

# THE NIA LEGAL BULLETIN



## ISSUE 2 (Sept-Oct 2024)

### A Compilation of Legal Updates and Relevant Judgments

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**I. SUPREME COURT & HIGH COURTS ON RIGHTS OF ACCUSED IN MATTERS OF BAIL**

**1. Case Title: Jagtar Singh Johal @Jaggi v. NIA and other connected matters, 2024 LiveLaw Delhi (1034)**

- **Brief Facts:** British national Jagtar Singh Johal was charged under the UAPA for alleged involvement in targeted killings in Punjab (2016-2017) linked to the Khalistan Liberation Force (KLF).
- **Issues Examined:** Whether the bail application could be granted despite the serious nature of allegations.
- **Judgment/Decision:** The Delhi High Court denied bail, citing prima facie evidence of Johal's association with KLF and the potential threat to witnesses if released. Denying bail to Johal, the bench observed there were grounds to believe that the allegations against him were prima facie true.
- **Outcome:** Bail rejected due to the seriousness of allegations and national security concerns.

**2. Case Title: Arafath Ali @ Arafath v. National Investigation Agency (2024: KHC: 39825 -DB)**

- **Brief Facts:** The accused was charged under the UAPA for conspiracy to establish a caliphate in India, allegedly inspired by the Islamic State (ISIS). The High Court dismissed the appeal challenging the rejection of the bail application of the accused facing charges related to alleged terrorist activities under the Unlawful Activities (Prevention) Act (UAPA) in connection with a stabbing incident. The case was being investigated by the National Investigation Agency (NIA). The NIA secured the presence of the accused and their

interrogation revealed an alleged conspiracy to commit terrorist activities to disturb unity, security and sovereignty of India.

- **Issues Examined:** Whether the accused's liberty under Article 21 could override national security concerns?
- **Judgment/Decision:** The Karnataka High Court upheld the denial of bail, emphasizing that national security takes precedence over individual liberty.
- **Outcome:** Bail denied, with the court reiterating the applicability of Section 43D(5) of the UAPA.

3. **Case Title: S. Nijam Ali @ Nijam & Anr. v. Union Of India [Criminal Appeal NO.2503 OF 2024] (Arising out of S.L.P.(Criminal) No.6392 of 2023) [Ramalingam Murder Case (RC-06/2019/NIA/DLI);**

- **Brief Facts:** The appellants faced prolonged detention under the UAPA without significant trial progress.
- **Issues Examined:** Whether long detention without trial violated Article 21?
- **Judgment/Decision:** The Supreme Court granted bail, observing that 40 witnesses were yet to be examined, delaying trial completion.
- **Outcome:** Appellants were granted bail, subject to stringent conditions.

## **II. KERALA HIGH COURT ON RIGHTS OF THE ACCUSED TO ACCESS UNRELIED UPON MATERIALS**

4. **Case No: CrI.MC 6592 of 2024; Case Title: Varghese Kuruvila v State of Kerala and Others**

- **Brief Facts:** The accused sought access to unused investigation materials to prepare a defense.
- **Issues Examined:** Whether an accused has the right to access evidence that has not been relied upon by the prosecution?
- **Judgment/Decision:** The Kerala High Court held that all investigation materials, including those not relied upon by the prosecution, must be accessible to the accused. The Court further observed that if the legal position laid down in *Ponnusamy P. v State of Tamil Nadu (2022)* is followed, the Court can ensure that the accused is not seeking these materials to delay the trial proceedings. The Supreme Court in that case had held that in the trial stage,

after the charges are framed, court can give an opportunity to the accused to avail this right. If it is sought at the appeal stage, the appellate court may make a decision as per Section 391 of Cr.P.C (Provision regarding receiving additional evidence at appellate stage).

- **Outcome:** Access granted to unused materials, safeguarding the right to a fair trial.

### **III. SUPREME COURT ON SANCTION FOR PROSECUTION UNDER UAPA**

#### **5. Case Details: Fulleshwar Gope v. UOI & Ors., SLP (Crl) No. 4866 of 2023**

- **Brief Facts:** The accused challenged the validity of the sanction for prosecution under the UAPA.
- **Issues Examined:** Whether procedural lapses in granting sanction under Section 45(2) of the UAPA could invalidate proceedings?
- **Judgment/Decision:** The Supreme Court upheld the validity of the sanction, stressing that challenges must be raised at the earliest. If such a challenge is raised at an appellate stage it would be for the person raising the challenge to justify the reasons for bringing the same at a belated stage – Such reasons would have to be considered independently so as to ensure that there is no misuse of the right of challenge with the aim to stall or delay proceedings.
- **Outcome:** The trial was allowed to proceed without interference.

### **IV. HIGH COURTS ON APPEAL PROCEDURES UNDER THE NIA ACT, 2008**

#### **6. Case title: Samiuddin @ Sami v/s State (I.A.No.1 of 2024 in Crl.A.No.421 of 2024 and I.A.No.1 of 2024 in Crl. A. No.425 of 2024)**

- **Brief Facts:** The Telangana High Court examined the condonation of delays in filing appeals under Section 21(5) of the NIA Act.
- **Issues Examined:** Whether statutory timelines for appeal apply equally to the NIA and the accused.
- **Judgment/Decision:** The court held that the 90-day bar for appeals must apply uniformly to all parties. *"The 'Justice Bar' cannot be stretched or curtailed at will and must remain of equal length regardless of the litigant at both ends of the spectrum. The doors of justice also cannot selectively be shut to a few and not to others particularly where the life and liberty of the accused is at stake..."* the bench underscored.
- **Outcome:** Delay condoned, and appeals allowed to proceed.

7. **Case Title: Roshan A v. Union of India & Others (Case No: WRIT PETITION NO. 7897 OF 2023)**

- **Brief Facts:** The petitioner challenged the NIA's jurisdiction to investigate a murder case under the UAPA. The NIA opposed this by submitting that the intention of the accused was to strike terror in a section of society. The deceased was a cow protection activist and a member of Bajrang Dal. Irked by the activities of the deceased, the accused had hatched a conspiracy to kill him, as that one killing would terrorise the section of society.
- Moreover, only after arriving at a conclusion that a scheduled offence had been committed, an order under section 8(5) of the NIA Act was passed by the Central Government entrusting the investigation to NIA.
- **Issues Examined:** Whether invoking the UAPA was justified in a murder case with alleged terror motives?
- **Judgment/Decision:** The Karnataka High Court upheld the NIA's jurisdiction, noting that the intent of the act was to strike terror. It refused to interfere with the decision of the Central Government to hand over the investigation in the alleged murder case of one Harsha at Shivamogga, to the National Investigation Agency (NIA). Considering the merits, the court said, *"Terrorism has no territorial bounds, though it has nothing to do with any particular religion, if terrorist activities are perpetrated by fanatics to achieve religious supremacy decrying the other religions and thereby pose a threat to integrity, unity and stability of the nation, people of such mind set have to blame themselves if they get into trouble."*
- **Outcome:** Petition dismissed, affirming NIA's jurisdiction.