

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.42 of 2024

Arising Out of PS. Case No.-31 Year-2022 Thana- NIA District- Patna

Md. Reyaz Moarif @ Babloo S/O Md. Islam Village- Kuawan, Ward No. 11,
P.S. Chakia, Dist. East Champaran @ Motihari (Bihar)- 845412.

... .. Appellant

Versus

The Union of India through the National Investigation Agency.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Syed Masleh Uddin Ashraf, Advocate
For the NIA	:	Mr. Dr. K.N. Singh, ASG
		Mr. Manoj Kumar Singh, Advocate
		Mr. Shivaditya Dhari Sinha, AC to ASG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-05-2024

Heard learned counsel for the appellant and Dr. K.N. Singh, learned ASG assisted by Mr. Manoj Kumar Singh, learned counsel for the National Investigation Agency (in short 'NIA').

2. This appeal under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'Act of 2008') has been preferred for setting aside the order dated 23.11.2023 passed by learned Special Judge, NIA, Patna, Bihar in Special Case No. 13 of 2023/R.C. No. 31 of 2022 arising out of Phulwari Sharif P.S. Case No. 827 of 2022 registered for the offences under Sections 120, 120(B), 121, 121(A), 153(A), 153(B)/34 of the Indian Penal Code (in short 'IPC') and Section



13 of the Unlawful Activities (Prevention) Act, 1967 (in short 'UA(P) Act').

3. As per the prosecution story, the informant filed a self-written report on 12.07.2022 at about 22:50 Hours alleging therein that on 11.07.2022 at about 07:30 P.M. on a secret information, when he along with other police personnel conducted raid at the rented house of co-accused Athar Parwez at Ahmad Palace and at Gulistan Mohalla, he recovered flag, handbills, a seven pages booklet/document and a rent agreement paper. Accordingly, a seizure list was prepared and Athar Parwez and Md. Jalaluddin were apprehended.

4. In connection with the present case, this appellant who was admittedly the Vice President of the Popular Front of India (PFI) of the State of Bihar was apprehended on 09.09.2023 and he is in judicial custody since then.

Submissions on behalf of the Appellant

5. Mr. Ashraf, learned counsel for the appellant has submitted as under:-

(i) The PFI was an organization registered under the Societies Registration Act XXI of 1860 vide Registration No. S/226/District South/2010, Delhi. The aim and object of the organization is inter alia to promote national integration,



communal amity and social harmony and to uphold the democratic set up and secular order and rule of law in the country.

(ii) At the time when the appellant became member of the PFI, it was not banned by the State of Bihar, therefore, his becoming member of the organization was not in contravention of any law. The organization has been banned only by a notification published in extraordinary Gazette Notification vide CG-DL-E-28092022-239179 Part II, Section 3, Sub-section (ii) No. 4370 on 28.09.2022. It has been banned for a period of five years by the Home Ministry, Government of India.

(iii) According to him, the recovery of seven pages booklet/document, namely, “India 2047 Rule of Islamic India, Internal Document” is highly doubtful and suspicious recovery and it seems to have been planted by the prosecution to implicate the appellant in this case with ulterior motive and nefarious design.

(iv) The seizure lists which were prepared on 11.07.2022 at 20:30 Hours and again at 22:45 Hours do not bear the signature of any accused, the seizure lists have not been prepared in consonance with the provisions contained under Section 100 Cr.P.C., hence, the story of recovery of the documents is highly doubtful.



(v) The prosecution has failed to bring any prima facie material to demonstrate that any person was given training in the premises which was taken on rent in Ahmad Palace. The submission is that these allegations are completely vague and imaginary based on conjecture and surmises.

(vi) According to him, Sections 121 and 121(A) IPC would not be attracted against the appellant for the reason that these sections have been leveled against the appellant by the prosecution on the basis of the alleged recovered seven pages booklet (India 2047). According to him, by no stretch of imagination, even accepting without admitting, its contents speak about two communities of the country and certainly not waging war against the Government of India.

(vii) Sections 153(A), 153(B) IPC and Section 13 of the UA(P) would not be attracted in this case.

6. By raising the aforesaid grounds, learned counsel for the appellant submits that the learned Special Judge, NIA, Patna has not appreciated the entire submissions of the appellant and rejected the prayer for bail keeping in view the rigors of Sub-section (5) of Section 43B of the UA(P) Act.

7. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Vernon Vs. The State of**



Maharashtra and Another reported in **2023 LiveLaw (SC) 575: 2023 INSC 655** and in the case of **Shoma Kanti Sen Vs. The State of Maharashtra and Another** delivered on 05.04.2024 in Criminal Appeal No. 2595 of 2023. It is his submission that the rigors under Sub-section (5) of Section 43-D of the UA(P) Act would not come in the way of a Constitutional Court in relaxing the rigors of such provision where there is no likelihood of trial being completed within a reasonable time.

8. It is submitted that in this case, the appellant is in custody since 09.09.2023, chargesheet has already been filed and cognizance has been taken but till date, the charges have not been framed. According to learned counsel for the appellant, the trial has yet not begun and it is likely to be completed in near future.

Submissions on behalf of the NIA

9. The prayer for bail of the appellant has been vehemently contested by Dr. K.N. Singh, learned ASG representing the NIA. A counter affidavit has been filed with a copy of the chargesheet as Annexure 'F'. Learned ASG has drawn the attention of this Court towards the materials collected by the Investigation Agency in course of investigation. Paragraph '17.6' of the chargesheet (Annexure 'F') briefly takes note of the alleged document "India 2047 Towards Rule of Islamic India, Internal



Document: Not for circulation”. Learned ASG has taken this Court through the contents of this document which have been briefly noted in paragraph ‘17.6’ of the chargesheet.

10. As regards the role of this appellant, learned ASG points out from paragraph ‘17.29’ of the chargesheet that this appellant happens to be the authorized signatory of the Canara/Syndicate Bank Account of the PFI, Bihar State and as an authorized signatory, he got transferred funds in the account of Muslim Youths who were shortlisted for recruitment in PFI. Besides, he also got deposited funds in the bank accounts of himself, accused Shamim Akhtar (A-3), Sanaullah (A-5) and Tausif (A-6) and other PFI members i.e. Gulam Sarwar, Hasan who were involved in training and other activities of the PFI.

11. It is pointed out that such persons who have received funds from the PFI bank account of Bihar in form of scholarships etc. were interviewed by the FIR named accused Reyaz Moarif (appellant), Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Mehboob-ur-Rehman (A-11) and Nooruddin Zangi (A-19) for providing scholarships. During interview, they were offered to join Popular Front of India and to undergo training for its membership/Cadre. This appellant had also been instrumental in arranging a spacious accommodation for PFI Cadres and for this



purpose, the appellant and others had finalized first floor of Ahmad Palace. They had given advance rent of Rs.32,000/- and agreed to pay monthly rent of Rs.16,000/- to the house owner.

12. Learned ASG submits that the Government of India has imposed ban on the PFI as unlawful organisation in September, 2022 but investigation has further revealed that even after the ban of the PFI, its Cadres were still involved in propagating the ideology of the PFI and were planning for unlawful/criminal acts by arranging arms and ammunition. Accused Yakub Khan @ Sultan @ Usman (A-27), PE Trainer of the PFI and an associate of this appellant was in possession of the firearm and was arranging ammunition for carrying out unlawful/criminal activities for extending the ideology of the PFI even after ban by the Central Government.

13. Learned ASG submits that the judgments of the Hon'ble Supreme Court on which reliance has been placed by learned counsel for the appellant were rendered in a different fact situation. Learned ASG has relied upon a recent judgment of the Hon'ble Supreme Court in the case of **Gurwinder Singh Vs. State of Punjab and Another** reported in **2024 (1) PLJR SC 417** wherein the Hon'ble Supreme Court has discussed the scope and ambit of Sub-section (5) of Section 43-D of the UA(P) Act. The



Hon'ble Supreme Court has also taken note of the earlier judgment in the case of **K.A. Najeeb Vs. Union of India** reported in **(2021) 3 SCC 713** and has distinguished it on the facts of the case. It is submitted that the circumstances under which the Hon'ble Supreme Court rendered its judgment in the case of **Vernan (supra)** and **Shoma Kanti Sen (supra)** are not present in this case.

Consideration

14. We have heard learned counsel for the appellant and learned ASG for the NIA as also have perused the records. The chargesheet which has been brought on record by way of Annexure 'F' to the counter affidavit of the NIA contains specific averments as to the materials which have been found by the NIA in course of investigation of this case. The role of this appellant has also been discussed in the chargesheet. Paragraphs '17.28', '17.29' and '17.30' of the chargesheet are being reproduced hereunder for a ready reference:-

17.28 The Directorate of Enforcement vide Provisional Attachment Order Nos. 14/2022 and 15/2022, both dated 01.06.2022 has attached the bank accounts of Popular Front of India including the bank account of Popular Front of India, Bihar and Rehab India Foundation in Enforcement Directorate Case No. ECIR/02/HIU/2018 being part of the



proceeds of the crime. The same has also been confirmed by the adjudicating officer vide orders dated 23.11.2022 and 24.11.2022.

17.29 Investigation further revealed that as an authorized signatory of the said Canara/Syndicate bank account No. 75151010000714 of PFI Bihar State, Md. Reyaz Moarif (A-4) got transferred funds in the accounts of Muslim youths who were shortlisted for recruitment in PFI. Besides, he also got deposited funds in the bank accounts of himself, accused Shamim Akhtar (A-3), Sanaullah (A-5), Tausif (A-6) and other PFI members i.e. Gulam Sarwar, Hasan who were involved in training and other activities of PFI.

17.30 Investigation brought out that such persons who have received funds from PFI bank account of Bihar in form of scholarships etc. were interviewed by FIR named accused Reyaz Moarif (A-4), Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Mehboob-Ur-Rehman (A-11) and Nooruddin Zangi (A-19) for providing scholarships. During interview, they were offered to join Popular Front of India and to undergo training for its membership/Cadre. The other persons who were provided funds from bank account of PFI Bihar had imparted training to PFI cadres or working for the PFI.”

15. This Court has also been informed that finding a prima-facie case, the learned Special Judge, NIA has already taken



cognizance of the offences and now the case is ready for framing of charge and very soon steps are to be taken for framing of charge.

16. We have also gone through the judgments of the Hon'ble Supreme Court. In the case of **Vernon (Supra)**, the Hon'ble Supreme Court has referred the **Union of India Vs. K.A. Najeer** reported in **(2021) 3 SCC 713** wherein the Hon'ble Supreme Court has taken a view that the statutory restriction under Sub-section (5) of Section 43-D, *per se*, do not oust the jurisdiction of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution of India and it would be within the jurisdiction of the Constitutional Courts i.e. the Hon'ble Supreme Court and the High Court to relax the rigours of such provision where there is no likelihood of trial being completed within a reasonable time and the period of incarceration a detenue has already undergone, covers a substantial part of the prescribed sentences for the offences with which the latter has been charged. The Hon'ble Supreme Court found that the same is the ratio of the judgments in the case of **Thwaha Fasal Vs. Union of India** reported in **2021 SCC OnLine SC 1000** and **Angela Harish Sontakke Vs. State of Maharashtra** reported in **(2021) 3 SCC 723**.



17. In the case of **Vernon (Supra)**, the Hon'ble Supreme Court dealt with an argument of the appellants that the accusations against the appellants under Sections which fall within Chapters IV and VI of the 1967 Act cannot lead to a prima-facie satisfaction of the Court that such accusations are true and the available evidences at this stage do not fit the ingredients of these restrictive provisions. In ultimate analysis, the Hon'ble Supreme Court found that none of the materials which were referred by the prosecution, the acts specified to in Sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract Sub-clause (c) of Section 15(1) of the said statute.

18. In the case of **Shoma Kanti Sen (Supra)**, the FIR was registered on 06.06.2018. The FIR was initially lodged against the organizers of the Elgar Parishad Event which included activists of a cultural body known as Kabir Kala Manch. The appellant before the Hon'ble Supreme Court was not named in the FIR as an accused at that point of time. The appellant was implicated in course of investigation and a chargesheet was filed against her as Accused No. 4 for having committed offences under various sections of the Indian Penal Code and under Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the 1967 Act. The prayer for bail of



the appellant was rejected earlier by the learned Sessions Judge on 06.11.2019 considering the rigours of Sub-section (5) of Section 43-D of the 1967 Act. The Hon'ble Division Bench of the High Court of Judicature at Bombay heard the bail plea of the appellant and passed an order on 17.01.2023 disposing of the appellant's prayer for bail, giving opportunity to the appellant to approach the learned trial court for filing a fresh application for bail. Being aggrieved by the order of the Hon'ble Division Bench of the High Court of Judicature at Bombay, the appellant approached the Hon'ble Supreme Court. In this case, the Hon'ble Supreme Court held that Section 43D(5) of the 1967 Act would not be applicable in the case of the appellant. The observation of the Hon'ble Supreme Court in paragraphs '41' and '42' of the judgment are quoted hereunder for a ready reference:-

“41. Once we find that Section 43D (5) of the 1967 Act would not be applicable in the case of the appellant, we shall have to examine the case of the appellant in relation to accusation against her under Section 13 of the 1967 Act and also other offences under the provisions of the 1860 Code, which we have narrated earlier. We have already indicated that she is a lady of advanced age, suffering from various ailments. The ailments by themselves may not be serious enough for granting bail on



medical ground. But taking cognizance of the composite effect of delay in framing charge, period of detention undergone by her, the nature of allegations against her vis-a-vis the materials available before this Court at this stage in addition to her age and medical condition, we do not think she ought to be denied the privilege of being enlarged on bail pending further process subsequent to issue of chargesheets against her in the subject-case.

42. We repeat here that our observations as regards the nature of allegations against her are only prima facie views and the future course of her prosecution would be dependent upon framing of charge and if charges are framed, the nature of evidence the prosecution can adduce against her in trial as also her own defence. With these observations, we set aside the impugned judgment and direct that the appellant be released on bail on such conditions the Special Court may consider fit and proper but the conditions shall include the following:-

(a) The appellant shall not leave the State of Maharashtra without leave of the Special Court.

(b) The appellant shall surrender her passport, if she possesses one, with the Special Court, during the period she remains enlarged on bail.



(c) The appellant shall inform the Investigating Officer of the NIA the address where she shall reside during the period she remains enlarged on bail.

(d) The appellant shall use only one mobile number, during the time she remains on bail, and shall inform her mobile number to the Investigating Officer of the NIA.

(e) The appellant shall also ensure that her mobile phone remains active and charged round the clock so that she remains constantly accessible throughout the period she remains enlarged on bail.

(f) During this period, i.e. the period during which she remains on bail, the appellant shall keep the location status (GPS) of her mobile phone active, twenty-four hours a day, and her phone shall be paired with that of the Investigating Officer of the NIA to enable him, at any given time, to identify the appellants' exact location.

(g) The appellant, while on bail, shall report to the Station House Officer of the Police Station within whose jurisdiction she shall reside, once every fortnight.

19. In the case of **Gurwinder Singh (Supra)**, once again the Hon'ble Supreme Court reviewed the previous case laws on the subject and in ultimate analysis, observed in paragraphs '31' and '32' as under:-



“**31.** The Appellant's counsel has stated that in the terror funding chart the name of the Appellant does not find place. It is pertinent to mention that the charges in the present case reveals the involvement of a terrorist gang which includes different members recruited for multiple roles. Hence, the mere fact that the accused has not received any funds or nothing incriminating was recovered from his mobile phone does not absolve him of his role in the instant crime.

32. The Appellant's counsel has relied upon the case of **K.A. Najeeb** (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In **K.A Najeeb's case** this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in **K.A. Najeeb's case** the trial of the respondent-



accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.”

20. In the light of the ratio of the judgments of the Hon’ble Supreme Court discussed hereinabove, when we examine the allegations against the appellant and the materials collected by



the NIA in course of investigation which are duly mentioned in the chargesheet (Annexure ‘F’ to the counter affidavit), we are of the considered opinion that the appellant is not able to persuade us to take a view that these materials would not prima-facie disclose an offence for which the appellant has been chargesheeted. We have already noticed that the learned Special Judge, NIA has taken cognizance after finding a prima-facie case to proceed against the appellant.

21. In result, we do not find any reason to interfere with the impugned judgment. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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