

Balancing National Security and Human Rights in Bail Decisions under the Unlawful Activities (Prevention) Act, 1967

Ridhima Tanwar¹, Dr Sulakshana Banerjee²

¹Ph.D from School of Law, Sushant University, Gurgaon focusing on “Balancing National Security and Human Rights in Bail Decisions under the Unlawful Activities (Prevention) Act, 1967”.

²Associate Professor, School of Law, Sushant University, Gurugram.

ABSTRACT

The Unlawful Activities (Prevention) Act, 1967, constitutes the primary legislative framework governing the prevention and investigation of unlawful and terrorist activities in India. The Act incorporates stringent bail provisions intended to safeguard national security by restricting the release of accused persons in cases involving serious offences. While these provisions aim to strengthen the criminal justice response to terrorism, they have also generated significant legal and constitutional debates regarding the protection of individual liberty, the presumption of innocence, and the right to a fair trial. This study examines the legal framework governing bail under the Unlawful Activities (Prevention) Act, 1967, with particular emphasis on the need to balance national security objectives with the protection of fundamental human rights. It seeks to analyse the statutory provisions, constitutional principles, and broader legal issues surrounding bail decisions under the Act. The study contributes to the ongoing discourse on balancing national security concerns with the protection of constitutional rights by providing a comprehensive legal analysis of the existing bail framework under the Unlawful Activities (Prevention) Act, 1967. The study addresses the continuing challenge of harmonizing counter-terrorism objectives with constitutional values by examining whether the existing legal framework governing bail adequately safeguards individual rights while preserving the legitimate interests of national security and public order.

Keywords: UAPA, Section 43D (5), Bail, Detention, Article 21, National Security, Human Rights, Presumption of Innocence, Judicial Discretion, Conviction Rate..

INTRODUCTION:

The Unlawful Activities (Prevention) Act, 1967, is India's principal legislation for the prevention of unlawful activities and terrorism, and its bail provisions reflect the importance accorded by the State to safeguarding national security. As per section 43D (5) of the Act, the opportunity to grant bail gets curtailed in cases where the allegations are prima facie established, thereby leading to the detention of numerous accused persons before their trial. Despite the fact that the Unlawful Activities (Prevention) Act, 1967, was passed to secure the sovereignty, integrity, and security of the country by offering a strong legal basis for dealing with acts of terrorism and unlawfulness, the strict provisions of the Act, especially the bail provisions, have posed constitutional and legal issues. The aim of this Act is to maintain a balance between maintaining the security of the country and the successful investigation and prosecution of the cases. But the bail restrictions in the Act have created apprehensions about the protection of fundamental rights under Article 21 of the Constitution of India, which includes the right to liberty, right to due process of law, and right to a fair trial. This has brought

up continuous debates about how much exceptional legislation can be made for security purposes without infringing upon individual rights. Thus, the issue of bail in accordance with the Unlawful Activities (Prevention) Act, 1967, has become an important subject for legal research.

BACKGROUND

The bail system under the Unlawful Activities (Prevention) Act, 1967, is an instance of how legislative purpose and constitutional rights conflict with each other. Through Section 43D (5) of the Act, the legislature intended to increase the threshold for granting bail in cases relating to acts of terrorism by requiring the court to deny bail if there are prima facie evidence for the case of the prosecution. This was confirmed in the decision of National Investigation Agency vs. Zahoor Ahmad Shah Watali. However, later in cases such as Union of India vs. K A Najeed, the court ruled that detention and delays in trial are violation of Article 21¹.

As far as more recent judicial advancements are concerned, in the case of Syed Iftikhar Andrabi vs. National Investigation Agency, it has been clearly re-emphasized by the Supreme Court that any decision

¹ *Union of India vs. K A Najeed* (2021) 3 SCC 713 (SC)

regarding the issue of bail under the Unlawful Activities (Prevention) Act, 1967, should be taken after considering the Constitutional provisions pertaining to personal liberty and a fair trial. The same is true for judicial decisions in cases where the accused is being dealt with under the Act. The low conviction rate under the Unlawful Activities (Prevention) Act, 1967 (UAPA), ranging between 2% and 6%, indicates that many individuals remain incarcerated for prolonged periods before ultimately being acquitted, raising significant concerns regarding due process, personal liberty, and the protection of constitutional rights^{2,3}. Hence, the research background is associated with the bail provisions of the Unlawful Activities (Prevention) Act, 1967.

CONCEPTUAL AND LEGAL FRAMEWORK

The bail in case of Unlawful Activities (Prevention) Act, 1967 indicates the clash between national security and constitutional rights in a very explicit manner⁴. It has always been highlighted through the scholars and the court cases that bail cannot only be a process, but it is rather a fundamental right related to Article 21 of the Constitution. This is evident from the statutory provision of Section 43D (5) which states that the refusal of the bail will be based on prima facie truth of the matter raised by the prosecution, and in *NIA vs. Zahoor Ahmad Shah Watali*⁵, it is stated that the courts have to accept the prosecution's evidence as it is which is a cause for making pre-trial detention a rule and not an exception. Bail serves as an essential safeguard against arbitrary detention and protects individuals from the misuse of power by state authorities by ensuring that restrictions on personal liberty are imposed only in accordance with the law.

In the same vein, efforts have been made to find harmony between the rigidity of the law and the Constitution. For instance, in the case of *Union of India vs. K. A. Najeeb*⁶, it was held by the Supreme Court that indefinite detention without trial breached the fundamental right of "life" guaranteed under Article 21 even though there was an express statutory provision to the contrary. This case became famous as the case in which consideration of Constitutional concerns superseded legislative intent. In subsequent decisions, it was further cemented that in matters concerning bail, delay in trial, ill health of the accused and proportionality should be taken into account.

There have also been discussions regarding the socio-political dimensions of the bail process in relation to the provisions of the Unlawful Activities (Prevention) Act,

1967. It has been noted that the law is capable of being misused for political purposes and as a result, may give rise to unwarranted arrest and detention of persons and even victimization of people who dissent. These concerns have been further aggravated due to the loose definition of the types of activities which can be termed as unlawful activities and terrorism and thus, providing enough room to investigative authorities to interpret the provisions as they deem fit.

Judicial Interpretation of Section 43D (5)

Section 43D (5)⁷ of the Unlawful Activities (Prevention) Act, 1967, constitutes the central statutory provision governing the grant of bail in offences under the Act. Its judicial interpretation has significantly influenced the scope of judicial discretion in bail proceedings. According to Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967, the court shall not allow bail if prima facie grounds exist in support of validity of accusation. This has been decided by the Supreme Court in the case of *National Investigation Agency vs. Zahoor Ahmad Shah Watali* in 2019⁸. This interpretation substantially restricted judicial discretion and contributed to prolonged pre-trial detention in cases prosecuted under the Act. This has led to making presumption of detention for long period of time as the norm in Section 43D (5). However, later cases like *Union of India vs. K.A. Najeeb* in 2021 have put limitations on it by stating that indefinite detention will amount to violation of Article 21⁹. However, more recently, in *Syed Iftikhar Andrabi vs. National Investigation Agency*¹⁰, the Supreme Court made it clear that statutory limitations provided under Section 43D (5) have to be exercised consistently with the constitutional rights of personal liberty and fair trial. The judgment also highlighted that extended periods of detention cannot always be excused only because of the serious nature of the allegations.

Prolonged Pre-Trial Detention and Article 21

One of the major issues in connection with providing bail according to the Unlawful Activities (Prevention) Act, 1967, is prolonged pre-trial detention which contravenes the Article 21 of the Constitution of India. It should be noted that Article 21 guarantees the right to life and liberty which include protection against arbitrary detention¹¹. However, the Section 43D (5) results in prolonged pre-trial detention as courts have no option but to deny bail when the allegations prima facie is proved. For example, in *Union of India vs. K.A. Najeeb*, the Supreme Court recognized that prolonged pre-trial detention without a timely trial violates Article 21 of the Constitution and

² National Crime Records Bureau. (2024)

³ *Syed Iftikhar Andrabi vs. National Investigation Agency*, 2026 INSC 503 (Supreme Court of India, 2026)

⁴ Unlawful Activities (Prevention) Act 1967.

⁵ *National Investigation Agency vs. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

⁶ *Union of India vs. K.A. Najeeb*, (2021) 3 SCC 713

⁷ The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967), s. 43D (5)

⁸ *National Investigation Agency vs. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1

⁹ *Union of India vs K. A. Najeeb*, (2021) 3 SCC 713 (SC).

¹⁰ *Syed Iftikhar Andrabi vs. National Investigation Agency*, 2026 INSC 503

¹¹ The Constitution of India, art. 21

granted bail despite the statutory restrictions under the Unlawful Activities (Prevention) Act, 1967¹¹. Furthermore, the conviction rate under the Unlawful Activities (Prevention) Act, 1967, remains very low (approximately 2–6%), raising concerns regarding prolonged incarceration of accused persons before trial¹². Consequently, some of the accused persons are kept in prison for several years even if they are not convicted. It infringes on the presumption of innocence until guilt being proved beyond reasonable doubt. Besides, the judicial branch realizes that extended detention can no longer be justified on grounds of national security interests. Nonetheless, in a relatively recent case of Syed Iftikhar Andrabi vs. National Investigation Agency, it was clarified by the Supreme Court that any statutory limitations made under Section 43D(5) must be in accordance with the constitutional rights of personal liberty and fair trial. The ruling also made it clear that long periods of detention could not always be justified on the basis of seriousness of the allegations.

Balancing National Security with Individual Rights

The state justifies the harshness of the provisions of bail under the Unlawful Activities (Prevention) Act, 1967, because of dangers to the sovereignty, integrity, and safety. As per Section 43D (5), the rationale behind the implementation of these provisions is to prevent the accused from engaging in any criminal activities until the completion of their trials. However, what the judicial institutions have made it clear is that the matter of national security should not override the basic human rights of citizens indefinitely. In the matter of Syed Iftikhar Andrabi vs. National Investigation Agency¹³, the Supreme Court once again clarified that despite the need for a circumspect judicial approach in cases of offences involving terrorism, the provisions that are restrictive on bail should not be interpreted in a way that negates the constitutional right to personal freedom and a fair trial. The Supreme Court acknowledged the fact that national security and the right of the individual are constitutionally consistent concepts which have to be harmonized through the judicious examination of the facts and circumstances of the case at hand. Further instances of judicial interpretation of the Unlawful Activities (Prevention) Act, 1967, also reveal that even as the gravity of the offence continues to be a relevant factor, courts are also obligated to consider other factors like length of detention, state of the trial proceedings, etc¹⁴.

Presumption of Innocence and Bail Denial

Presumption of innocence is one of the important components of criminal law, but unfortunately it is completely flipped in the case of bail under Unlawful Activities (Prevention) Act, 1967, statute. As per the clause of Section 43D (5), the prosecution material shall be presumed prima facie true before the court; therefore,

presumption of guilt takes place while considering the bail of the accused person. It was stated in the case of Umar Khalid vs. State (NCT of Delhi)¹⁵ that justification for prolonged detention of the accused was due to the existence of poor evidence. Such a statement was further highlighted by the Supreme Court judgment in Watali. Such an act is not a fair practice of justice and results in punishing the accused person even before trial. In accordance with previous legal studies, refusal of granting the bail before trial is against the basic principles of the constitution and international human rights laws, according to which the liberty of the accused must be curtailed only when it becomes absolutely essential. The conviction rate under the Unlawful Activities (Prevention) Act, 1967, is very low. There exist many doubts regarding the fairness of such prolonged incarceration of the accused.

Case Evidence of Misuse and Political Detention

The Unlawful Activities (Prevention) Act, 1967, bail provisions have been accused of misuse with political intentions leading to detention without justification. Such cases as that of Gulfisha Fatima vs. State¹⁸ illustrate how much discretion investigating authorities have under the definition of unlawful activity provided for in the provisions. Refusal to grant bail in such cases results in the concern of violation of the rights of dissidence and undermining the democratic freedoms of citizens. For instance, prolonged detention of Umar Khalid vs. State (NCT of Delhi)¹⁶ despite lack of any evidence can be viewed as an example of misuse of the bail provisions. Though the judiciary has managed to prevent the misuse in some cases so far, there are no other mechanisms to protect citizens from such abuses. It is evident how important it is for the judiciary to be vigilant in order to ensure that bail provisions are not abused for political reasons. According to the relevant case laws, the misuse of the Unlawful Activities (Prevention Act), 1967, bail provisions contradict the principle of democracy and raises the issue of the justice of the system.

Constitutional and Human Rights Considerations

The international human rights law provides that the deprivation of personal liberty prior to a conviction will continue to be an exceptional act which shall conform to the legal principle of legality, necessity, proportionality and judicial review. Instruments like the International Covenant on Civil and Political Rights provide that pretrial detention cannot become the norm and that every accused is entitled to a judicial examination of the lawfulness of his detention. This balance has been made between the national interest of security with respect to human rights and the presumption of innocence. The bail provisions of the Unlawful Activities (Prevention) Act,

¹² *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713

¹³ *Supra note*, 12

¹⁴ Government of India. *The Unlawful Activities (Prevention) Act, 1967*

¹⁵ *Gulfisha Fatima vs. State* (NCT of Delhi). Bail Appln. No. 940 of 2021

¹⁶ *Union of India vs. K. A. Najeeb* (2021) 3 SCC 713 (SC).

1967¹⁷ have thus been scrutinized against the principles of international human rights laws. While it is true that this Act provides for strict statutory exceptions to handle offences of national security, the constitutional courts have increasingly come to the point that such exceptions should go hand in hand with the principles of personal liberty, fair trial and judicial review provided for by the Constitution of India. Also, these internationally accepted principles find application in the understanding of bail under the Unlawful Activities (Prevention) Act, 1967. Although the Act subjects bail to rigid statutory conditions, the Indian constitutional courts have been consistent in holding that such conditions should be administered in a way that upholds the spirit of Article 21 of the Constitution.

METHODOLOGY

In this case, the study uses a doctrinal legal research methodology which only involves secondary source materials to explore the law that is involved in determining bail under the Unlawful Activities (Prevention) Act, 1967. Qualitative doctrinal legal analysis is used in the research to criticize statutory laws, constitutional principles, judicial cases, and other sources of law which provide an insight into the relationship between national security and human rights protection. The study will analyze primary legal materials including the Constitution of India, Unlawful Activities (Prevention) Act, 1967, and significant court rulings of the Supreme Court of India regarding the interpretation of Section 43D (5) and Article 21 in relation to bail. Other court decisions from the Indian High Courts will be considered if they help in developing the law on bail.

Research Limitation

This study is limited to doctrinal analysis of statutory provisions, judicial interpretations, and secondary literature. It does not include empirical fieldwork or interviews with stakeholders. The scope is confined to bail under the Unlawful Activities Prevention Act, 1967, without examining broader procedural aspects of criminal justice. Hence, findings are interpretive and may not capture all practical realities of enforcement.

DISCUSSION

In the bail mechanism laid out under the Unlawful Activities (Prevention) Act, 1967, there exists the ongoing issue of ensuring a balance between constitutional values of national security and individual liberty. Under Section 43D (5), bail can be granted only if the court is satisfied that there is a prima facie case against the accused. The judgment delivered in the case of National Investigation Agency vs. Zahoor Ahmad Shah Watali resulted in the curtailment of judicial review under Section 43D (5)¹⁸. This means that a practice of prolonged detention prior to trial has developed which has violated the basic rules of justice and presumption of innocence. However, in the

case of Union of India vs. K. A. Najeeb⁹, the Supreme Court has ruled that continuous detention without trial would mean violating article 21 of the Constitution. The developing judicial position can thus be seen as an attempt to balance restrictions imposed by the statute with guarantees afforded by the Constitution through the means of making sure that anti-terrorist laws are consistent with the larger doctrine of rule of law. The result is that the provisions of bail made under the Unlawful Activities (Prevention) Act of 1967 remain a significant constitutional challenge to India.

Need for Legislative Reform in Bail Provisions

Based on the findings of this research, there is a need to develop laws that will provide guidance in the application of bail under the Unlawful Activities (Prevention) Act, 1967 without undermining the purpose of the act. The current statutory guidelines contained in Section 43D (5) have created some challenges about long-term pre-trial detention, lack of judicial discretion and violation of fundamental rights provided under Article 21 of the Constitution¹⁹. There is a need for developing a legal framework that will provide guidance for establishing the threshold for prima facie assessment, procedures to limit prolonged detention and timely judicial review of the continued imprisonment. Changes can be made to the Section 43D (5) to allow for the exercise of judicial discretion, fixing upper limits on pre-trial detention and the modification of bail provisions to suit the constitutional guarantees of Article 21. Reform of the legislative Act will make it possible to make the provisions concerning national security continue being effective, without violating individual rights and liberties. The tone had already been set by the judiciary on the matter, as seen in the case of Najeeb, but it will require legislation for further reforms to take place. Thus, any future reform in the law must strive to strike a balance between counter-terrorism efforts and the constitutional principles of liberty, equity, and due process. The effect of such reforms will be twofold; firstly, it will enhance the legitimacy of the criminal justice process as well as people's trust in the process of administering justice.

CONCLUSION

The analysis of the provision related to the bail in regard to the Unlawful Activities Prevention Act, 1967 reveals an extremely harsh provision, which contravenes the fundamental concepts of liberty and justice enshrined in the Constitution. Section 43D (5) of the Act is against the concept of "presumption of innocence," which makes the court obliged to refuse a grant of bail on the basis of prosecution evidence. Judicial activism, such as K. A. Najeeb case, seeks to restore the balance by interpreting Article 21 and right to a speedy trial. For this reason, there continues to be an ongoing requirement to enhance the legislative and judicial framework in relation to bail to ensure that the objectives of national security are realized

¹⁷ The Unlawful Activities (Prevention) Act, 1967, Government of India.

¹⁸ *National Investigation Agency vs. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 (SC).

in a manner that is consistent with the constitutional principle of fairness and proportionality. In doing so, it will further strengthen the counter-terrorism laws and the constitutional principles of the rule of law..

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