

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.130 of 2024

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

Md. Irshad Alam S/o Naimuddin Ansari R/o Village- Harpur Nag, PS.-
Mahesi, Dist.- East Champaran.

... .. Appellant

Versus

The Union of India through the National Investigation Agency

... .. Respondent

Appearance :

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

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

Date : 15-05-2024

This appeal has been preferred for setting aside the order dated 14.12.2023 passed by learned Special Judge, National Investigating Agency (in short 'NIA'), Patna, Bihar in Special Case No. 7 of 2022/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 'UAPA').

2. 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 pm 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.

3. Learned counsel for the appellant submits that appellant is not named in the First Information Report (in short 'FIR'), his name has transpired in course of investigation but the materials on the basis of which the appellant has been brought within the purview of investigation and later on charge-sheeted under various Sections of the IPC and the UAPA would not *prima-facie* show that a case under the provision of IPC and UAPA is made out. It is his submission that the appellant has been implicated in this case on mere suspicion, he has been apprehended on 18.03.2023 and is in judicial custody continuously thereafter.

4. Learned counsel submits that this appellant was not a member of the Popular Front of India (in short 'PFI') and even if it is assumed for a moment without admitting it that he was a member of the organisation, that alone would not be an offence.



Learned counsel submits that the present case is based on the recovery of seven pages of booklet/document, namely, India 2047 Rule of Islamic India, Internal Document. According to him, this booklet has been shown seized on 11.07.2022 at 20:30 hours but the same does not bear the signature of any of the accused. It is submitted that the book titled 'Indian 2047' has been published by Empower India Foundation in 182 pages in its supplementary edition of 2021 which has been forwarded by prominent persons of different walks of life and the same is in public domain and available on the website. This book nowhere mentions any content against the interest of the country and it would not amount to waging war against the Government of India.

5. It is submitted that the prosecution has miserably failed to bring any material on the record to establish that this appellant had conspired to kill anyone and for that he was acting as an activist of the organisation. Learned counsel has relied upon the judgments 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 Cr. Appeal 2595 of 2023. It



is his submission that the rigours under sub-section 5 of Section 43D of the UAPA would not come in the way of constitutional court in relaxing the rigours of such provision where there is no likelihood of trial being completed within a reasonable time. It is submitted that in this case even as charge-sheet has been filed and the learned trial court has taken cognizance of the offences alleged therein, yet the charges have not been framed and the trial has not begun, therefore, it is submitted that there being no chance of conclusion of trial in near future, the learned trial court has committed an error in rejecting the prayer for regular bail of the appellant.

6. Dr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Manoj Kumar Singh, learned Advocate, has opposed the prayer for setting aside the impugned order and release of the appellant on bail. Learned ASG has taken this Court through the contents of the charge-sheet. The role played by the appellant have been discussed by the investigating agency in paragraphs 15.5, 17.1, 17.30, 17.36 and other paragraphs of the charge-sheet.

7. Learned ASG has also placed before us the transcript of the talks between the appellant and the co-accused Md. Yaqub Khan @ Usman @ Sultan. The statement of



protected witness has also been placed before us and we have perused the same.

8. It is submitted on behalf of the NIA that investigation has clearly revealed that this appellant was closely associated with the activities of the organisation, he was an active member and from the telephonic talk, which he had with the other activists of the organisation, it has been found that he had arranged the arms and ammunition and conducted reeve of a youth in order to target him. The witnesses have stated that Md. Yaqub @ Sultan @ Usman possess fire arm and encouraged Muslim youths to join PFI. He has imparted training of knife, sword and stick for self-defence to the newly recruited PFI members.

9. Learned ASG submits that this is not one of those cases in which the accused is lying in jail for a long period and the trial has not been concluded. In the present case, the NIA has already filed charge-sheet against the appellant, cognizance has been taken of the offences and now the case is to proceed for framing of charge. It is submitted that once a *prima-facie* case has been found by the learned trial court and thereafter cognizance has been taken on the basis of the materials available on the record, at this stage, it is not required to be



examined by this Court and reappreciate the materials which have been collected by the investigating agency.

10. Relying upon the 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** learned ASG submits that in this case, the Hon'ble Supreme Court has discussed the scope and ambit of sub-section 5 of Section 43D of the UAPA. The Hon'ble Supreme Court has taken note of the earlier judgment in the case of **Union of India vs. K.A. Najeeb** reported in **(2021) 3 SCC 713** and has distinguished it on the facts of the case. It is further submitted that the circumstances under which the Hon'ble Supreme Court rendered its judgment in the case of **Vernon (supra)** and **Shoma Kanti Sen (supra)** are not present in this case.

11. We have heard learned counsel for the appellant and learned ASG for the NIA as well as have perused the records. It is true that the appellant is not named in the FIR but at the same time, his name has transpired in course of investigation. The NIA has filed a charge-sheet finding that there are sufficient materials to proceed against the appellant. The relevant paragraphs of the charge-sheet have been brought to our notice and we reproduce the same hereunder:-

“17.30 During further investigation, on 18.03.2023, Md.



Irshad Alam (A-36) was also arrested in the instant case for his association in the criminal conspiracy of Md. Yaqub Khan (A-27) and his associates in their nefarious designs of targeted killing of a Hindu boy for extending the agenda of PFI by spreading the religious enmity and hatred and establishing Islamic rule in India.

17.32 During the investigation, witnesses were examined to clearly identify the criminal conspiracy hatched by the accused persons in this case and their further activities for Popular Front of India after its ban by the Central Government. The examination of witnesses revealed the association of Md. Tanweer Barkati (A-28), Md. Aabid (A-29), Md. Belal @ Irshad (A-30) and Md. Irshad Alam (A-36) with PFI, their involvement in extending the criminal activities of PFI even after its ban by the central Government, to fulfil the agenda of PFI ie. Islamic rule in India. They also stated that the accused persons used to participate in recruitment and training of PFI. They collected zakat during Ramzan and used the same in the training and other activities of PFI. The examination of witnesses also corroborated the facts that these accused persons used social media to propagate the ideology of PFI. In January, 2023, Md. Yaqub Khan (A-27) circulated a derogatory communal post on social media related to Ram Shila (stones) which were being carried for construction of Ram Mandir in Ayodhya, UP. He was vehemently opposed on social media. Due to this post, the situation of his area was aggravated and same resulted in spreading religious enmity and hatred between the people of two communities.

17.33 During the investigation, examination of witnesses also brought out the sourcing of ammunition for the firearm and recce of a Hindu youth in order to target him. Witness also stated that in the end of January, 2023, Md. Yaqub Khan (A-27) had asked them telephonically for requirement of ammunition urgently to complete some task. He used coded language i.e. “7 नम्बर जो बकरी है, ओकरा तीन-चार गो दाना खरीदना है Urgently and also “7 नम्बर का जो सोफा है उकर दू. तीन गो पऊवा चाहिए”, Later, 02 rounds ammunition was arranged by Md. Yaqub Khan @ Sultan @ Usman (A-27) from Md. Aabid (A-29) through Md. Tanweer @ Md Tanweer Barkati (A-28). Witness also stated that Md. Yaqub Khan @ Sultan @ Usman (A-27) possesses



firearm and encouraged Muslim youth to join PFI. He had imparted training of knife, sword and stick for self-defense to the new recruited PFI members. Witness also stated that the prompt action by NIA saved life of a youth.

17.35 During investigation, NIA, Ld. Court of Spl. Judge NIA cases Patna, Bihar has passed orders with directions to Director FSL, Patna and Jail Superintendent, Adarsh Central Jail, Beur, Patna for obtaining voice samples of Md. Yaqub Khan @ Sultan @ Usman (A-27), Md. Tanweer Barkati (A-28), Md. Aabid (A-29) and Md. Irshad Alam (A-36) in the instant case for matching/comparison with recorded intercepted voice call of said accused persons. In compliance to order of the Ld. Court of Spl. Judge NIA cases Patna, Bihar, on approaching by NIA team, Md. Yaqub Khan @ Sultan @ Usman (A-27), Md. Tanweer Barkati (A-28), Md. Aabid (A-29) and Md. Irshad Alam (A-36) did not provide their voice samples even after providing their consents before the Ld. Court.

17.36 Investigation revealed that accused persons were connected with each other during the relevant period of criminal conspiracy. Analysis of Call data record of mobile number 7256846744 of Md. Yaqub Khan (A-27) revealed that he was associated with the FIR named accused persons of the PFI namely Athar Parvej (A-1) mobile no. 8292626020, Md. Riyaz Maurif (A-4) mobile no. 7004947874, Taushif Alam (A-6) mobile no. 8084072313, Shamim Akhtar (A-3) mobile no. 9311114145, Mohammad Sanaullah (A-5) mobile no. 7739774394 & 9122826649, Ehsan Parvej (A-8) mobile no. 9973693322 and Mazaherul Islam @ Mazhar Imam (A-23) mobile no. 6205119635 in the criminal conspiracy of the PFI. He was also connected with other co-accused Md. Tanweer Barkati (A-28) mobile no. 9572424047. Md. Belal @ Md. Irshad (A-29) mobile no. 8294182181, Md. Abid @ Aryan (A-29) mobile no. 7766056316 and Irshad Alam mobile no. 9507947743 for extending the criminal conspiracy of PFI even after ban of the PFI by Central Government.

12. The witnesses W-103, W-106, W-107, W-109, W-110 and W-116 at PW-A have stated that the accused Md. Irshad Alam was associated with co-accused persons in the criminal



conspiracy of the PFI and was involved in recruitment, training of PFI cadres and in spreading religious enmity in a clandestine manner even after the ban of PFI by Government of India. He was also associated with co-accused in conspiracy of targeted killing by arranging ammunition.

13. In the above background of the materials available on the record, when we go through the judgment of the Hon'ble Supreme Court in the case of **Vernon** (*supra*) and **Shoma Kanti Sen** (*supra*), it is found that those judgments were rendered in a different fact situation. In Cr. Appeal (DB) No. 42 of 2024, we have taken note of the distinguishing features of the judgments of the Hon'ble Supreme Court on which reliance has been placed by learned counsel for the appellant, therefore we reproduce paragraphs '16', '17' and '18' from the judgment in Cr. Appeal (DB) No. 42 of 2024 hereunder:

“**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 Inda Vs. K.A. Najeeb** 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 High Court and the Hon'ble Supreme



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 detainee 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 this ratio has been reiterated 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 don 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 alleged 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. During this period, the investigation had been transferred to the NIA and because of the provisions made under the NIA Act, the bail plea of the appellant was placed before the Hon'ble Division Bench of the High Court. 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."

14. In the same criminal appeal, we have also discussed the judgment of the Hon'ble Supreme Court in the case of **Gurwinder Singh**. Paragraph '19' of the judgment in Cr. Appeal (DB) No. 42 of 2024 is being reproduced for a ready reference hereunder:-

"**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. Najeed** (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 Najeed'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. Najeed'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.”



15. In the kind of materials present on the record, we do not find any infirmity in the impugned judgment of the learned trial court. At this stage, this Court finds that there is no reason for this Court to record a *prima-facie* finding that the materials on the record are not disclosing commission of the offences under various provisions of the IPC and UAPA. It is noticed that there is no likelihood of inordinate delay in conclusion of trial and it seems that the case is now ready for framing of charge.

16. This appeal is therefore devoid of merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Rajiv-

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CAV DATE	
Uploading Date	16.05.2024
Transmission Date	16.05.2024

