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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 35/2025**

ARIF FAROOQ BHAT

.....Appellant

Through: Mr. Archit Krishna and Mr.
Himanshu Kunjam, Advs. (M:
9810933083)

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Ms. Shilpa Singh, SPP with Mr.
Priyam Agrawal, Adv. with SI Sumer
Singh.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

% **15.01.2025**

1. This hearing has been done through hybrid mode.

CRL.M.A. 759/2025 (For Exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CRL.A. 35/2025

3. The present appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008, read with Section 483 of BNSS challenging the impugned order dated 9th January, 2025 passed by the Id. ASJ-03, Patiala House Courts, New Delhi, in case being *NIA No.2/2022* titled as *NIA vs. Tariq Ahmed Dar & Ors.*, arising out of *FIR No. RC No. 29/2021/NIA/DLI* dated 10th October, 2021 registered at P.S. NIA Delhi, under Sections 120B/121/122/123 of IPC and Sections 18/18A/18B/20/38/39.

4. *Vide* the impugned order the Id. ASJ has granted custody parole to the



Appellant for two days till 12th January, 2025 to visit his family and see his father in Srinagar.

5. The Appellant is arraigned as Accused - 27 in the charge-sheet dated 8th April, 2022, filed by the NIA in respect of the said FIR. The order on charge has already been passed on 30th July, 2024 and the charges have also been framed against the Appellant. The allegations against the Appellant as captured in the order on charge read as under:-

"118. It is argued on behalf of State qua accused Arif Farooq Bhat (A-27) that the disclosure made by the accused A-27 led to the discovery of hitherto unknown facts which has been represented as D-183, which is the scrutiny report of digital device seized from possession of the accused. The scrutiny reveals that accused was a member of several online propaganda groups such as 'Malviaalhizbi', 'Resistance Front', 'Mavia Al-Hizbi Official', 'Grief of Ummah', 'ULF J&K Official', 'Kashmir Cyber Warriors' (D-183/1 to D-183/4). The messages shared in these groups clearly establishes the cyber conspiracy hatched by Pak based terror outfits in the instant case, as already stipulated in para 17.6 to 17.21 of the chargesheet supported by D-204, D-216, statement of PWX-4, and PW-278. Recovery of images of threatening posters (D-183/10), extremist literature (D-183/11, D-183/12), audio clips of podcasts channels (D-183/8) and other relevant material on record establishes role of the accused in the overall conspiracy of the case. That the extent of radicalization of the accused is also reflected in the chat recovered from the digital device (D-183/5) wherein the accused discusses about his intent to destroy India while being in discussion with a Pakistan based cyber entity namely 'Seraj Badree'. The recovery of multiple video clips (D-183/6 and D-183/7) from the digital devices of the accused invariably establishes that the accused was receiving training in handling (assembly / disassembly) of large weapons (AK-47 etc.) from Pak-based handlers of proscribed terrorist



organizations. In one of the videos, the accused even confesses to the Pakistan based handler that he has been involved in the stone pelting activities and express his desire to take up arms for freedom of Kashmir and to fight India. The accused was thus conspiring and committed acts preparatory to the commission of a terrorist act. That the proximity of the accused with different Pakistan based Cyber entities and groups orchestrating a cyber conspiracy is further established from the recovery of screenshots from digital device (D-183/14 and D-183/15), related to recruitment of cadres to terrorist ranks. Further recovery of images of graffiti "We are TRF", "posters of TRF" etc. read with the statement of PW-257, also establishes that accused took prints of the threatening posters of IRF and pasted these posters in and around Bemina area of Srinagar to further the agenda of terrorist organizations. Additionally, recovery of image of co-accused A-3, establishes inter-connectivity of the accused with co-accused acting as a 'hybrid cadre'.

119. Ld. Counsel for A-27 argued that applicant/accused is aged about 27 years and has no prior criminal antecedents. It is argued that the alleged weapon training received by applicant do not in any way link the applicant/accused to alleged conspiracy or proscribed terrorist organization. That there is no audio of unknown person in the video where other person is holding a fire arm but accused is unarmed. There is no material on record that there has been any attempt to prosecute or even investigate the identity of person other than a bald averments of the person being a TRF handler. That even if it is assumed that in the video call, other person showed gun to applicant, is not sufficient. It is further argued that there is nothing to corroborate the version of accused printed and pasted radical posters in furtherance of terrorist activity. It is also argued that mere possession of extremist literature is not enough and/or merely being part of certain telegram groups without intention or attempt to further terrorist activities not sufficient to attract UAPA. It is argued that there was



no contact of accused with any other co-accused. It is argued that even if it is assumed that accused had knowledge of A-3 but in absence of any conversation, it cannot be said that accused had any intention to further the terrorist activities of A-3. That there is no material on record to corroborate allegation against accused. That the statement of PW257 is vague and unsubstantiated as well as was recorded four months after arrest of accused. It is submitted that accused be discharged.

120. The testimony of PW257 is on the fact of taking print-out of posters of certain banned organizations and the response of accused qua situation faced by Kashmiris due to atrocities done by law enforcement people. Evidence/material in the form of data extracted from the digital device seized from A-27 is on record. Accused is found to be member of multiple social media groups. In one of the chat extracted from his social media account, where he is speaking to one Mustaqi Ghai and claiming that he also wants to do something and has stated that he is ready to do some work and request to assign it to him. At another place, this part of chat no. 467, he claims that he wants to destroy India. One may argue that this material at the highest is an indication of the mindset of accused and in other words, of the intention of accused. However, the desire expressed by accused cannot be considered in isolation and has to be seen holistically in view of the entire material on record. From the data extracted of device seized from accused, screen-shots have been retrieved of telegram chats showing accused being associated with number of telegram channel/individual. Accused has disclosed that he was tasked by admin of one of group to paste posters of TRF and share the same in the group. This disclosure along with the fact in the testimony of PW-257 shows overt act on behalf of accused. Photograph of co-accused Bilal Ahmed Mir has also been retrieved from the device of accused which shows that they were in touch and known to each other. There are other audio clips which are aimed at spreading false propaganda and anti-India narrative. There is a transcript of the script/audio of



accused in one of the videos. The transcript shows the readiness of accused to use violent means by raising armed rebellion. There is a video clip of about 05 minutes and 38 seconds retrieved from the digital device of accused where he is taking step by step training from an unidentified person and the said training is in respect of assembly and usage of weapon like AK-47. On behalf of accused, it was argued that the investigation has not been done in respect of that unidentified person. Even if it is accepted that prosecution failed to investigate into this aspect, it does not take away an apparent fact that video was about weapons training and accused was actively participating in that. 120.1. Therefore, in view of the above, it is clear that there is sufficient material on record to show that prima facie case is made out against him.”

6. The Appellant had moved an application before the Id. ASJ seeking interim bail in view of the precarious health condition of his father. The said application for interim bail was considered on 9th January, 2025 and after having considered the medical condition, the Trial Court had granted custody parole to the Appellant in the following terms:-

“7. On behalf of NIA, in the written reply as well as in oral submissions contention is made that on humanitarian ground, applicant/accused may be admitted in custody parole. Ld. Defence counsel has submitted that he has instructions to say that applicant/accused is not having any financial sources to bear the expenses of custody parole. It implies that applicant/accused was not seeking custody parole for not having sufficient finances means. Given the facts of this peculiar application, where it has come on record that health condition of applicant/accused is such which seems serious, a son should not be held back from meeting his father only for financial constraints. Thus, it is directed that applicant/accused is admitted in custody parole for period of six hours for two days at



the earliest and preferably not later than 12th January 2025. The authority concerned may book the ticket in Tatkal. The expenses of custody parole, traveling to the hospital/home of accused and for his return journey shall be borne by State.

8. It be noted in this regard that jail authorities, local police station would ensure that accused would not go to any other place and would not meet any other person except family members of accused/applicant. In this regard for maintaining the dignity of the occasion, those police officials who would accompany accused/applicant may not be in police uniform, however, other officials of force who would be ensuring the law and order, security etc. can be in uniform and stay outside the hospital/home.

9. Jail Superintendent and authorities concerned are directed to ensure adequate safety / security measures are to be taken while taking the accused for custody parole. Jail authorities are also directed to coordinate with local Police Station for ensuring law and order situation, security etc. as well as to take appropriate measures to ensure that the accused/applicant may not flee away during custody parole.

11. Applicant/accused shall not be allowed to meet anyone except his wife, children, father and mother and that too one by one. Photocopy of I.D. of all who have met the accused shall be retained. If any person mentioned above is not carrying I.D, he/she shall not be allowed to meet accused.

11.1 Accused shall not be allowed to use mobile phone or landline phone. During this period, no one will be allowed to click picture with accused. It is also clarified that present orders are only qua the case pending in this court.

11.2 Incharge of Troupe escorting accused shall be having authority to bring back accused from hospital/home of applicant/accused before expiry of six hours, in case, there is violation of any of the condition of custody parole.”



7. After this order was passed on 9th January, 2025, the Appellant was taken in terms of the said order to Srinagar to meet his father and his family. As per the Petitioner, he left from Delhi on 12th January, 2025 and reached Srinagar on 13th January, 2025. In the interregnum, however, unfortunately the father of the Appellant passed away on 12th January 2025 and the last rites could not be performed by the Appellant as he was yet to reach Srinagar.

8. Ms. Shilpa Singh, Id. Counsel for the NIA, has been queried by the Court as to why the Appellant could not be taken immediately after the order granting custody parole was passed on 9th January, 2025. She submits that since the cost of the entire custody parole was to be borne by the State, necessary approvals were to be obtained and thereafter arrangements were made for the travel of the troupe along with the Appellant.

9. Since, by the time the Appellant reached Srinagar, his father had passed away and his last rites had already been conducted, the Appellant now prays for interim bail to participate in the remaining rituals. Mr. Krishna, Id. Counsel for the Appellant submits that there are two more ceremonies which are to be held *i.e.*:-

1. *Fatih Khani* prayers at graveyard and at the residence of the Appellant's late father on 4th day of his passing *i.e.*, 15th January, 2025.

2. *Fatih Khani* prayers at graveyard and at the residence of the Appellant's late father on 15th day of his passing *i.e.*, 26th January, 2025.

10. Ms. Singh, Id. Counsel for the NIA, raises a preliminary objection as to the maintainability of the present appeal on the ground that the impugned



order is an interlocutory order which is not maintainable under Section 21 of NIA Act.

11. The request of the Appellant is also opposed by Id. Counsel for the NIA, who on instructions from the Delhi Police, submits that about 8 to 9 security personnel from Delhi Police are accompanying the Appellant. She further submits that the law and order situation in Srinagar is extremely sensitive and there are at least 80-100 people who have assembled at or around the Appellant's home in Srinagar.

12. It is further submitted by Ms. Singh, that the cost of the custody parole for additional days is also to be borne in mind and secondly, the ceremonies *qua* the last rites of the Appellant's father themselves would be ending today. Moreover, it is submitted on instructions that the Appellant has been taken to the graveyard for the prayers today.

13. The NIA has also raised concerns owing to the forthcoming Republic Day on 26th January, 2025 and that the Appellant's staying back in Srinagar could create a law and order problem.

14. The Court has considered the matter. The demise of the father of the Appellant, after the Appellant was granted custody parole is quite unfortunate. The Trial Court has exercised its discretion and has granted custody parole at the cost of the State itself considering the nature of the matter. The demise has taken place post the impugned order being passed. However, the Appellant had reached Srinager on 13th January, 2025. Today is already 15th January, 2025 and the prayers at the graveyard have to be held today for which the Delhi Police personnel have informed the Court that the Appellant is being permitted to participate in the prayers.

15. The Court has also considered the order on charge and the allegations



against the Appellant. After having considered the same, it is directed that today evening, until departure from Srinagar, the Appellant shall be permitted to meet his family in terms of the order passed by the Id. ASJ on 9th January, 2025.

16. After the Appellant has conducted the prayers at the graveyard today and met his family, he shall be brought back to Delhi in terms of the bookings already made by Delhi Police.

17. The appeal along with any pending application is disposed of. The question of law on maintainability of the present appeal is left open.

18. Copy of this order be communicated to the concerned Jail Superintendent for necessary information and action.

19. *Dasti.*

PRATHIBA M. SINGH, J

DHARMESH SHARMA, J

JANUARY 15, 2025/gunn/ms