The Provision of bail in UAPA

Why in news?

Supreme Court denied bail to Gurwinder Singh an accused in an alleged "Khalistan module" as it doesn't find any place in the stringent anti-terror Unlawful Activities Prevention Act (UAPA).

What are the key provisions under UAPA?

Key aspect	About
Objective	To make powers available to the state for dealing with activities directed against the integrity and sovereignty of India.
Unlawful organisation	Any organization could now be termed as 'unlawful' by the government subject to *judicial review.*
Terrorist act	Any act done with the intention to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.
Terrorist gang	It empowered the authorities to investigate and arrest a group of people who are involved in unlawful activities and the central government can term them as 'terrorist gang'.
Terrorist organization	It means an organization listed in the Schedule or an organization operating under the same name as an organization so listed.
Custody of accused	The accused could be taken into custody without a charge sheet, it could be extended to 180 days.
Grant of bail	Section 43D(5) states that the test for denying bail under the UAPA is that the court must be satisfied that a "prima facie" case exists against the accused.
Economic offence	To fulfil obligation under Financial Action Task Force, the government added offences that threaten the country's economic security in the definition of 'terrorist act'.
Individuals as terrorists	Unlawful Activities (Prevention) Act, 2019 allows the government to tag 'individuals' as terrorists as they are the one who carries out the terrorist act and not an organization.
Seizure of property	It empowers the Director-General of National Investigation Agency (NIA) to grant approval of seizure or attachment of property when the case is investigated by the agency.

How UAPA restricts bail?

- **Public prosecutor hearing**- A person accused of an offense under specified chapters of the UAPA shall not be released on bail if in custody unless the Public Prosecutor has been given an opportunity of being heard on the application for such release.

- **Court's evaluation**- Even if the public prosecutor has been heard, the court is required to evaluate whether there are reasonable grounds to believe that the accusations are true based on an initial examination of the case diary or the police report.
- **Burden of proof**- The accused while seeking bail, must demonstrate to the court that it is unreasonable to believe that the accusations against them are true.

What is the stand of Supreme Court?

- **Watali case, 2019**- The courts should not examine the evidence in detail but rather accept it at face value. This approach is distinct from regular criminal trials where the defense has a broader scope to challenge evidence and present arguments.
- **Broad probabilities standard-** The role of the court in a UAPA bail hearing is to record a finding based on broad probabilities regarding the accused's involvement in the alleged offence.

Broad probabilities standard limit the depth of scrutiny that the court can apply to the evidence presented.

- **Additional burden on accused**- The accused must satisfy the court that the alleged offence do not make out reasonable grounds for believing that the accusation against them is prima facie ("first sight") true.
- **Post Watali ruling**- It effectively closed the window, especially for trial courts, to look at the prosecution's case critically while granting bail.

Court's ruling on bail under UAPA case
• Delhi High Court granted bail to student activists, it emphasized that the prosecution must present specific factual allegations rather than relying on broad speculations and inferences. • **Anand Teltumbde's Case-** Bombay High Court insisted on the prosecution demonstrating a nexus between the accused and the offense. • **Union of India vs KA Najeeb, 2021**- It allowed bail considering the significant period of incarceration undergone by the accused. • The decision acknowledged that bail under UAPA is an exception but should be balanced with the right to a speedy trial. • **Gonsalves case, 2023-** It differed from Watali judgement and said that the courts must do a surface-analysis of the evidence and its worth before granting bail. • **Gurwinder Singh case-** It relied on the Watali ruling entirely without considering the Gonsalves ruling.

What lies ahead?

- The *evolving nature* of legal interpretations in UAPA cases underscores the need for a balanced approach that considers both national security concerns and individual rights.
- Achieving *clarity and consistency* in legal principles is essential to uphold the *rule of law* and ensure fair and just outcomes in cases involving sensitive issues covered by the UAPA.

Reference

Indian Express- UAPA bail in Supreme Court

