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Bail Under UAPA — Supreme Court's Divergent Bench Rulings Raise Constitutional Questions

19 May 2026 · **POLITY** · **GS2**

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Bail Under UAPA — Supreme Court's Divergent Bench Rulings Raise Constitutional Questions

19 May 2026 · 7 min read

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WHY IN NEWS:

A series of **contradictory Supreme Court orders** on bail in cases under the **Unlawful Activities (Prevention) Act (UAPA)** have brought the law's Section 43D(5) — which sets an extremely high threshold for bail — under renewed judicial and public scrutiny. In May 2026, different SC benches granted bail in some UAPA cases while denying it in others on similar facts, raising the question of whether Section 43D(5) is applied consistently and whether it violates the constitutional guarantee of personal liberty under **Article 21**.

UAPA'S BAIL BAR — SECTION 43D(5)

Section 43D(5) of the UAPA imposes the most stringent bail standard in Indian law:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 of Criminal Procedure, 1973, is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

In plain terms: If the court finds **prima facie truth** in the prosecution's case — even without trial — bail must be refused. The standard flips normal presumption of innocence.

Contrast with Ordinary Bail Standards

STANDARD	APPLICATION	TEST
Normal IPC/BNSS cases	Triple test: flight risk, tampering evidence, repeat offence	Accused has a right to bail unless prosecution meets the triple test
NDPS Act (S. 37)	Bail only if court is satisfied accused is not guilty and not likely to commit offence	High bar — similar to UAPA
UAPA Section 43D(5)	Bail refused if prima facie case exists	Highest bar — prosecution doesn't need to prove guilt; merely a prima facie case diary is sufficient
PMLA (S. 45)	Twin conditions: court satisfied not guilty + not likely to commit offence	Similar severity to UAPA

THE DIVERGENCE: RECENT SC BENCH RULINGS

Between 2024 and May 2026, different SC benches have taken divergent approaches:

Bail Granted (Liberal Approach)

In several cases involving **student activists, journalists, and academics** charged under UAPA (including some Bhima Koregaon and related cases), SC benches emphasised:

- **“Bail is the rule, jail is the exception”** — Article 21 cannot be suspended indefinitely
- **Prolonged incarceration** (5–8 years without trial completion) violates constitutional rights
- The **right to a speedy trial** (Article 21) can override Section 43D(5) when trial is not progressing
- Reference: Union of India v. K.A. Najeeb (2021) — SC held that constitutional courts can grant bail in UAPA cases when trial delay causes Article 21 violation, notwithstanding Section 43D(5)

Bail Denied (Strict Approach)

In other cases — including those involving alleged Maoist links or separatist activities — SC benches held:

- Section 43D(5) is a valid legislative mandate; courts must respect Parliamentary intent
- Prima facie truth in chargesheet is sufficient to deny bail; courts should not “second-guess” NIA investigations
- National security concerns justify tighter bail standards; Article 21 has reasonable restrictions

THE CONSTITUTIONAL TENSION

CONSTITUTIONAL VALUE	UAPA SECTION 43D(5) IMPACT
Article 21 — Right to life and personal liberty	Long pre-trial detention without conviction may violate this fundamental right
Article 14 — Right to equality	Inconsistent application across similar cases may violate equal treatment
Article 20(3) — Right against self-incrimination	Chargesheet-based prima facie test does not require accused's statement — less directly implicated
Presumption of innocence	Reversed by Section 43D(5) — prosecution need only establish prima facie case
Parliament's power (Entry 1, List I)	UAPA is within Parliament's competence; security legislation is a legitimate state interest

The fundamental tension is between **national security** (which UAPA is designed to protect) and **individual liberty** (which the Constitution guarantees).

KEY PRECEDENTS

1. NIA v. Zahoor Ahmad Shah Watali (SC, 2019)

- SC held that in UAPA bail applications, courts must **accept the prosecution's version** at face value if supported by material in the chargesheet
- Courts cannot scrutinise evidence in depth at the bail stage — prima facie truth only requires the chargesheet to be “plausible”
- **Effect:** Significantly raised the bar for bail; widely cited to deny UAPA bail

2. Union of India v. K.A. Najeeb (SC, 2021)

- SC held that despite Section 43D(5), **constitutional courts retain power** to grant bail when prolonged incarceration violates Article 21
- Long delays in trial (here, 5+ years) can be a ground for bail even under UAPA
- **Effect:** Opened a narrow window for bail based on Article 21 violation

3. Thwaha Fasal and Anr. v. Union of India (SC, 2021)

- SC distinguished between “tested material” and “untested allegations” in the chargesheet

- Affirmed that courts must form their own opinion on prima facie truth — not rubber-stamp prosecution claims
- **Effect:** Slightly moderated the Watali standard

4. Sudha Bharadwaj v. NIA (SC, 2022)

- SC granted bail to advocate Sudha Bharadwaj (Bhima Koregaon case) on health and prolonged detention grounds
- Did not directly challenge UAPA's bail bar but used Article 21 exception

UAPA — OVERVIEW

PARAMETER	DETAIL
Full name	Unlawful Activities (Prevention) Act
Originally enacted	1967
Major amendments	2004, 2008, 2012, 2019
Key 2019 amendment	Allowed designation of individuals (not just organisations) as terrorists; previously only organisations could be designated
Administering agency	Ministry of Home Affairs; investigations by NIA (National Investigation Agency)
Chapters IV and VI	Chapter IV: Terrorist activities (S. 15–22); Chapter VI: Terrorist organisations (S. 35–40)
Stringent provisions	Section 43D(5) — bail bar; Section 43A — arrest without warrant; Schedules I and II — listed organisations
Designated organisations	45 organisations including Lashkar-e-Taiba, Jaish-e-Mohammed, IS (India), CPI(Maoist)

NIA — NATIONAL INVESTIGATION AGENCY

PARAMETER	DETAIL
Established	December 31, 2008 (NIA Act, 2008) — after 26/11 Mumbai attacks
Headquarters	New Delhi
Jurisdiction	Scheduled offences under NIA Act — terror, UAPA, WMD Act, hijacking, maritime piracy
Director General	Head of NIA
Special NIA courts	Designated courts under Section 11 of NIA Act for trial of NIA cases
2019 amendment	NIA can investigate terror offences committed by Indian citizens abroad

UPSC RELEVANCE

GS Paper 2 — Polity and Governance

- **UAPA Section 43D(5)**: bail bar; prima facie truth standard; constitutional validity
- **Article 21**: right to personal liberty; right to speedy trial; bail jurisprudence
- **SC's role**: constitutional courts vs. statutory courts; power to grant bail despite statutory bar
- **NIA**: establishment, jurisdiction, 2019 amendments (individual designation as terrorist)
- **Key judgments**: Watali (2019), Najeeb (2021), Thwaha Fasal (2021), Sudha Bharadwaj (2022)

Mains Question (GS2): “The Supreme Court’s contradictory verdicts on bail under UAPA reflect a deeper constitutional tension between national security imperatives and the fundamental right to personal liberty. Analyse.” (250 words)

Keywords: UAPA, Section 43D(5), bail, prima facie truth, Article 21, NIA, K.A. Najeeb, Watali, Bhima Koregaon, individual terrorist designation, right to speedy trial, PMLA Section 45.

Sources: Vajiramandravi, ForumIAS, The Hindu

★ FACTS CORNER — KNOWLEDGEPEDIA

UAPA — KEY FACTS:

Full form: Unlawful Activities (Prevention) Act

Originally enacted: 1967; major amendment: 2019

2019 Amendment: Allowed designation of individuals as terrorists (not just organisations); NIA can investigate offences by Indians abroad

Administering body: Ministry of Home Affairs; investigations by NIA

SECTION 43D(5) — UAPA BAIL BAR:

Bail refused if court finds prima facie truth in the chargesheet/case diary

Reverses normal presumption of innocence

Applies to offences under Chapters IV (terrorist activities) and VI (terrorist organisations)

Stricter than NDPS Act, PMLA — considered most stringent bail bar in Indian law

KEY SC JUDGMENTS ON UAPA BAIL:

NIA v. Watali (2019): Courts must accept prosecution case at face value at bail stage; prima facie truth = chargesheet is “plausible”

Union of India v. K.A. Najeeb (2021): Constitutional courts can grant bail despite Section 43D(5) when prolonged incarceration violates Article 21

Thwaha Fasal (2021): Courts must form their own opinion on prima facie truth; cannot rubber-stamp prosecution

Sudha Bharadwaj (2022): Bail granted on health + prolonged detention grounds; Article 21 exception invoked

NIA (NATIONAL INVESTIGATION AGENCY):

Established: December 31, 2008 under NIA Act 2008 (post 26/11 Mumbai attacks)

HQ: New Delhi

Jurisdiction: Scheduled offences under NIA Act — UAPA, terror, WMD, hijacking, piracy

2019 amendment: Can investigate terror offences by Indians abroad

ARTICLE 21 BAIL JURISPRUDENCE:

“Bail is the rule, jail is the exception” — standard in ordinary criminal law

Right to speedy trial is part of Article 21; prolonged pre-trial detention can violate it

Constitutional courts (HC, SC) retain power to grant bail even when statute bars it, if detention violates Article 21

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