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I. SUPREME COURT ON UA(P)A AND ALLIED CRIMINAL LAWS

1. Harpreet Singh Talwar @ Kabir Talwar vs The State of Gujarat (2025 LiveLaw (SC) 556)

- **Brief Facts:** The case arises from a multi-jurisdictional narcotics smuggling operation allegedly run by Afghan-based syndicates with Indian links, involving large-scale heroin importation under the guise of commercial consignments. Harpreet Singh Talwar (the appellant) is accused of playing a central role in facilitating a heroin-laced talc stone consignment imported into India in December 2020 through Mundra Port, Gujarat, under the cover of a firm named M/s Magent India.

Investigations revealed the consignment was part of a broader smuggling network, with evidence including protected witness statements, forensic call records, and documentary trails suggesting Talwar's involvement in the formation and control of the front company and efforts to conceal the illicit activity. No direct recovery of contraband was made from Talwar's consignment, but the prosecution alleges his actions were integral to a criminal conspiracy under the NDPS Act and UAPA. Talwar was arrested in August 2022 and has remained in custody since, with the trial ongoing and several key witnesses already examined.

- **Issue(s):**

- a) Whether the appellant is entitled to regular bail given the nature of the allegations, the statutory bar under Section 43D(5) of the UAPA, and the evidence presented thus far.
- b) Whether the absence of direct recovery of contraband from the appellant's consignment negates the case for conspiracy and continued detention?

- **Judgment/Order:**

- a) The Supreme Court reviewed the factual matrix, submissions from both sides, and the progress of the ongoing trial.
- b) The Court noted the seriousness of the allegations, the transnational nature of the crime, the potential risk of witness influence or elimination, and the statutory restrictions on bail under the UAPA.
- c) It also considered the appellant's arguments regarding lack of direct evidence, prolonged detention, and the examination of most key witnesses.
- d) The Court ultimately upheld the lower courts' decisions, finding that the statutory bar to bail was attracted and that continued custody was warranted at this stage.

- **Outcome:**

- a) Bail was denied to Harpreet Singh Talwar.
- b) The Court directed the expeditious completion of the trial, considering the appellant's prolonged detention, but found no grounds to grant bail at this juncture.

II. HIGH COURTS ON UA(P)A AND ALLIED CRIMINAL LAWS

2. In The High Court of Madhya Pradesh, In Reference v. Memo No.454/2024 dated 23.11.2024

- **Brief Facts:** The case concerns a juvenile accused (Sayed Meer Hussain) facing trial for serious offences, including sections of the IPC, Explosive Substances Act, Railways Act, Public Property (Prevention) Act, and the Prevention of Unlawful Activities Act (UAPA). The National Investigation Agency (NIA) investigated and filed the charge sheet. The case was pending before the Special Judge (NIA Act). On application, it was found the accused was under 18 at the time of the incident. The Juvenile Justice Board (JJB), after a preliminary assessment, transferred the case for trial as an adult to the Children's Court under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. A reference was made to the High Court to clarify whether the trial should be conducted by the Special Court under the NIA Act or the Children's Court under the JJ Act.
- **Issue:** Whether the trial of a juvenile, who is to be tried as an adult for offences investigated by the NIA, should be conducted by the Special Court under the NIA Act or the Children's Court as per the JJ Act.
- **Judgment/Order:**
 - a) The High Court analyzed the relevant provisions of the NIA Act and the JJ Act, as well as precedents and the legislative intent behind juvenile justice laws.
 - b) The Court emphasized the beneficial and overriding nature of the JJ Act, particularly Section 1(4) and Section 18(3), which vest jurisdiction in the Children's Court for cases involving juveniles, even if tried as adults.
 - c) The Court held that, notwithstanding the seriousness of the offences and the NIA's involvement, the JJ Act's special provisions and its later enactment prevail for juveniles.
 - d) The trial, therefore, must be conducted by the Children's Court, not the Special Court under the NIA Act
- **Outcome:** The reference was answered in favour of the Children's Court: the trial of the juvenile (even as an adult) must proceed before the Children's Court constituted under the JJ Act, not the Special Court under the NIA Act.

3. Mohammed Asarudeen v. Union of India & Ors 2025 LiveLaw (SC) 636.

- **Brief Facts:** Mohammed Asarudeen, the appellant, was being tried by the Special Court for NIA cases in Chennai for serious offences initially registered under the Indian Penal Code (IPC), and later, sections of the Unlawful Activities (Prevention) Act (UAPA) were added. After the investigation, the NIA filed a charge sheet and applied to the Special Court under Section 44 of the UAPA and Section 17 of the NIA Act, seeking protection for certain witnesses by withholding their statements from the accused, citing safety concerns. The Special Court allowed the application, permitting the prosecution to hide the identity and addresses of specific witnesses in documents supplied to the accused and to keep original statements in a sealed cover, to be opened only at the time of examination-in-chief. The High Court, on appeal, modified the order: it held that once witnesses are protected, their statements should not be supplied to the accused even after examination-in-chief, but only used by the court.
- **Issue(s):**
 - a) Whether the Special Court and High Court were correct in granting blanket protection to a group of witnesses without recording specific satisfaction that each witness's life was in danger, as required under Section 44(2) of the UAPA and Section 17(2) of the NIA Act.
 - b) Whether the accused is entitled to access the statements of protected witnesses after their examination-in-chief, and what process the court must follow to restrict such access.
- **Judgment/Order:**
 - a) The Supreme Court held that the power to protect witness identity under Section 44(2) of the UAPA is an exception to the general rule and must be exercised only after the court records specific satisfaction, based on material, that the life of each individual witness is in danger.
 - b) The Court found that both the Special Court and the High Court failed to record such satisfaction in respect of each protected witness and instead made general observations.
 - c) The Supreme Court set aside the orders of both the Special Court and the High Court, emphasizing that an omnibus application for witness protection cannot be entertained; the application must contain specific averments for each witness.
 - d) The Court clarified that after satisfaction is recorded, the court must also apply its mind to determine what protective measures are appropriate and record brief reasons for those measures.
 - e) The Court granted eight weeks to the Special Public Prosecutor to file a proper application for witness protection, to be decided by the Special Court in accordance with the law and the principles laid down in this judgment.

▪ **Outcome:**

- a) The orders granting blanket protection to a group of witnesses were set aside.
- b) The matter was remanded to the Special Court for fresh consideration, with directions that any future application for witness protection must be specific to each witness and supported by material showing a threat to their life.
- c) The Special Public Prosecutor was given eight weeks to file a fresh, proper application; until then, the identity of the concerned witnesses would remain protected, subject to further orders by the Special Court.

4. Viswanathan v. State of Kerala, 2025 KHC OnLine 626 025 KHC OnLine 626

- **Brief Facts:** The prosecution's case relied heavily on the testimony of an approver, whose statements were self-exculpatory and contradicted the original charge. The approver's evidence lacked material corroboration. Additionally, the prosecution sought to rely on the discovery of a weapon, allegedly at the instance of the accused.
- **Issue(s):**
 - a) Whether a conviction can be sustained solely on the basis of an approver's testimony that is self-exculpatory, contradictory, and uncorroborated.
 - b) Whether the mere fact of discovery of a weapon at the accused's instance is sufficient to infer authorship of concealment or guilt.
- **Judgment/Order:**

The Court held that:

- a) An approver's self-exculpatory testimony, especially when it contradicts the original charge and lacks material corroboration, cannot form the basis for conviction, as such evidence is unreliable and untrustworthy.
- b) Once the evidence of the approver is found to be unreliable, its worth is lost, and even corroboration cannot make it the foundation of a conviction.
- c) Under the Evidence Act, mere discovery of a weapon at the accused's instance is not sufficient to infer that the accused concealed the weapon, as the accused might have learned about its location from another source.

- **Outcome:** The conviction based on the unreliable and uncorroborated testimony of the approver was set aside. The accused was acquitted as the prosecution failed to establish guilt beyond.

5. **Shabir Ahmed Shah v. National Investigation Agency (2025:DHC:4966-DB)**

- **Brief Facts:** Accused Shabir Ahmed Shah, Chairman of Jammu & Kashmir Democratic Freedom Party (JKDFP), allegedly involved in terror funding and secessionist activities. Arrested on 4 June 2019 after initial and supplementary chargesheets included his name. NIA case registered in 2017 (RC 10/2017/NIA/DLI) under IPC Sections 120B, 121, 121A and UAPA Sections 13, 16–18, 20, 38, 39, 40. Allegations: orchestration of violent protests, stone-pelting, funding via hawala and LoC trade, eulogizing militants, association with banned groups and leaders like Hafiz Saeed, Syed Salahuddin, Zahoor Watali.

Issue(s):

- a) Whether the appellant is entitled to bail in light of the standard under Section 43D(5) of the UAPA, in an appeal filed under Section 21 of the NIA Act?
- b) Whether his conduct (funding secessionist activities, support for JKDFP) falls outside permissible expression under Article 19(1)(a) when invoked in a UAPA-bail context?

Judgment / Order:

- a) The right to free speech does not extend to incitement of violence or secession (“This right cannot be misused... detrimental to the interest and integrity of the country.”)
- b) In bail matters under UAPA/NIA Act, the court must look at existence of prima facie material—not its weight or credibility.
- c) Old evidence (25-year-old videos) still relevant when captured during the investigation.
- d) The accused’s leadership position in JKDFP (now declared unlawful) and multiple related cases raise suspicion of tampering and witness influence.
- e) Although Shah has been in custody since 2019, the trial is ongoing with framing of charges, and no undue delay in prosecution.

Outcome:

- a) Appeal Dismissed: Shabir Ahmed Shah remains in custody; bail not granted.
- b) Bail Denied: The Division Bench dismissed the appeal, upholding the NIA court’s denial of bail.
- c) High Court Clarification: Observations were strictly limited to bail; not a comment on the merit of the prosecution’s allegations.

