesses, including PW-72; electronic data by the experts etc.

8. The main reasoning of the trial Court is that PW-31 Syed Khalid had hosted A-1 and another militant in Jammu, who



have confirmed the complicity of the A-6, the real brother of A-1. The further reasoning prevailed with the trial Court is that PW-37-Vijay Kumar (SPO) travelled with A-2, A-3 and A-6 in February, 2019 from Qazigund to Jammu. The trial Court also took note of the bank records showing transfer of Rs. 50,000/- from the account of A-6 to the account of A-3, besides CDR data and voice samples.

### **SUBMISSIONS AND GROUNDS OF CHALLENGE**

**9.** The main ground is that prosecution has recorded only 11 witnesses out of approximately 90 listed witnesses and the trial has been going on for the last 05 years. It is urged that there is no evidence against the appellant; no direct or indirect incriminating evidence and most of the 11 recorded prosecution witnesses either did not speak against him or supported his innocence.

**10.** According to the appellant, voice clips/chats relied upon by NIA are not incriminating and, in fact, show that the appellant assisted the investigation. The appellant has also questioned the legality of impugned order on the ground that the trial Court wrongly relied upon certain unrecorded witnesses that were never mentioned in the charge-sheet. It is further stated that no recovery of any incriminating material was made from the appellant. The appellant has a



clean past record, is a Government servant and a PhD scholar. On the aforesaid grounds, the appellant seeks quashing of the impugned order and grant of regular bail.

**11.** The respondent has opposed the appeal and has taken the plea of the bar under Section 43-D (5) of UA(P) Act. Reference to the material collected during investigation is also made to support the accusations and the charges framed against the appellant, note whereof shall be taken hereinafter at appropriate stage.

### **ANALYSIS**

**12.** The present case pertains to waging war against India, hatching of conspiracy, smuggling of arms and ammunition at the instance of banned terrorist organization- Hizb-ul-Mujahideen.

**13.** The appellant has been found to be part of this larger conspiracy and acted as an intermediary, who facilitated the safe movement of A-1 (his real brother and District Commander of HM), and other militants from Shopian to Jammu in the month of February 2019 for ex-filtration to Pakistan with the help of HM leadership. The appellant has acted go-between A-1, A-2 & Devender Singh, a police officer in Anti-Hijacking Unit (A-3). There is sufficient prima-facie material supporting the raising of funds and their transfer to



A-3 for their safe passage. The call detail records prima-facie show that the appellant allegedly made hundreds of calls to A-1, A-2 & A-3 as a part of the conspiracy to supply arms/ammunition, to harbour militants and to wage war against India.

**14.** Although, Mr. Molvi Aijaz Ahmad, learned counsel for the appellant, vehemently argued that the appellant was only trying to help society and had nothing to do with militancy, such a plea cannot be accepted in the present proceedings. The same can, however, be a valid defence at the appropriate stage during trial.

**15.** Another disturbing feature of this appeal is that during the pendency of present appeal, an application bearing CrIM No. 212/2026 was filed on 11 February 2026 seeking direction to the Superintendent, District Jail, Karnal, Haryana for providing the required treatment or in the alternative, shifting him to Central Jail, Kot Bhalwal or Central Jail, Srinagar.

**16.** Mr. Vishal Sharma, learned DSGI produced the order dated 24 April 2026 passed by the trial Court on an application moved by the applicant on 24 February 2026 seeking short term bail on health grounds and shifting from



District Jail, Karnal Haryana to either Central Jail Kot Bhalwal or to Central Jail, Kashmir.

**17.** Admittedly, an application on behalf of the appellant with twisted facts but seeking the same relief on health grounds was filed before the trial Court while the High Court was seized of the matter. This amounts to abuse of the process of the Court and forum shopping. By such conduct, the appellant is disentitled to the discretionary relief.

**18.** In view of the law laid down by Hon'ble Supreme Court in ***Kusha Duruka Vs. State of Odisha (2024) 4 Supreme Court Cases 431***<sup>1</sup>, a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

**19.** Even otherwise, the plea of the appellant that on account of his ailment he is entitled to discretionary relief is unfounded, in view of the report dated 23 April 2026 issued by the Medical Officer, (H.C.M.S-1), District Prison, Karnal that reads thus:-

***“Patient cum inmate named Sayed Irfan Ahmed S/O Shyed Mushtaq Ahmad got diagnosed with? Left Lower Lid nacrus by Doctors at PGIMS Rohtak, which is a small wart like lesion on left lower eye lid. As size of lesion/wart is increasing. Doctors at PGIMS Rohtak planned for Excision under Local Anaesthesia and advised to come on***



***27.04.2026 for admission and further management. The above mentioned procedure is not considered as Major Surgical procedure and thus it does not require attendant.”***

**20.** It appears that the appellant has all along been seeking discretionary relief by concealment or misstating of facts.

**21.** Indisputably, the formal charges against the appellant were framed on 16 December 2022 after drawing prima-facie satisfaction regarding commission of the alleged offences on the basis of material collected during investigation, thereby attracting the rigors and restrictions of Section 43-D (5) of UA(P) Act.

**22.** From the material collected during investigation and while framing charges, a prima-facie case against the appellant was made out. It is settled law that to arrive at the conclusion whether there is a prima facie case, the material collated by the investigating agency must prevail until contradicted or disproved by other evidence.

**23.** It is also settled law that at the stage of consideration of the bail giving of reasons for grant or non-grant of bail are markedly different from discussing merits or demerits of the evidence. Therefore, the only requirement of law is that Court has to record a finding on the basis of broad



probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and thus, evaluation of evidence, while considering the bail application is not permissible.

**24.** As regards the plea of delayed trial and resultant continuous incarceration, the law on this point is no more *res-integra*. Once the appellant is prima facie shown to have involved in such a heinous crime, the right to speedy trial does not come to his rescue, because enlargement in that event would necessarily fraught with danger of indulgence in similar activities, particularly when non-state actors operating from across the Border control such terrorist related activities.

**25.** In ***Gurwinder Singh Versus State of Punjab and Ors. AIR 2024 SC 952***<sup>2</sup>, the Hon'ble Supreme Court, while dealing with a case involving terrorist activity under UA(P) Act held that the conventional principle that "bail is the rule, jail is the exception" does not apply under UA(P) Act. The power to grant bail is severely restrictive.

**26.** The Court distinguished the case of ***K.A Najeer (2021) 3 SCC 713***<sup>3</sup> and held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail



especially when the trial is underway and several witnesses have already been examined.

**27.** In this regard, the sufficient material gathered during investigation, which is *prima facie* pointer to the fact that appellant was conduit between the terrorist operating across the border and co-accused so as to transfer funds for the alleged terrorist related activities etc.

**28.** In **Union of India Vs. Barakathullah etc; 2024 SCC OnLine SC 1019<sup>4</sup>**, the Hon'ble Supreme Court after taking into consideration law laid down in **National Investigation Agency Versus Zahoor Ahmed Shah Watali (2019) 5 SCC 1<sup>5</sup>**, elaborated the guidelines on the approach that the Courts must adopt while dealing with bail applications under the UA(P) Act. The Court must look at the totality of the material gathered by the Investigating Agency as a whole. The contents of the documents relied upon by the prosecution are to be presumed true at this stage and their admissibility cannot be questioned. The sanctity of such material must prevail until contradicted and overcome or disproved by other evidence.

**29.** In a recent judgment, Hon'ble Supreme Court in case titled **State of Punjab Vs. Sukhwinder Singh @ Gora; 2026 SCC OnLine SC 671<sup>6</sup>**, observed that right to speedy



trial under Article 21 of the Constitution is undoubtedly a valuable constitutional guarantee; but in the context of a special statute such as the NDPS Act dealing with commercial quantity, that right has to be read alongside, and not in displacement of, the mandate of Section 37. Section 43-D (5) of the UA(P) Act is couched in the similar language, therefore, this proposition of law enunciated by Hon'ble Supreme Court is equally applicable to the cases where rigor of Section 43-D (5) is applicable.

**30.** The primary role attributed to the appellant is an intermediary in the conspiracy to the terrorist activities, therefore, the allegations can be looked into by piecing together multiple links like; phone records, money trails, meetings, material against co-conspirators, handlers, or other witnesses who may appear later in the list of witnesses. Evaluating only the examined witnesses and ignoring the remaining ones would amount to a mini-trial which is legally impermissible.

**31.** In view of the afore-stated facts, the material available on record and the conduct of the appellant in approaching the trial Court for grant of bail during the pendency of instant appeal, the indulgence at this stage is not only premature but also is unwarranted.



**32.** For the aforementioned reasons, bail application of the appellant is rejected and appeal is dismissed.

**(Shahzad Azeem)  
Judge**

**(Sindhu Sharma)  
Judge**

**Jammu:**  
12.05.2026  
Tarun/PS

<i>Whether approved for reporting:</i>	:	Yes
<i>Whether the order is speaking</i>	:	Yes

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<sup>1</sup> Kusha Duruka Vs. State of Odisha (2024) 4 Supreme Court Cases 432

<sup>2</sup> Gurwinder Singh Versus State of Punjab and Ors. AIR 2024 SC 952

<sup>3</sup> Union of India Vs. K.A Najeeb (2021) 3 SCC 713

<sup>4</sup> Union of India Vs. Barakathullah etc; 2024 SCC OnLine SC 1019

<sup>5</sup> National Investigation Agency Versus Zahoor Ahmed Shah Watali (2019) 5 SCC 1

<sup>6</sup> State of Punjab Vs. Sukhwinder Singh @ Gora; 2026 SCC OnLine SC 671