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**EDITORIAL ANALYSIS**

# The Right to a Fair Trial at the Crossroads

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CURATED &amp; WRITTEN BY

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# The Right to a Fair Trial at the Crossroads

 **The Hindu** 3 July 2026 **GS2**

Source: [ujyari.com](https://ujyari.com) — researched, fact-checked & UPSC-mapped



## INTERVIEW ANGLE

*"If an accused spends six years in jail before the trial even reaches the stage of framing charges, has the system already delivered a punishment without a conviction? How should a judge weigh liberty against a stringent bail bar?"*

Source: [Original editorial](#)  [The Hindu](#)

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## WHY THIS MATTERS NOW

In 2026 the Supreme Court, in **Syed Iftikhar Andrabi v. NIA**, granted bail to a UAPA accused after **nearly six years** in custody, holding that the stringent bail bar must yield to Article 21. Yet a **perceived conflict across Benches** on the same question has been referred to a larger Bench, even as high-profile undertrials remain jailed for close to six years with trials barely moving. For an aspirant, this is a live GS2 case on **personal liberty, the criminal justice system and the rule of law**.

## THE CRUX IN 60 WORDS

Under **Section 43D(5) of the UAPA**, bail is near-impossible once the accusation looks **prima facie true**, while trials drag for years. The result is **pre-trial detention as de facto punishment**, in tension with the **Article 21** right to liberty and speedy trial. Courts have read Article 21 above the bar (K.A. Najeeb, Andrabi), but **inconsistent Bench outcomes** erode the rule of law.

## THE ISSUE, DECODED

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CONCEPT	WHAT IT MEANS	WHY IT MATTERS
<b>Section 43D(5), UAPA</b>	Bail barred if accusation is prima facie true	Sets a very low threshold ( <a href="https://ujjiyari.com/vocab/threshold/">https://ujjiyari.com/vocab/threshold/</a> ) for denying liberty
<b>Article 21</b>	Right to life and personal liberty, including speedy trial	The constitutional check on prolonged detention
<b>De facto punishment</b>	Years in jail before conviction	The process itself becomes the penalty
<b>Presumption of innocence</b>	Accused presumed innocent until proven guilty	Undercut when bail is the exception, jail the rule

## THE ANALYSIS: WHY PROCESS HAS BECOME PUNISHMENT

- 1 A statutory** (<https://ujjiyari.com/vocab/statutory/>) **bar tilted against liberty.** Section 43D(5) requires the court to deny bail if the material discloses a prima facie true accusation, so the merits favour custody from the outset, unlike the ordinary “bail is the rule” principle.
- 2 Trials that do not end.** When arguments on charge remain incomplete after years, the undertrial’s incarceration is decoupled from any finding of guilt, and Article 21’s speedy-trial component is engaged.
- 3 The constitutional corrective.** From K.A. Najeeb (2021) to Syed Iftikhar Andrabi v. NIA (2026), the Court has held that a statutory bar cannot override the right to liberty where trial has no realistic prospect of timely completion.
- 4 Inconsistency as the deeper harm.** Divergent outcomes on similar facts, now referred to a larger Bench, mean liberty can turn on the composition of the Bench rather than a settled principle, which is corrosive to the rule of law.

## DATA AND INSTITUTIONS VAULT

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*Unlawful Activities (Prevention) Act, 1967* (<https://ujjiyari.com/legislation/unlawful-activities-prevention-act-1967/>); **Section 43D(5)** is the bail bar; amended significantly in 2004, 2008, 2013 and 2019. **Constitution:** Article 21 (life and personal liberty, including speedy trial); Article 22 (safeguards on arrest); presumption of innocence. **Case law:** *Union of India v. K.A. Najeeb* (2021, statutory bar yields to Article 21 on long delay); *Syed Iftikhar Andrabi v. NIA* (2026, bail after nearly six years); *NIA v. Zahoor Ahmad Shah Watali* (2019, prima facie standard). **Bodies:** National Investigation Agency (NIA); Special NIA courts; the Supreme Court and High Courts as constitutional guardians. **Concept:** undertrial prisoners, presumption of innocence, “bail is the rule, jail the exception,” speedy trial.

## THE DEBATE

**Argument that detention has become punishment:** Section 43D(5) plus multi-year trials means the accused serves a sentence before conviction, violating the presumption of innocence and the Article 21 promise of liberty and speedy trial.

**Argument for the stringent bar:** Parliament deliberately raised the threshold for terror and organised-crime cases; easy bail can enable evidence tampering, witness intimidation or absconding, and national security warrants a higher bar than ordinary crime.

**Balanced verdict:** Both concerns are real, but they point to the same fix. The answer is not to gut the security rationale, nor to accept indefinite custody, but to guarantee time-bound trials and consistent bail standards so that neither liberty nor security is sacrificed to delay.

## HOW TO THINK ABOUT THIS (TRANSFERABLE SKILL)

*A law can be constitutionally valid yet unjust in practice if the surrounding system (here, trial delay and inconsistent Benches) distorts its effect. When you evaluate any statute, ask two questions, not one: is the provision sound, and does the machinery that applies it produce fair outcomes? The UAPA bail debate is really a debate about administration, delay and consistency, as much as about the text.*

## DIAGRAM-IN-WORDS

UAPA charge -> Section 43D(5) bail bar (prima facie true = no bail) -> trial delayed for years -> undertrial jailed without conviction -> Article 21 (liberty + speedy trial) engaged -> courts read Article 21 above the bar (Najeeb, Andrabi) -> BUT divergent Bench outcomes -> rule of law strained -> reform bail jurisprudence + fix trial timelines

## THE WAY FORWARD

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- 1 **Anchor Article 21 as the grundnorm.** Reaffirm, ideally through the larger Bench, that no statutory bar can defeat liberty when trial is not realistically near completion.
- 2 **Set outer limits on pre-trial detention.** Frame guidelines linking continued custody to demonstrable trial progress.
- 3 **Fast-track long-pending UAPA trials.** Prioritise cases where the accused has already served years, with day-to-day hearings where feasible.
- 4 **End the inconsistency.** Let the larger Bench lay down a clear, uniform test so outcomes do not vary Bench to Bench.
- 5 **Build capacity.** Expand special courts, prosecutors and forensic support so speedy trial is achievable, not aspirational.

## THE TAKEAWAY BOX

*Acknowledge the security rationale of the UAPA, then argue that Section 43D(5) combined with trial delay converts detention into punishment, violating Article 21, and that the fix is time-bound trials and consistent bail jurisprudence (<https://ujyari.com/terms/jurisprudence/>).*

*“A fair trial means more than an eventual verdict; it means that the process does not become the penalty.”*

*UAPA, 1967; Section 43D(5) bail bar; NIA and special NIA courts; Article 21 (speedy trial), Article 22; K.A. Najeeb (2021); Syed Iftikhar Andrabi v. NIA (2026); Watali (2019).*

*How should a judge weigh the liberty of an unconvicted individual against a legislatively mandated security bar? Is delay a neutral fact or a moral failure of the State?*

*UPSC has asked on the balance between individual liberty and state security, and on the right to a speedy trial. This editorial ties both to bail jurisprudence.*

*fundamental rights, criminal justice reform, undertrial prisoners, rule of law, separation of powers, national security.*

**Sources:** *The Hindu* (<https://www.thehindu.com/opinion>), *Supreme Court of India* (<https://www.sci.gov.in>), *PRS Legislative Research* (<https://prsindia.org>)

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**KEY ARGUMENTS AT A GLANCE**

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**When the bail bar under laws like the UAPA combines with trials that stretch for years, pre-trial detention becomes de facto punishment and hollows out the Article 21 guarantee of personal liberty, so bail jurisprudence and trial timelines must be reformed together.**

 **SUPPORTING**

- Section 43D(5) of the UAPA makes bail almost impossible if the accusation appears prima facie true, while trials routinely run for years, so the undertrial is punished by the delay itself.
- The Supreme Court has repeatedly held, from *Union of India v. K.A. Najeer* onward, that a statutory bail bar cannot override Article 21 when trial has no realistic prospect of ending in a reasonable time.
- Divergent Bench outcomes on near-identical facts, some granting bail after long incarceration and others refusing it, corrode the predictability that the rule of law demands.

 **COUNTER**

The State argues that Parliament designed the stringent bar deliberately for terror and organised-crime cases, that easy bail can let the accused tamper with evidence or abscond, and that national security justifies a higher threshold than ordinary crime.

 **WAY FORWARD**

Read Article 21 as the grundnorm above the statutory bar, set outer limits on pre-trial detention, fast-track long-pending UAPA trials, refer conflicting precedents to a larger Bench, and expand judicial and prosecutorial capacity.


**MAINS ANSWER FRAMEWORK**

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**QUESTION**

*"Under stringent bail statutes such as the UAPA, prolonged pre-trial detention risks converting the judicial process into de facto punishment." Critically examine in the light of Article 21 and the right to a speedy trial. (250 words)*

**INTRODUCTION**

Personal liberty under Article 21 is the constitutional default; detention is the exception. But under stringent bail statutes such as the UAPA, that default has quietly inverted, and undertrials now spend years in jail before a trial concludes, or even begins in earnest.

**BODY**

The problem is structural, not incidental. Section 43D(5) of the UAPA bars bail if, on the case diary and charge sheet, the court finds the accusation prima facie true, a low threshold that effectively presumes the accused unfit for bail.

When this bar meets trials that run for six years or more, with arguments on charge still incomplete, the punishment is delivered by the process itself, before any finding of guilt. In 2026 the Supreme Court, in *Syed Iftikhar Andrabi v. NIA*, granted bail after nearly six years of incarceration and reaffirmed that Section 43D(5), however stringent, remains subordinate to the Article 21 mandate of personal liberty and speedy trial, echoing *K.A. Najeeb (2021)*.

Yet the jurisprudence is not settled: a perceived conflict across Benches on when long incarceration unlocks bail has been referred to a larger Bench, and undertrials in the Delhi riots conspiracy case have remained in custody for close to six years. Inconsistent treatment of similar facts undermines the rule of law, because liberty then depends on the Bench rather than the principle.

The State's counter, that terror cases justify a higher bar and that release risks evidence tampering, is weighty, but it is an argument for faster trials, not indefinite detention.

**CONCLUSION**

A fair trial means more than an eventual verdict; it means that the process does not become the penalty. The remedy is not to dilute genuine security concerns but to enforce Article 21 through time-bound trials, consistent bail standards and a larger Bench to end the conflict.


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