

Misuse of UAPA

What is the issue?

The Supreme Court's judgment in *Thwaha Fasal vs Union of India*, has deconstructed the provisions of the UAPA against blatant misuse.

What is the UAPA about?

- The Unlawful Activities (Prevention) Act (**UAPA**) was enacted in 1967 and was strengthened by the Union government in 2008 and 2012.
- The UAPA is meant to deal with matters of profound impact on the '**Defence of India**' and address threats to the very existence of our Nation.
- The Act introduces a vague definition of terrorism to encompass a wide range of non-violent political activity including political protest.
- The Act empowers the government to declare an organisation or an individual as "terrorist" and ban it.
- Even being a member of such a proscribed organisation becomes a criminal offence.
- It deprives the accused of the **right to bail** and this made them to live long under detention.
- Unlike the Criminal Procedure Code, the UAPA under Section 43D(2), permits keeping a person in prison for up to **180 days**, without even filing a charge sheet.

What is the background of this case?

- A charge sheet filed against Thwaha Fasal and Alan Shuhaib of Kerala for harbouring and associating with a banned Maoist outfit.
- The third accused absconded and later the investigation was handed over to the National Investigation Agency (NIA)
- The provisions of the UAPA were invoked and offences under Sections 38 and 39 of the UAPA and 120B of the Indian Penal Code (IPC) were alleged.
- **Section 38** deals with "offence relating to membership of a terrorist organization."
- **Section 39** deals with "offence relating to support given to a terrorist organisation."

- **Section 120B** of the IPC is the penal provision on criminal conspiracy.
- **Section 13** of the UAPA is the provision about punishment for unlawful activities.

***Section 43D(5)** of the UAPA says that for many of the offences under the Act, bail should not be granted, if there are reasonable grounds for believing that the accusation is prima facie true.*

What is the judicial trajectory in this case?

- The trial judge granted bail to both the accused in September 2020 after initial rejections of the plea.
- The High Court, in appeal, confirmed the bail of Allen (the accused) but denied it to Thwaha.
- The Supreme Court upheld the trial judge's finding that the materials do not show any "intention on the part of both the accused to **further the activities** of the terrorist organisation".
- The top court confirmed the bail granted to both the students.
- The Court said that **mere association with a terrorist organisation is not sufficient** to attract the offences alleged.
- The Court ruled that mere possession of documents or books by the accused at a formative young age, or even their fascination for an ideology, does not make out an offence.
- It held that until the association and the support were with intention of furthering the activities of a terrorist organisation, offence under Section 38 or Section 39 is not made out

Why is the judgement so significant?

- **Presumption of guilt** - Instead of presumption of innocence, the UAPA holds presumption of guilt of the accused.
- According to **Section 43D(5)**, jail is the rule and bail is often not even an exception.
- Many individuals including Sudha Bharadwaj, Siddique Kappan and Stan Swamy were denied bail based on a narrow interpretation of the bail provision.
- The Court in this case has refused to construct this Section in a narrow and restrictive sense.
- It has tried to mitigate the error committed in *NIA vs Zahoor Ahmad Shah Watali* (2019) which ruled that the burden is on the accused to show that

the prosecution case is not *prima facie* true.

- The Court also relied on the *Union of India vs K.A. Najeeb* (2021) which noted that the provisions under Section 43D(5) do not curtail the power of the court to grant bail on the ground of violation of fundamental rights.
- In 2021, the Delhi High Court granted bail to student activists Natasha Narwal, Devangana Kalita and Asif Iqbal Tanha who were charged under the UAPA for alleged connections with the Delhi riots.
- This judicial radicalism can release other political prisoners in the country who have been denied bail either due to the harshness of the law or due to the lack of understanding the law.

Reference

1. <https://www.thehindu.com/opinion/lead/a-new-jurisprudence-for-political-prisoners/article37372642.ece>
2. <https://www.thehindu.com/news/national/supreme-court-grants-bail-to-journalism-student-thwaha-fasal-in-uapa-case/article37205982.ece>

