

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.914 of 2023

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

MANZER PARWEZ @ MANZAR PERWEZ S/O ABDUL QAYUM
MOHALLA- GULISTAN, P.S-PHULWARISHARIF, DISTRICT-PATNA
... .. Appellant

Versus

THE UNION OF INDIA THROUGH THE NATIONAL INVESTIGATION
AGENCY BIHAR
... .. Respondent

with

CRIMINAL APPEAL (DB) No. 810 of 2023

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

ABDUR RAHMAN @ ABDUL RAHMAN SON OF MD. YAHYA
RESIDENT OF MOHALLA - KATHOTIA, POLICE STATION - BARARI,
DISTRICT - KATIHAR
... .. Appellant

Versus

THE UNION OF INDIA THROUGH THE NATIONAL INVESTIGATION
AGENCY BIHAR
... .. Respondent

with

CRIMINAL APPEAL (DB) No. 811 of 2023

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

MAHBOOB ALAM @ MAHBOOB NADWI SON ABDUL RASHID
RESIDENT OF VILLAGE- RAMNAGAR BANSI BARI, PS-
HASSANGANJ, DIST- KATIHAR , BIHAR
... .. Appellant

Versus

THE NATIONAL INVESTIGATION AGENCY BIHAR
... .. Respondent

with

CRIMINAL APPEAL (DB) No. 890 of 2023

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

SHAMIM AKHTAR S/O MD. WASIMUDDIN R/O MOHALLA-
KHASGANJ, PS. SOHSARAI, DIST. NALANDA @ BIHARSHARIF
... .. Appellant

Versus

THE UNION OF INDIA THROUGH THE NATIONAL INVESTIGATION
AGENCY INDIA
... .. Respondent

with

CRIMINAL APPEAL (DB) No. 917 of 2023

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

1. MD. KHALIQUZZAMAN @ KHALIQUZZAMAN @ KHALIKUR AMAN S/O LATE ANWAR AHMAD R/O MOHALLA- GONPURA, PS. PHULWARISHARIF, DIST.PATNA (BIHAR)
2. MD. AMIN @ MD. AMIN ALAM S/O MD. ZUBAIR R/O MOHALLA- GONPURA, PS. PHULWARISHARIF, DIST. PATNA (BIHAR)
- Appellants

Versus

THE UNION OF INDIA THROUGH THE NATIONAL INVESTIGATION AGENCY NEW DELHI

... .. Respondent

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Appearance :
(In CRIMINAL APPEAL (DB) No. 914 of 2023)
For the Appellant : Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent : Dr. Krishna Nandan Singh (A.S.G)
Mr. Manoj Kumar Singh, Advocate
Mr. Ankit Kumar Singh, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 810 of 2023)
For the Appellant : Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent : Dr. Krishna Nandan Singh (A.S.G)
Mr. Manoj Kumar Singh, Advocate
Mr. Ankit Kumar Singh, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 811 of 2023)
For the Appellant : Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent : Dr. Krishna Nandan Singh (A.S.G)
Mr. Arbind Kumar, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 890 of 2023)
For the Appellant : Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent : Dr. Krishna Nandan Singh (A.S.G)
Mr. Arbind Kumar, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 917 of 2023)
For the Appellants : Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent : Dr. Krishna Nandan Singh (A.S.G)
Mr. Manoj Kumar Singh, Advocate
Mr. Ankit Kumar Singh, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 02-05-2024
All the five appeals, i.e., Criminal Appeal (DB)
No.914 of 2023 (Manzer Parwez @ Manzar Perwez Vs. The

Union of India through the National Investigation Agency Bihar), Criminal Appeal (DB) No. 810 of 2023 (Abdur Rahman @ Abdul Rahman Vs. The Union of India through the National Investigation Agency Bihar), Criminal Appeal (DB) No. 811 of 2023 (Mahboob Alam @ Mahboob Nadwi Vs. The National Investigation Agency Bihar), Criminal Appeal (DB) No. 890 of 2023 (Shamim Akhtar S/O Md. Wasimuddin Vs. The Union of India through the National Investigation Agency India) and Criminal Appeal (DB) No. 917 of 2023 (Md. Khaliquzzaman @ Khaliquzzaman @ Khalikur Aman And Md. Amin @ Md. Amin Alam Vs. The Union of India through the National Investigation Agency New Delhi), which have been filed under Section 21(4) of the National Investigation Agency Act, 2008 (for short 'NIA Act') have been heard together on the issue of grant of anticipatory bail and they are being disposed of by this common order.

Factual Matrix

2. The brief facts leading to filing of the present appeals are as under:-

2.1. The Bihar Police had received an information about the plan of accused persons to cause disturbance during the proposed visit of the Prime Minister of India. On receipt of the said information, a raid was conducted by Phulwarisharif Police on

11.07.2022 at the house of Jalaluddin Khan @ Md. Jalaluddin, who had given the upper floor of his house on rent to accused Athar Parwez. From the floor of the house taken on rent by Athar Parwez, documents relating to unlawful activities aiming disrupting the sovereignty of India and to cause disaffection against the country as also for establishing Pan-Islamic rule in India by subverting the Constitution of India, were recovered. The reading of the documents so recovered suggested propagation of armed struggle and violent means to implement the aforementioned agenda.

2.2. The said Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez were arrested. The said accused gave the names of other 25 persons who were also involved in the unlawful activities and, therefore, against all the accused persons, Phulwari Sharif P.S. Case No. 827 of 2022 was registered.

2.3. It further appears from the record that the Govt. of India, Ministry of Home Affairs, after considering the nature and gravity of the offence, directed the National Investigation Agency (in short the NIA) to take up the investigation of the case vide order dated 22.07.2022. Pursuant to the said direction, the NIA re-registered the case as R.C. -31/2022/NIA/DLI dated 22.07.2022 under Sections 120, 120B,

121, 121A, 153A, 153B and 34 of the Indian Penal Code ('IPC' for short). Thereafter, Section 13 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA' for short) was also invoked.

2.4. As the present appellants are apprehending their arrest, they filed separate applications for grant of anticipatory bail in Special Case No. 02 of 2023/R.C. No. 31 of 2022 (arising out of Phulwari Sharif P. S. Case No. 827 of 2022) before learned Special Judge, N.I.A., Patna, Bihar.

2.5. By way of the impugned orders, the learned Special Judge, N.I.A., Patna, Bihar, rejected the applications filed by the respective appellants for grant of anticipatory bail and, therefore, the respective appellant filed separate appeal under Section 21(4) of the NIA Act.

3. We have heard Mr. Syed Masleh Uddin Ashraf, learned counsel appearing on behalf of the appellants in all the appeals and Dr. K. N. Singh, learned Additional Solicitor General for India assisted by Mr. Manoj Kumar Singh and Mr. Arbind Kumar, learned Advocates for the respondent Union of India in all the appeals.

4. At the outset, learned Advocate appearing on behalf of the appellants pointed out that the appellant of Cr. Appeal (DB) No. 914 of 2023, namely, Manzer Parwez @ Manzar Perwez is

shown as accused No. 18, appellant of Cr. Appeal (DB) No. 516 of 2023, namely, Abdur Rahman @ Abdul Rahman is shown as accused No. 24, appellant of Criminal Appeal (DB) No. 811 of 2023, namely, Mahboob Alam @ Mahboob Nadwi, is shown as accused No.7, appellant of Criminal Appeal (DB) No. 890 of 2023, namely, Shamim Akhtar is shown as accused No. 3 the appellants of and Criminal Appeal (DB) No. 917 of 2023, namely, Md. Khaliquzzaman @ Khaliquzzaman @ Khalikur Aman and Md. Amin @ Md. Amin Alam have been shown as accused Nos. 14 and 15 respectively.

Submission on behalf of Appellants:-

5. Learned Advocate for the appellants submits that, during the course of raid carried out by the concerned police authorities, two persons were found, i.e., accused Nos. 1 and 2 from the spot. However, on the basis of the statement of the said accused, the present appellants have been implicated and, therefore, in the First Information Report (FIR), the present appellants are shown as accused. At this stage, learned counsel has referred page 27 of the compilation, i.e., the seizure list. It is submitted that there is no signature of the accused who were found from the place of occurrence in the said seizure list. Learned counsel has also referred to page 26 of the compilation, i.e., the

second seizure list. It is submitted that the said seizure list was though signed by the accused Athar Parwez, the date shown in the said seizure list is 13.07.2022. However, in fact, certain documents were seized on 11.07.2022. Thus, it is claimed that the same was signed only later by one of the accused under duress and nothing was recovered from the residential house of accused Jalaluddin Khan @ Md. Jalaluddin or the rented premises of Athar Parwez. Thus, the aforesaid seizure list was falsely prepared and, in fact, nothing was seized from the aforesaid premises.

5.1. At this stage, it is also contended that only a seven-pages booklet/document, namely, “India 2047, Rule of Islamic India, Internal Document”, was recovered, which document could be downloaded by anybody from the internet.

5.2. Learned counsel for the appellants thereafter submitted that at the time of filing of the FIR, Popular Front of India (PFI) was not banned in Bihar. In fact, it is a registered organization under the Societies Registration Act, 1860, which promote, *inter alia*, national integration, communal amity and social harmony and uphold the democratic set up and secular order and rule of law in the country. It is also submitted that present FIR is filed in July, 2022. Thereafter, said organization was banned only on 28.09.2022, i.e., after registration of FIR.

5.3. Learned Advocate for the appellants further submits that appellant of Cr. Appeal (DB) No. 914 of 2023, namely, Manzer Parwez @ Manzar Perwez is a government servant and working as a Technician and is not connected with PFI. Similarly, appellant of Cr. Appeal (DB) No. 890 of 2023, namely, Shamim Akhtar, is President of Social Democratic Party of India, which is duly recognized by the Election Commission and has participated in the elections. The said appellant is also not a member of the proscribed organization, i.e., PFI and rather he is an active social worker. Other appellants are also not the member of PFI despite which, they have been implicated in the FIR in question.

5.4. At this stage, it is contended that even if the person is a member of an organization which was not banned at the relevant point of time, it cannot be said that such a person has committed any offence punishable under UAPA.

5.5. Learned Advocate for the appellants thereafter referred to penal provisions invoked against the appellants, i.e., Sections 120, 120B, 121, 121A, 153A, 153B and 34 of the Indian Penal Code and contended that the aforesaid provisions are not attracted on the facts of the present case. Learned counsel for the appellants has also referred to the provision contained in Section

13 of the UAPA and thereafter submits that the said provision is also not attracted. Thus, the respondent NIA has failed to make out any *prima facie* case of committing an offence by the appellants under UAPA. Hence, the bar contained under Section 43D(4) of the UAPA would not be attracted.

5.6. Learned counsel for the appellants, therefore, urged that when the bar under the aforesaid provision is not attracted on the facts of the present case, the learned Special Judge, N.I.A., Patna, Bihar, ought to have entertained the anticipatory bail applications filed by the appellants herein. Learned counsel urged that the impugned orders passed by the learned Special Judge, N.I.A., Patna, Bihar, be quashed and set aside and the appellants be released on anticipatory bail in the event of their arrest.

5.7. Learned counsel for the appellants has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***Vernon vs. The State of Maharashtra & Anr.*** (AIR 2023 SC 3926). Learned counsel, more particularly, referred paragraph 36 and 43 of the said decision. He also placed reliance upon the order dated 05.04.2024 passed by the Hon'ble Supreme Court in the case of ***Shoma Kanti Sen vs. The State of Maharashtra & Anr.*** in Criminal Appeal No. 2595 of 2023.

Submission of Learned A.S.G.:

6. On the other hand, learned Additional Solicitor General for India appearing for the respondent NIA has vehemently opposed all these appeals. Learned ASG has referred the averments made in the counter affidavit filed on behalf of the NIA in each of the appeals and thereafter submitted that, after the registration of the FIR and the case under the NIA Act, the respondent NIA has carried out the investigation and, during the course of the investigation, ample evidence has been collected against the accused, who are arrested and also against the rest of the accused who are named in the FIR. It is pointed out from the record that the investigation agency has filed charge-sheet against the arrested-accused in which there is a reference of the material collected during the course of investigation.

6.1. At this stage, learned ASG has pointed out that two other co-accused, namely, Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, who were arrested from the place of occurrence, the respondent has filed the charge-sheet. The said co-accused filed bail application with a prayer that they may be released on bail. Further, their prayer for bail was not entertained by the court of learned Special Judge, N.I.A., Patna, Bihar, and, therefore, the said co-accused preferred Cr. Appeal (DB) Nos. 514

of 2023 and 516 of 2023 respectively. It is submitted that a Coordinate Bench of this Court, after considering the materials collected by the investigation agency, rejected the appeals filed by the aforesaid co-accused vide order dated 28.11.2023. It is submitted that while dismissing the said appeals, the coordinate Bench has specifically observed that *prima facie* case is made out against the aforesaid two co-accused. Learned ASG has produced the copy of the order dated 28.11.2023 passed by the Coordinate Bench in the case of the two co-accused.

6.2. At this stage, learned ASG has referred the provisions contained in Section 43D(4) of UAPA. It is submitted that the anticipatory bail applications filed by the appellants are not maintainable in view of the aforesaid provision. In support of the said contention, learned ASG has placed reliance upon the decision rendered by the Bombay High Court in the case of *Anand Teltumbde vs. State of Maharashtra and Others*, reported in **2020 SCC OnLine Bom 1692**. Learned ASG has, accordingly, referred paragraph 45 to 50 of the said decision. At this stage, it is submitted that the order passed by the Bombay High Court rejecting the anticipatory bail application of the concerned accused was challenged by the concerned accused before the Hon'ble Supreme Court by filing S.L.P. (Crl.) No. 1916 of 2020. It is

submitted that the Hon'ble Supreme Court has also rejected the said SLP filed by the concerned accused after referring to the provisions contained in Section 43D(4) of the UAPA.

6.3. Learned ASG has also placed reliance upon the decision rendered by the High Court of Kerala in the case of *Ahammedkutty Pothiyil Thottiparambil vs. Union of India* reported in **2023 SCC OnLine Ker 5501**. Learned ASG has more particularly referred paragraph 16, 18 and 28 of the said decision.

6.4. Learned ASG has thereafter placed reliance upon the latest decision rendered by the Hon'ble Supreme Court in the case of *Gurwinder Singh vs. State of Punjab & Anr.* Reported in **2024(1) PLJR(SC) 417**. He has submitted that in the said case after considering the provisions contained in Section 43D(4) of the UAPA has rejected the bail application of the concerned accused.

6.5. Learned ASG has thereafter referred the impugned orders passed by the learned Special Judge, N.I.A., Patna, Bihar, and thereafter submitted that no error is committed by the learned Special Judge, N.I.A., Patna, Bihar, while rejecting the anticipatory bail applications filed by the concerned appellants. He, therefore, urged that all the appeals be dismissed.

6.6. Learned A.S.G., at this stage, submitted that in the facts and circumstances of the present case custodial interrogation of the appellants-accused is required and when the coordinate Bench has not entertained the bail applications filed by the other two co-accused, the present appeals, which have been filed for grant of anticipatory bail, cannot be entertained.

Discussion and Finding:

7. Having heard the learned counsel appearing on behalf of the parties and having gone through the materials placed on record, it would emerge that initially FIR of Phulwari Sharif P.S. Case No. 827 of 2022 was registered for the offences punishable under Sections 120, 120B, 121, 121A, 153A, 153B and 34 of the Indian Penal Code. Thereafter, the Govt. of India, Ministry of Home Affairs, after considering the nature and gravity of the offence, directed the National Investigation Agency to take up the investigation of the case vide order dated 22.07.2022 and, therefore, R.C. Case was registered. It is further revealed that Section 13 of the UAPA was also invoked. It further transpires that two accused were arrested from the place of occurrence, i.e., Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, who had given the name of the present appellants at the time of raid. It is pertinent to note that the investigating agency has carried out the

investigation and, during the course of investigation, ample evidence is collected against all the accused. The Investigation Agency thereafter filed the charge-sheet against two accused persons, who were arrested from the place of occurrence. It is pertinent to note that said co-accused Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez had filed bail application before the learned Special Judge, N.I.A., Patna, Bihar, which came to be rejected and, therefore, they filed Cr. Appeal (DB) Nos. 514 of 2023 and 516 of 2023. It is not in dispute that the Coordinate Bench of this Court by order dated 28.11.2023, after considering the similar type of contentions raised by the present appellants and after verifying the investigation papers and after considering the provisions contained in Section 43D(5) and (6) of the UAPA specifically observed that the *prima facie* case is made out against the said accused. The Coordinate Bench has, therefore, rejected the appeals filed by the said two co-accused.

7.1. In the present case, respondent NIA has filed counter affidavit in all the appeals and that copy of the charge-sheet, which is filed against the other arrested accused is also placed on record. From the materials placed on record, we have found that the concerned accused Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez had refused to sign the seizure list. It

is pertinent to note that the Coordinate Bench, while rejecting the appeals filed by the aforesaid two co-accused, has considered similar contentions which are raised by the present appellants and thereafter observed in paragraph 17 to 23 as under: -

“17. We have examined the police papers, the charge-sheet and the statement of the protected witnesses, produced in sealed cover.

18. It was disclosed during investigation that there was a definite plan to disturb the visit of the Prime Minister to Bihar. During the raid, five sets of document, India 2047 towards Rule of Islamic India, Internal Document; not for circulation and pamphlet of Popular Front of India, 20th of February, 2021 in different languages were recovered. The documents propagated and adjured participation in the activities of the P.F.I.

19. Appellant/Jalaluddin Khan @ Md. Jalaluddin admitted of having rented the first floor of his house to appellant/Athar Parwez for imparting training to the cadre of P.F.I. on 6th and 7th of July, 2022 (in fact, the rental document is in the name of the wife of appellant/Jalaluddin Khan @ Md. Jalaluddin and appellant/Athar Parwez). In the afore-noted training on 6 th and 7th of July, 2022, many persons from outside the State of Bihar had received training. This was confirmed by appellant/Athar Parwez, who admitted of his being actively associated with Student Islamic Movement of

India (SIMI) earlier, which today is a banned terrorist organization. He had been providing legal help to SIMI members lodged in jail. On the directions of P.F.I., investigations revealed, he was preparing a secret group of ex-SIMI members with the aim of taking revenge against the atrocities committed against Muslims in India and to attack the persons who had, in the past, made derogatory remarks against Islam. It was found during the investigation that the assemblage was in support of the revenge action taken at Amrawati (Maharashtra) and Udaipur (Rajasthan) in retaliation to derogatory comments against Islam.

20. From the documents recovered from the premises of appellants/Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, it was found that it contained an estimation that even if 10 per cent of the total Muslim population would rally behind P.F.I., the majority community would be subjugated. Four stages were spelt out for carrying out the objective, namely, to establish the rule of Islam in India. Those stages are: uniting Muslims and giving training of weapons; using violence selectively to demonstrate strength and terrorize opponents; alliance with S.Cs. and S.Ts. to divide the Hindus and to somehow or the other infiltrate in police, army and judiciary. With these objectives in mind, the final stage was conceived of when the P.F.I., would declare a new constitution based on Islamic principles with the help of external forces. While

doing this, it was also urged to use the reference of Babri Masjid for radicalization and mass mobilization. It also suggested collection of information against extremist Hindu organizations so as to take selective revenge.

21. During the course of investigation, the mobile phones, SIM cards and other digital devices, which were seized, were sent to Thiruvananthapuram, Kerela, for data extraction and analysis. The extracted data was found to be replete with communally objectionable videos which were circulated to spread religious animosity and hatred. Those extracted data also confirmed the participation of the appellants in various protests organized by P.F.I. and other organizations under its umbrella.

22. The statements of the protected witnesses, namely, X, Y and Z, clearly reveal that all of them were allured to join P.F.I. by promising to provide scholarships and later they were attempted to be drawn into the nefarious vortex of hate. The prime purpose of their enlistment was to give further fillip to Muslim empowerment and to execute future plans of P.F.I.

23. We are conscious enough not to discuss and evaluate the materials collected during the course of investigation in any greater detail, except for the purposes of testing the correctness of the orders passed by the Special Court, N.I.A., rejecting the prayer for bail of the appellants.”

7.2. Learned counsel for the appellants submitted that the concerned co-accused are in process of filing SLP before the Hon'ble Supreme Court against the said order. However, he has fairly submitted that, till today, no order has been passed by the Hon'ble Supreme Court in the case of the aforesaid two co-accused.

7.3. We have examined the materials placed before us, it transpires therefrom that not only a conspiracy to disrupt the visit of Hon'ble Prime Minister to Bihar was hatched, it would have a disastrous cascading effect on the public order in the country, had the police not been able to thwart it in time. The document recovered during the raid in different language speaks volumes about the nefarious design of the accused, who subscribed the ideology of fundamentalist organizations propagating the agenda *India 2047 towards Rule of Islamic India, Internal Document*.

7.4. Co-accused Jalaluddin Khan @ Md. Jalaluddin has admitted renting the first floor of his house to Athar Parwez for imparting training to the cadre of PFI on 6th and 7th of July, 2022. The said rental document is in the name of the wife of Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez). In the said training on 6th and 7th of July, 2022, many persons from different parts of the

country had received training, which fact too was confirmed by Athar Parwez. Athar Perwez has admitted to be actively associated with Student Islamic Movement of India (SIMI) earlier, which is now a banned terrorist organization, by providing legal help to SIMI members lodged in jail. During the investigation, it was revealed that he was preparing a secret group of ex-SIMI members with the aim of taking revenge against the alleged atrocities committed against Muslims in India and to attack the persons who had made derogatory remarks against Islam earlier at the instance of PFI. It was found during the investigation that the said training was organized in support of the revenge action taken at Amrawati (Maharashtra) and Udaipur (Rajasthan) in retaliation to derogatory comments against Islam.

7.5. It transpires from the documents recovered from the premises of Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez that even if 10 per cent of the total Muslim population would rally behind PFI, the majority community would be subjugated. Four stages were evolved for to establish the rule of Islam in India, e.g., uniting Muslims and giving training of weapons; using violence selectively to demonstrate strength and terrorize opponents; alliance with S.Cs. and S.Ts. to divide the Hindus and to somehow or the other infiltrate in police, army and

judiciary. With these objectives in mind, the final stage was conceived of when the PFI, would declare a new constitution based on Islamic principles with the help of external forces. While doing this, it was also urged to use the reference of Babri Masjid for radicalization and mass mobilization. It also suggested collection of information against extremist Hindu organizations so as to take selective revenge.

7.6. During the course of investigation, the mobile phones, SIM cards and other digital devices, which were seized, were sent to Thiruvananthapuram, Kerela, for data extraction and analysis. The extracted data was found to be replete with communally objectionable videos which were circulated to spread religious animosity and hatred. Those extracted data also confirmed the participation of the appellants in various protests organized by PFI and other organizations under its umbrella.

7.7. Thus, from the investigation papers and the copy of the charge-sheet placed before us, we are of the view that *prima facie* case is made out against the present appellants also. It is true that initially on the basis of the statement of the aforesaid two co-accused, present appellants have been implicated in the FIR. However, the materials on record *prima facie* indicate the complicity of the accused in the unlawful activities alleged by the

investigating agency. It is further revealed that the present appellants are evading their arrest. From the investigation papers it would further reveal that *prima facie* it can be said that the present appellants have committed the alleged offences punishable under the UAPA and, therefore, the appeals filed by the appellants for grant of anticipatory bail would not be maintainable. At this stage, it is also relevant to note that the contentions which are taken by the appellants in the present appeals were also taken by two other co-accused, namely, Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez in Cr. Appeal (D.B.) Nos. 514 of 2023 and 516 of 2023, however, the coordinate Bench of this Court has not entertained similar contentions and thereby rejected the bail applications filed by the said two co-accused. It is not in dispute that till today the order passed by the coordinate Bench of this Court in the case case of two co-accused is not set aside by the higher forum. Hence, the similar contentions taken by the appellants in the present appeals are misconceived.

7.8. At this stage, we would like to refer to the decision rendered by the Bombay High Court in the case of *Anand Teltumbde* (supra). The Bombay High Court has observed in paragraph 45, 49 and 50 in the said case as under: -

45. Section 43D(4) of UAPA Act categorically mentions that Section 438 of

Code shall not apply in relation to any case involving arrest of any person accused of having committed an offence punishable under the Act. The Legislature has omitted the applicability of Section 438 of Cr. P.C. with some purpose. The purpose has to be read with the object of the Act and the fetters imposed in Section 43D(5) for granting bail to the accused, who is prosecuted under the provisions of UAPA Act. The UAPA Act was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith. The preamble of UAPA Act reads as follows:

“An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith;

[WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;]

AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the State to take action against certain terrorists and terrorist organizations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947), has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;

AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”

49. Thus, it is crystal clear that there is an object behind introducing Section 43D(4) of UAPA Act creating bar for applicability of Section 438 of Cr. P.C. and hence the application seeking anticipatory bail in exercise of powers u/s 438 of Cr. P.C. is not maintainable in law.

50. Learned counsel for applicant had vehemently contended that there is no evidence to apply the provisions of UAPA Act and hence this application has to be entertained. The submission deserves to be rejected in view of aforesaid observations. The learned counsel had urged before Sessions Court and this Court that provisions of UAPA Act are not applicable. The applicant is prosecuted for offences under IPC and UAPA Act. Even taking into consideration the submission advanced by learned counsel for applicant, on perusal of all the material on record, it can be seen that there is prima facie evidence showing complicity of applicant in the crime. Hence, in light of the material, said submission also deserves to be rejected. The Hon'ble Supreme Court in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali (supra) in paragraph 27 has observed that the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is

required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter of trial. The Court must look at the contents of the document and take such document into account as it is. In paragraph 52 of the said decision it was observed that the issue of admissibility and credibility of the material and evidence presented by the Investigating Officer would be a matter of trial.”

7.9. At this stage, it is relevant to note that the aforesaid order of the Bombay High Court rejecting the anticipatory bail application of the concerned accused was challenged by him before the Hon’ble Supreme Court. The Hon’ble Supreme Court dismissed the SLP vide order dated 16.03.2020. Copies of both these orders have been placed on record by the learned counsel.

7.10. In the case of **Ahammedkutty Pothiyil Thottiparambil** (supra), the Kerala High Court has observed in paragraph 28 as under: -

“28. Be that as it may, as noted, final report has not been filed in the case against all

the accused. Even the accused against whom final report has already been filed, further investigation is going on. The appellant is a person against whom final report has not been filed, inasmuch as investigation into his involvement in the crime is yet to be over. One of the reasons stated for not submitting final report against the appellant is that he is yet to be interrogated as he has been evading arrest all throughout, and having regard to the materials so far collected against the appellant, his custodial interrogation is necessary to obtain a clear picture of his complicity in the crime. Having regard to the averments in the final report submitted in the crime against some of the accused, where there is reference about the alleged involvement of the appellant also, we are of the view that the investigating agency cannot be found fault with in taking the stand that custodial interrogation of the appellant is necessary in the case. There is no bar against conducting further investigation under Section 173(8) of the Code after final report is submitted under Section 173(2) of the Code. Further investigation is merely a continuation of the earlier investigation. This position has been reiterated by the Apex Court in the recent judgment in State v. Hemendhra Reddy, 2023 SCC OnLine SC 515 also. Needless to say, the

argument advanced by the learned counsel for the appellant that inasmuch as final report has already been submitted against some of the accused in the crime, the investigating agency cannot bring any additional materials against the appellant and that the appellant is, therefore, entitled to be treated at par with the remaining accused in the case who have already been granted bail, is therefore without substance. In other words, on merits also, according to us, this is not an exceptional case in which the court could exercise the power to grant pre-arrest bail if at all such power could be exercised in a case of this nature involving an offence punishable under the UAP Act.”

7.11. In the case of **Gurwinder Singh** (supra), the Hon’ble Supreme Court was considering the bail application filed by the concerned accused. The Hon’ble Supreme Court has observed in paragraphs 19 and 20 as under: -

“19. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The ‘justifications’ must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, ‘prima facie’ standard, as a measure of the degree of satisfaction, to be recorded by Court when

scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ali Watali² has noticed this difference, where it said:

"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D,

which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.”

7.12. In the case of **Vernon** (supra), the Hon’ble Supreme Court has observed in paragraphs 26, 29, 36 and 43 as under: -

“26. In none of the materials which have been referred to 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. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding

of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true.

29. We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications.

Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged.

36. In the case of Zahoor Ahmad Shah Watali (supra), it has been held that the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the charge-sheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In our opinion, however, it would not satisfy the prima facie “test” unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be

implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have joined this “struggle” inspired by the appellants has been brought before us. Thus, we are unable to accept NIA’s contention that the appellants have committed the offence relating to support given to a terrorist organisation.

43. In the case of Zahoor Ahmad Shah Watali (supra) reference was made to the judgment of Jayendra Saraswathi Swamigal -vs- State of Tamil Nadu [(2005) 2 SCC 13] in which, citing two earlier decisions of this court in the cases of State -vs- Jagjit Singh (AIR 1962 SC 253) and Gurcharan Singh -vs- State of (UT of Delhi) [(1978) 1 SCC 118], the factors for granting bail under normal circumstances were discussed. It was held that the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the

accused not being secured at the trial; reasonable apprehension of witnesses being tempered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. Juxtaposing the appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, we are satisfied that the appellants have made out a case for granting bail. Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the 1967 Act, we have referred to the materials available against them at this stage. These materials cannot justify continued detention of the appellants, pending final outcome of the case under the others provisions of the 1860 Code and the 1967 Act."

7.13. At this stage, it is relevant to note that after considering the various decisions rendered by the Hon'ble Supreme Court in the aforesaid case of **Vernon** (supra), the Hon'ble Supreme Court has considered the provisions contained in Articles 14 and 21 of the Constitution of India and keeping in view the fact that the concerned accused was in custody for more than five years, released the said accused on bail. However, in the

present case, the appellants are praying for grant of anticipatory bail. In view of the materials/evidence collected by the investigating agency in the present case *prima facie* case has been made out against the appellants and, therefore, the aforesaid decisions would not render any assistance to the appellants herein.

7.14. In the case of ***Shoma Kanti Sen*** (supra), the Hon'ble Supreme Court has considered various earlier decisions and thereafter released the concerned accused on bail mainly on the ground that she is a lady of advance age suffering from various ailments. There was delay in framing the charge after considering the period of detention undergone by her as well as the nature of allegation and the material available before the Court, the Hon'ble Supreme Court released the said accused on bail. We cannot dispute the proposition of law laid down by the Hon'ble Supreme Court in the said case. However, as discussed hereinabove, in the present case, there is ample material collected by the investigating agency during the course of investigation. Therefore, *prima facie* case is made out against the appellants. Further, the present appeals are for grant of anticipatory bail and, therefore, the decisions upon which the appellants have placed reliance would not render any assistance to them.

7.15. Thus, in view of the aforesaid facts and circumstances of the present case, the custodial interrogation of the appellants is required. Further as discussed hereinabove *prima facie* case has been made out against the appellants and, therefore, bar contained in Section 43D(4) of the UAPA would be attracted.

7.16. We have also gone through the reasoning recorded by the learned Special Judge, N.I.A., Patna, Bihar, while rejecting the applications filed by the appellants and we are of the view that learned Special Judge, N.I.A., Patna, Bihar, has not committed any error while rejecting their applications.

8. In view of the aforesaid facts and circumstances of the present case, we are not inclined to entertain the present appeals.

9. Accordingly, all the appeals stand dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Pawan/-

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