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Bail, not Jail or Jail, not Bail: The Bail Dilemma Under the Uapa, 1967- Umar Khalid V. State of National Capital Territory of Delhi

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Abstract: ***The conflict of law arising out of the case of Umar Khalid v. State (NCT of Delhi), booked under the Unlawful Activities (Prevention) Act, 1967, is a unique case where the principles of state security, free speech and expression, preventive detention, and the right to liberty clash with each other and presents us with an opportunity to clarify the laws dealing with terrorism. Instead of examining the guilt or innocence of Dr Umar Khalid, this paper analyses the legal framework governing extended pre-trial incarceration under special statutes such as the UAPA, especially Section 43D (5), and how it deviates from general bail jurisprudence. The study traces the trajectory of "prima facie true" standards through the ruling in NIA v. Zahoor Ahmad Shah Watali. It examines how this threshold undermines the presumption of innocence at the bail stage. By examining the Umar Khalid case, the paper interrogates whether indefinite incarceration without trial commencement remains acceptable under the Indian Constitution. art. 21, and if yes, then to what extent, especially when the delay is systemic instead of attributable. Comparison with analogous laws of the U.K., U.S., and Canada is drawn to demonstrate that, while preventive detention is recognised and accepted internationally as a counterterrorism measure, it is typically accompanied by strict temporal and procedural limitations, continuous judicial review, and enforceable safeguards against arbitrariness, if any. This paper illustrates the challenging task of harmonising legislative precaution with constitutional liberty and preventive measures with procedural fairness, as the legitimacy of a national security law depends not only on its potential to prevent terror or harm but also on its ability to operate within a framework that ensures liberty is not compromised indefinitely.***

Keywords: ***Unlawful Activities (Prevention) Act; Bail Jurisprudence; Article 21; Prima Facie True Standard; National Security.***

I. INTRODUCTION

Enacted in 1967, the Unlawful Activities (Prevention) Act [1] aimed at effective prevention of activities which derogated the integrity of our nation. Over time, it evolved from a preventive mechanism into an instrument for suppressing dissent. Three amendments which helped in doing the same were the 2004 one, which introduced the term "terrorist attack", the 2008 one, which inserted Section 43D (5) regarding bail, transmuting a procedural safeguard into a constitutional battlefield, and in 2019, it declared that even individuals, along with foreigners, come under the scope of "terrorists", under certain grounds provided in the Act.

This paper begins by discussing the background of UAPA, then dives deep into analysing the increasing use/misuse of UAPA, and the judicial philosophy of bail under UAPA, while giving primary attention to the case of Umar Khalid v. State (NCT of Delhi) [2] from various judicial perspectives. The purpose is not to re-argue the innocence or guilt of the appellant, but to examine what concerns are dealt with by a Court when applying the embargo on bail, while also dealing with other aspects like sedition and speedy trial.

Conventionally, the scope of UAPA goes far beyond its original counter-terror purpose. Judicial findings and NCRB data indicate that the application of the UAPA has become increasingly arbitrary. Courts, while obliged by the Constitution to protect liberty, often find themselves constrained by the "prima facie true" bar, which ultimately limits judicial discretion. Under the criminal laws of this country, a person accused of non-bailable offences is liable to be detained in custody during the pendency of the trial unless he is enlarged on bail in accordance with law. The action of rejecting bail, as a form of state control, conflicts with constitutional safeguards [3]. The collective effect of stringent bail procedures, prolonged investigation, and delayed trials itself becomes a punishment for the accused.

This misuse of the UAPA creates a standoff between judicial restraint under Section 43D (5) and constitutional duties under the Indian Constitution. art. 21 [4]. This situation often corrodes the principle that liberty is the default practice and detention, the exception. In a democratic country like India, which considers the rule of law a general principle, pre-trial detention must not outlast the trial itself. But the troubling combination of stringent bail provisions and an extended 180-day investigation period makes this practice the new normal. Especially in politically sensitive matters, rejection of bail is often perceived as a tool of suppression, giving lawful protests a face of presumptive subversion.

This research employs a doctrinal and comparative approach, delving deep into the landmark rulings from both Indian and foreign courts. Empirical references from many news articles support the doctrinal content, ensuring a clear understanding of the limits of different rights of citizens under the constitution, as well as how bail jurisprudence under the UAPA can interfere with liberty and procedural fairness.

II. BACKGROUND AND ANALYSIS OF THE UMAR KHALID CASE

As stated earlier, this paper does not argue about the innocence or guilt of the appellant, Dr Umar Khalid, nor

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does it intend to assign any moral, ethical, or political blame. The main focus is on the legal framework of UAPA, especially Section 43D (5), where liberty is measured against the state's security.

A. Background and Arguments on the Case

Dr Umar Khalid was a former JNU student leader who was arrested on 13th September 2020 under FIR no. 59/2020, in connection with a large conspiracy case related to the 2020 Delhi riots, which resulted in the loss of 53 precious lives and property damages worth crores. Khalid was charged under multiple other provisions as well beside UAPA, namely, "Indian Penal Code, 1860, §§ 120B, 124A, 147, 148, 149, 153A, 302, 307, 353, 186, 212, 395, 427, 435, 436, 454, 109, 114 & 34 (India) [5]," "Sections 3 and 4 of the *Prevention of Damage of Public Property Act,* 1984 [6]," and "Sections 25 and 27 of the *Arms Act, 1959* [7]."

Going with the charge sheets, Khalid allegedly delivered a "provocative speech" at Amravati (Maharashtra) on 17th February 2020, followed by meetings at the Shaheen Bagh on 8th January 2020 and Seelampur on 23-24 January 2020, along with two co-accused, namely, Tahir Hussain (suspended AAP councillor) and activist Khalid Saifi (from United Against Hate). These meetings, as per the prosecution, formed the core of a "pre-planned conspiracy" to trigger violence, coinciding with the visit of (then) U.S. President Donald Trump. WhatsApp group chats and CDR analysis, extracted under Section 65B, reveal clear coordination and involvement of all of them. Statements of protected witnesses (SATURN, HELIUM, ROMEO, JULIET, BOND, ECHO, AND DELTA) also point out the accused's direct link with the riots.

The defence, Adv. Trideep Pais declared that Khalid is against the CAA and is not ashamed of it, and that the Delhi Police charge sheet is a figment of the officer who drafted it [8]. The speeches were political expressions without any intention to cause violence and were a legitimate exercise of India's Constitution. art. 19, cl. 1(a) and the speech of Amravati, which is being treated as evidence, the police had relied upon footage from "Republic TV" and "News 18", and both of them retrieved the same from a tweet by BJP's Amit Malviya. Pais also stated that being a member of a WhatsApp group does not amount to operational involvement. Regarding the alleged meetings, Pais said they occurred before the official announcement of Trump's visit, showing no link between them. No weapons or funds were found "directly" from Umar, clearing the misunderstanding. He also said that the statements of the protected witnesses were recorded very late and are uncorroborated. Lastly, Pais argued that prolonged detention without trial violates Article 21.

B. Judicial Reasonings for Bail Denial

i. Sessions Court (ADJ Amitabh Rawat)

Denied bail, stated that the prosecution material reveals premeditated conspiracy. It identified meetings, speeches, WhatsApp communications, and CDR analysis sufficient to meet the prima facie threshold [9].

ii. Delhi High Court (Mr Siddharth Mridul and Rajnish Bhatnagar)

The High Court agreed with the Sessions Court, holding that the material on record, including protected witnesses' statements, creates the need for an embargo under Section 43D (5) [10]. It also reiterated the ruling of *NIA v. Zahoor Ahmad Shah Watali* [11]to guide the bail proceedings and to not conduct a "mini trial" at this stage.

iii. Supreme Court (Justices Arvind Kumar and N. V. Anjaria)

Denied bail to Umar Khalid and Sharjeel Imam, holding the same, that the material on record indicates a prima facie case, along with a stark point that pre-trial incarceration cannot amount to punishment on its own. However, the SC has granted bail to the other 5 co-accused, namely, Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehmaan, Mohammad Shakeel Khan, and Shadab Ahmed, holding that they stand on a different footing from the others in the conspiracy [12].

C. Timeline in Conclusion

Table I: Timeline of the Umar Khalid Case

Date	Happening	Observation
6th March 2020	FIR No. 59/2020 registered against Dr Khalid & others.	Delhi Police alleged that they were conspiring to lead to the North-east Delhi riots in February.
13th September, 2020	Dr Khalid was arrested.	He was taken into custody in connection with the FIR registered under the UAPA.
16th September, 2020	First charge sheet.	Filed by the police with allegations.
November 2020 to Feb. 2021	Supplementary charge sheets were filed.	Additional forensic material, witness statements, and WhatsApp data were added to the record.
July, 2021	First Bail Petition filed (Sessions Court).	Khalid's bail under UAPA was first moved and heard over a period of ~8 months.
24th March, 2022	The Sessions Court denies bail under Section 43D (5) of the UAPA.	Accusations held "prima facie true"; bail objectionable.
18th October, 2022	The Delhi High Court dismisses the appeal.	Held charge sheet materials (CDRs, witness statements, chats, speeches) constitute a prima facie case.
3rd December, 2022	Acquittal in a separate stone-throwing case.	Khalid was acquitted but continues to be detained under the main conspiracy charges.
12th December, 2022	A weeklong bail was granted.	It included a gag order which prevented Khalid from talking to the media.
6th April, 2023	SLP filed in the Supreme Court.	Challenging the High Court's bail rejection.
May 2023 to August 2023	Multiple SC listings & adjournments.	The bail plea was repeatedly adjourned; no final SC order has been issued.
17th August, 2023	Bail plea dropped from SC cause list.	Listed but removed due to bench changes/reassignments.
18th December, 2024	Interim bail granted (family marriage).	Brief interim bail for a week granted under conditions; returned to custody.
2nd September, 2025	Delhi High Court affirms bail rejection.	The High Court again refuses bail, satisfied that the prima facie threshold is met. SLP is still pending.
11th December, 2025	Interim bail granted.	Interim bail from 16 December to 29 December to attend another family wedding.
5th January, 2026	The Supreme Court denied bail.	Denied Khalid & co-accused bail; notes evidence establishes a prima facie case; the other 5 were granted bail.

Source: Supreme Court Observer. Also see CRL.A. 173 of 2022 [13].

Table I above shows the mammoth amount of time taken in the proceedings of the Umar

Khalid case, with the trial still pending.

D. Case Analysis and Significance

The case of Umar Khalid stands as a defining test of modern bail jurisprudence under UAPA. It highlights the battle between Section 43D (5) and Articles 14 and 21, while also defining the boundaries of the prima facie test at the bail stage. It also pays close attention to the balance between liberty and state security through judicial discretion, while criticising prolonged pre-trial custody. *The Wire* [14] published an article on 13th September 2022, in which Umar wrote a letter to Rohit Kumar, thanking him for his birthday wishes. In that article, Umar asked a question, which was, "Do people not see any similarity between the UAPA and the Rowlatt Act, which the Britishers used against our freedom fighters?", which was not answered or covered by any government authority.

As of October 2024, Khalid has spent 4 years in jail without a trial. The situation made it to the *New York Times* [15] with the heading "Four years in Jail without a Trial: The price of dissent in Modi's India," alleging that the government in India has turned to a draconian state security law and also saying that Modi's government has worked to bend the judicial system to its will, creating a Hindu-Muslim matter to a combined protest. This case has gained global attention, as recently, the New York mayor, Zohran Mamdani, wrote to Umar, "I think of your words on bitterness often, and the importance of not letting it consume oneself."

All the above contentions were made only to put pressure on the fact that others are judging our nation based on a single case. The Case's global relevance shows that UAPA's jurisprudence is under international scrutiny as a barometer of India's constitutional balancing of liberty and security. It puts us in the spotlight on the world stage, where every next decision must be made with the utmost attention.

III. SECTION 43D (5) OF UAPA: BAIL AND THE "PRIMA FACIE TRUE" STANDARD

A. Statutory Analysis

Section 43D (5) has emerged as one of the most debated provisions, which is said to constitute a legislative inversion of bail jurisprudence under BNSS [16]. The threshold established for denying bail under Section 43D (5) may be quoted as follows:

"(5) Notwithstanding anything contained in the Code, 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 on his own bond if the Court, on a perusal of the case diary or the report made under Code of Criminal Procedure, 1973, § 173 [17] (154 BNSS) thinks that there are reasonable grounds for believing that the accusation against such person is *prima facie true."*

Thus, the harsh conditions for the grant of bail under Section 43D (5) will apply only to offences punishable under Chapters IV and VI of the Act. In the present case, the charge sheet has been filed u/s 16, 17, and 18 of the Act, which are part of Chapter IV and thus fall within the scope of Section 43D (5). The proviso of this section imposes an embargo on the grant of bail to the accused against whom any of the offences under Chapters IV and VI have been alleged. If, after reviewing the charge sheet, the Court is unable to draw such a prima facie conclusion, the embargo created by the proviso will not apply.

B. Dissecting the Term "Prima Facie"

The doctrine of "prima facie" operates at the core of the embargo on bail. It is a Latin term, meaning "at first sight". Unlike the standard of bail under BNSS, where the Court puts its judicial mind on risk of flight, tampering of evidence, and severity of offence while granting bail, UAPA obliges the Court to expand its scope even further, from individuality to national integrity and public order, as interpreted from the Act's preamble and chapters 4 and 6.

The term "prima facie" is extensively explained by the Hon'ble Supreme Court in the ruling of *National Investigation Agency v. Zahoor Ahmad Shah Watali* [18], where it held that, "By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence."

As per Section 482 of BNSS, a Court should have "reasonable grounds" to believe that the accused has committed an offence to deny him bail. It is not as if, to release the applicant on bail, a positive finding that he is not guilty of the alleged offences is required to be made or recorded. What would be required is satisfaction about the existence of 'reasonable grounds' for believing him to be not guilty. The phrase 'reasonable grounds' imports a lesser degree of satisfaction than 'sufficient grounds.' It is not that he can be released on bail only if there is no case for proceeding against an accused [19].

The same contradicts the Court's power to deny bail under UAPA if the accusation appears to be "prima facie true." There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such an offence and the satisfaction to be recorded for the 1967 Act that there are reasonable grounds for believing that the accusation against such a person is "prima facie" true [20]. There is no denying the fact that Article 11 of the UDHR [21] declares that everyone accused of any penal offence is presumed innocent until proven guilty. While this is a fundamental principle in criminal law which the Hon'ble Supreme Court has also upheld, the provisions under UAPA and other special acts, however, contain a contrary rule, which has an inevitable effect on the scheme of provisions of bail as laid down by those statutes.

So now the question arises: how does a Court determine whether the accusations against the accused are prima facie true? The answer is that the Court must exercise its discretion with respect to the totality of the materials collected by the investigating entity during the investigation, and whether those materials, at first glance, point to the accused's guilt. If the

Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed [22].

In essence, the principle of innocence until proven guilty under Article 11 of the UDHR and the Indian Constitution. Art. 21 is displaced by the presumption of threat that places the preventive concept over personal liberty.

C. Materials and Bail Jurisprudence

Keeping in mind the contrary view under UAPA regarding the principle of innocence until proven guilty, this part will now examine the applicability and inapplicability of the embargo under Section 43D (5).

The jurisdiction to grant bail must be exercised in accordance with well-settled principles, having regard to the circumstances of each case, and not arbitrarily [23] as Justice V.R. Krishna Iyer observed, the question of bail is one of liberty, justice, and public safety, and not of punishment before trial [24]. It is well settled that the matters to be considered in a bail application are [25]:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the charge;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being tampered with; and
(viii) danger, of course, of justice being thwarted by the grant of bail.

The contention that the test of bail under UAPA is more stringent than in other enactments is not fully acceptable, as in other enactments, the burden on the accused is to show that he is "not guilty" of an offence, which is a higher threshold [26]. Still, when it comes to offences punishable under UAPA, something more needs to be kept in mind in view of Section 43D (5).

The law regarding the grant or refusal of bail is very well settled. The Court granting bail should judiciously exercise its discretion and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly where the accused is charged with having committed a serious offence. Any order devoid of such reasons would suffer from non-application of the mind [27].

Apart from the above, certain other relevant considerations may also be noted at this juncture. However, the same are only illustrative and not exhaustive, nor can they be. The considerations being [28]:

(a) While it is not acceptable to have the entire evidence establishing the guilt of the accused beyond a reasonable doubt, there ought always to be a prima facie satisfaction of the Court in support of the charge.
(b) Frivolity in prosecution should always be considered. It is only the element of genuineness that shall have to be considered in the matter of the grant of bail. In the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

A common query that may arise now is whether the Courts are required to "record" prima facie reasons for the grant or refusal of bail, even though they are not expected to go into the merits at this stage. The Supreme Court in the case of *Puran,* Shekhar *and others. v. Rambilas and anr.* [29], clarified that while a Court should avoid conducting a mini-trial or a detailed evaluation of the merits of the prosecution's case at this stage, it nevertheless cannot avoid its duty to give reasons as to why, at least prima facie, bail is justified or not. The judicial reasoning behind it is that bail orders are discretionary, but the same must be transparent and reviewable.

Another very debated question is "Whether prolonged custody justifies bail." The answer is not a full yes or no, but depends mainly on the circumstances of the case. In the judgment of *Umarmia Alias Mamumia v. State of Gujarat* [30], the appellant was involved in serious offences and had absconded for 10 years before he was arrested in 2004. The Court saw no reason to confine him to jail, as he has already suffered more than 12 years in custody, and the trial may not be completed in the near future. Taking note of the above, the Court granted bail to the Appellant, subject to the condition that he furnish a bail bond for Rs. 1 lakh with one surety for a similar amount.

Thus, in deciding bail applications, one important factor to consider is the delay in concluding the trial. If an accused is denied bail but is ultimately acquitted, no one will compensate him for the time he spent in custody. Therefore, long incarceration of an accused may not, by itself, be a ground for the grant of bail. Still, it certainly constitutes a ground for granting bail to an accused if the delay in concluding the trial is attributable to the prosecution [31].

Judicial discretion is thus placed in a difficult position, between respecting the legislative intent to protect the national order and preserving constitutional morality. Section 43D (5) should not be perceived as a restriction on reasonable discretion, as it does not completely ban independent adjudication. Although the Courts must ensure that the phrase "prima facie" does not become a substitute for "proof", and the embargo must not become an excuse for limitless incarceration. In a democratic country like India, even exceptional statutes shall remain inferior to exceptional justice.

IV. BAIL AND THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

A. Deviation From General Practice

As of January 2026, Dr Khalid remains in custody since his arrest on 13th September 2020 under the UAPA and other provisions. Over 5 years have passed, and despite the charge sheet being filed, the trial has not commenced in full. The delay has drawn nationwide legal concern not merely because of the mammoth time that has elapsed, but also because of the statutory rigidity

of bail provisions under UAPA, which impose one of the strictest barriers to obtaining bail in Indian criminal jurisprudence. Though designed to protect state security, it has become a test case for the endurance of the Indian Constitution. art. 21 and its embedded principles of bail as the rule and speedy trial as a constitutional right.

The principle that 'bail is the rule, and jail, the exception' is an indispensable feature of a democratic criminal justice system, arising from Article 21, and imposing unjust or harsh conditions while granting bail is violative of Article 21 [32]. Yet this constitutional principle is most strained under special statutes like UAPA. Section 43D (5) of the UAPA deviates from the ordinary rule u/s 439 CrPC, which says that grant of bail should be the rule and the refusal of bail should be the exception [33], in the name of state security, and when accused of an offence under Chapter IV and VI of the Act, Chapter IV in the present case, the "prima facie true" standard also helps in further deviation from the general law by effectively limiting the presumption of innocence, the anchor of criminal law.

It is indisputable that bail is not to be withheld merely as a punishment [34]. Even a gross delay in the disposal of bail applications would justify the invocation of India Const: art. 21 and the consequential necessity to release the undertrial on bail [35]. Ordinarily, in cases under special statutes such as UAPA, the release of undertrials on bail is extremely limited. But the Supreme Court clarified that even in such cases, where there is no prospect of the trial being concluded within a reasonable time, release on bail may be necessary, as it is embedded in the right to a speedy trial under Article 21 [36]. It has also been emphasized that the right of the accused to be set at liberty, takes precedence over the right of the State, to carry on the investigation and submit a charge sheet [37].

Even though the fact of incarceration is relevant, the incarceration of persons charged with non-bailable offences during the pendency of trial cannot be questioned as violative of Article 21, since the same is authorised by law [38]. Still, the court must ensure that the prosecution does not degenerate into persecution.

B. Is Speedy Trial Just a Myth?

The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Sometimes, even persons accused of minor offences have to wait for their trials for a very long time. The right to a speedy trial, as such, is not mentioned as a specific fundamental right in the Constitution nor in the CrPC. Still, the BNSS has introduced several provisions to ensure a speedy trial, such as limiting the number of adjournments under s 346 of the BNSS. Yet there is still no provision prescribing the maximum period a magistrate may keep an undertrial in custody without trial. Nevertheless, the SC has recognized the same to be implicit in the spectrum of Article 21.

The right to a speedy trial is derived from the provisions of *the Magna Carta, 1215 [39]. It has also been incorporated into the Virginia Declaration of Rights of 1776 [40] and, from there,* into the *Sixth Amendment of the U. S. Constitution* [41]. This right applies not only to the actual proceedings in court but also begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages [42]. A delayed trial is not necessarily an unfair one. Indeed, some amount of deprivation of personal liberty cannot be avoided. Still, if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. The SC in *Abdul Rehman Antulay v. RS Naik* [43] also reiterated that there can be no time limit for completing a trial. It is thus the obligation of the state or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Undue delay may result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of a witness or otherwise.

In the case of *Sheela Barse v. State of Maharashtra* [44], the Supreme Court, while determining whether undue delay has occurred, expressed that one must have regard to all the attendant circumstances, including nature of the offence, the number of accused and witnesses, the workload of the court concerned, prevailing local conditions, and so on, what are called the systematic delays. Every delay does not necessarily prejudice the accused. However, an inordinately long delay may be taken as presumptive proof of prejudice [45].

Long pre-trial confinement adversely affects the rights of undertrials, who are presumed innocent until proven guilty (except under special statutes), leading to overcrowding in prisons. The Law Commission has reported on this matter in its 77th and 78th Reports [46]. It has been recommended that the matter of reducing delay and arrears in trial Courts is of "greatest importance", to which "the highest priority" ought to be given. A similar feat was observed by the SC in *Hussainara Khatoon v. Home Secretary, State of Bihar* [47], that an alarming number of men, women, and children were kept in prison for years awaiting trial in courts of law. The offences with which some of them were charged were trivial and, if proved, would not have warranted more than a few months' punishment, perhaps a year or two. But they were deprived of their freedom for periods ranging from three to ten years, without their trial having yet commenced. The court said that these persons were denied human rights and were languishing in jail for years for offences which perhaps they might ultimately be found not to have committed.

The right to speedy trial, however, is subjected to the well-known maxim, '*nullum tempur aut locus occurrit regi',* which means "lapse of time is no bar to the Crown (State) in proceeding against offenders", supporting the general rule of criminal justice that "a crime never dies [48]." While justice delayed is justice denied, justice withheld is even worse. It is not denied that a speedy trial secures rights to an accused, but it does not preclude the rights of public justice. Therefore, a mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to a speedy trial must be weighed against the impact of the crime on society and the public's confidence in the judicial system [49].

C. Comparative Study of "Preventive Detention"

i. *United Kingdom*

In the UK, under s 41 and Schedule 8 of the Terrorism Act 2000 [50], the police may arrest persons reasonably suspected of involvement in terrorism. Still, detention beyond 48 hours

requires judicial authorisation, and each extension of up to 14 days is granted only if continued detention is necessary to gather or preserve evidence. These safeguards reflect the UK's adherence to Article 5 of the European Convention on Human Rights [51], safeguarding the right to liberty and protection against arbitrary detention.

Unlike the Indian UAPA regime, where limitless incarceration before trial is slowly but visibly becoming normalised, the UK framework handles it as a strictly regulated exception, minimising its use as much as possible.

ii. United States of America

The law governing the exercise of preventive detention in the U.S. is the Patriot Act of 2001 [52]. Section 412, read with Section 236A of the Immigration and Nationality Act [53], permits preventive detention of non-citizens who are "under suspicion" of creating terror. Still, the same is subject to judicial review to ensure there is no arbitrariness or ulterior motive. While U.S. law allows preventive detention in the name of national security, courts still provide periodic review and habeas corpus, and the law recognises detention only under explicit statutory authorisation, while remaining subject to international humanitarian law.

Thus, unlike UAPA, which allows for extended custody of citizens pending trial, U.S. law distinguishes between preventive national detention and ordinary criminal prosecution, setting a clear judicial threshold while respecting the concept of a speedy trial under both.

iii. Canada

Canada's Anti-terrorism Act, 2015 [54] is a preventive measure designed to prevent potential terrorist acts before they even occur. Still, to do the same, the authority requires the Attorney General's prior consent. The law permits courts to impose conditions such as passport submission, restricted movement, or electronic monitoring, but these are only for a specified time.

These preventive measures include strong judicial and parliamentary checks, such as sunset clauses and mandatory reporting, to ensure accountability, so that the restriction on liberty remains proportionate and reviewable rather than unreasonable or unfair.

iv. Concluding The Analysis

These global frameworks show that preventive detention is accepted as a legitimate counterterrorism measure, but procedural accountability, time-bound limits, and judicial review must always accompany it. While detention under the UAPA is pre-trial and not the one under Article 22 of the Constitution, its prolonged and limitless nature often creates a preventive atmosphere in practice, which risks transforming a preventive statute into a punitive one, degrading the rights of liberty under the Indian Constitution. art. 21.

V. CONCLUSION

The case of Umar Khalid emerges not merely as an individual prosecution but as a collective constitutional moment, one in which multiple sections of Indian law collided, namely, national security legislation, the limits of dissent, preventive detention, and the endurance of the right to liberty under pre-trial incarceration. This paper has deliberately and consciously avoided adjudicating on the appellant's guilt or innocence and has instead delved deep into the legal framework within which liberty is assessed, restricted, and deprived.

At its core, this case demonstrates the consequences of applying Section 43D (5) of the UAPA, where the traditional presumption of innocence yields to preventive prioritisation. The "prima facie true" standard, as judicially clarified by the *Watali* [55] judgement, substantially alters bail jurisprudence by almost forcing courts to accept the prosecution's material at face value. While counterterrorism concerns may justify this framework, its application, especially in cases involving political speeches, protests, and alleged conspiracies, raises serious questions about fairness and reasonableness.

Indian constitutional jurisprudence has repeatedly held that liberty cannot be deprived of citizens for an indefinite period, yet special statutes like the UAPA place courts in a constrained and awkward position. Comparative analysis with laws from the U.K., U.S., and Canada further shows that, while preventive detention is internationally acknowledged, procedural and temporal safeguards consistently accompany it, including periodic judicial review and accountability, features which remain unevenly realised in practice under Indian law.

Ultimately, this case reflects a structural tension rather than the confinement of the judiciary's discretionary powers, a tension between legislative precaution and constitutional guarantee of liberty, between preventive measures and procedural justice. The resolution of this tension lies not in absoluteness, nor in unconstrained liberty, nor in unreviewable security; it lies in scrutinised judicial discretion, prompt prosecution, and a reaffirmation that even the gravest allegations must be tested within a framework that preserves human dignity as the bare minimum. As in a constitutional democracy, the veracity of the state is measured not solely by its ability to prevent terrorism or any other harm, but by its commitment to ensure that prevention does not become punishment without trial.

DECLARATION STATEMENT

Some of the references cited are older and are explicitly noted as [1], [3], [5], [6], [7], [17], [18], [19], [21], [22], [24], [25], [27], [28], [33], [34], [38], [39], [42], [43], [44], [45], [47], [48], [49], [50], [51], [52], [53] and [54]. However, these works remain significant for the current study, as they are pioneering in their fields.

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