Section 43D(5) of the UAPA

Why in news?

- Father Stan Swamy, arrested by the NIA in relations with Bhima Koregaon violence, passed away. Click here to know more
- Just 2 days before his death, he had moved the Bombay High Court challenging Section 43D(5) of the Unlawful Activities Prevention Act (UAPA).

Who is Father Stan Swamy?

- Fr. Stan Lourduswamy S.J., is an Indian Roman Catholic priest and a tribals rights activist for several decades.
- The 83-year-old activist (suffers from Parkinson's disease) was arrested by the National Investigation Agency (NIA) in October 2020.
- He is alleged to have involved in the 2018 Bhima Koregaon violence and is charged under the UAPA.

What is Section 43D(5) of UAPA?

- The UAPA was enacted in 1967.
- It was strengthened by the Union government in 2008 and 2012.
- Section 43D(5) makes grant of bail virtually impossible under UAPA.
- It leaves little room of judicial reasoning.
- The test for denying bail under the UAPA is that the court must be satisfied that a "prima facie" case exists against the accused.
- Swamy termed Section 43D(5) as "illusory".

What have the Courts held in this regard?

- In 2019, the SC defined prima facie narrowly to mean that the courts must not analyse evidence or circumstances.
- Instead, it should look at the "totality of the case" presented by the state.
- In other rulings, however, courts have taken an alternative reading of Section 43D(5).
- Courts have emphasised the right to a speedy trial.
- They have also raised the bar for the state to book an individual under UAPA.

What were the exceptions?

- In Union of India v K A Najeeb in January 2021, the Supreme Court upheld the grant of bail under UAPA.
- In this case, the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.
- The Court, nevertheless, recognised that bail under UAPA was an exception.
- The Court said that such an approach would act as a safeguard against Section 43D(5) of UAPA.
- Because it could be used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.
- In February 2021, the Bombay High Court granted bail to Telugu poet Varavara Rao.
- He is an accused in the Elgar Parishad case along with Swamy.
- The Court, in this case, held that bail under UAPA can be granted by constitutional courts purely on grounds of sickness and advanced age.
- Rao is 80 and had tested positive for Covid-19.
- Recently, the Delhi High Court granted bail to three student-activists, circumventing the bail provision under UAPA.
- It questioned if the alleged offences qualified as "terrorist offences" to be booked under UAPA in the first place.

Source: The Indian Express