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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 21st August, 2024**Date of Decision: 30th August, 2024*

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CRL.A. 564/2024**O.M.A. SALAM**

.....Appellant

Through: Mr. Adit S. Pujari, Mr. Shaikh Saipan,
Mr. Shaurya Mittal, Ms. Mantika
Vohra Mr. Arif Hussain, Advocates
(M: 9923973915).

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr. Rahul Tyagi, SPP (NIA) with Mr.
Jaitn, Mr. Vikas Walia, Ms. Vaideshi
Singh, Mr. Abhishek Tomer, Ms.
Nancy Bhati, Ms. Phani Bhushan, Mr.
Ambur Bhandari, Advocates and DSP
T.V. Rajesh (NIA).

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

Background:

2. The present appeal has been filed on behalf of the Appellant- O.M.A. Salam under Section 21(4) of the National Investigation Agency Act, 2008 (*hereinafter, the 'NIA Act, 2008'*) challenging the impugned order dated 31st May, 2024 passed by the Id. Special Judge (NIA), Patiala House Courts, New Delhi in NIA Case No. **RC No. 14/2022/NIA/DLI** titled **NIA v. OMA Salam & Ors** by which the prayer for interim bail was rejected.

3. Vide order dated 31st May, 2024 the Special Court while considering



the position of the Appellant who is the Chairperson of the Popular Front of India ('PFI') which is a banned organisation as also the nature of allegations against him, denied bail to the Appellant herein. The relevant portion of the order dated 31st May, 2024 is extracted herein:

"10. In the detailed reply filed by the State, a brief synopsis of evidences against accused is put up. As noted above, the court is also required to look into the possibility where accused is likely to commit or indulge in similar violation. Applicant/accused is stated to be indulged in the alleged activities leading to commission of crime on multiple occasions spread over a period of time. This court does not have a magic wand to ascertain whether or not an accused shall commit similar violations if released on bail but the likelihood of the same can be ascertained from the previous conduct of the accused. Since, there are allegations of accused being indulged in alleged activities over a period of time and on multiple occasions, a possibility cannot be ruled out that if let out on bail, the accused shall not indulge in similar activities/ violations.

*11. Further another objection raised on behalf of NIA is that applicant/accused wields lot of influence being the Chairperson of banned organization and there is every possibility of protected witnesses being threatened. A tripod/triple test is laid down to be considered at the time of adjudication of bail plea of an accused and the same shall be considered at the time of bail plea for temporary release as well. Applicant/accused has claimed that there is no possibility of him tampering with evidence or influencing any witness nor applicant/accused is a flight risk. However, to the objection raised on behalf of NIA in respect of possibility of influencing the witness, no concrete reply could be given. **It is not in dispute that applicant/accused was Chairperson of the banned organization. The matter is at the stage of***



consideration of Charge which implies that copies of statement of witnesses are already been given to the accused. In such situation, where an apprehension has been raised on behalf of NIA of possibility of threat to witnesses, same cannot be brushed aside simply on the basis of oral contention of accused. The objection raised on behalf of NIA cannot be said to unfounded or put in air as same is attributed to the position of applicant/accused which is an. no concrete reply could be given. admitted fact. This foundation of the objection could not be refuted on behalf of accused.

12. Hence, as a sequel of my above discussion, it is held that application is disposed of as dismissed.”

4. The fundamental ground on which the Appellant seeks bail in the present appeal is on the premise that the daughter of the Appellant who was an MBBS student passed away on 18th April, 2024 in a vehicle accident. Post the said accident, it is claimed that the wife of the Appellant is suffering from extreme grief and various other mental health conditions. The Appellant seeks bail in order to meet his wife. In support of plea based on his wife's mental health condition, a medical prescription issued by the Government Medical College Manjeri, Malappuram, Kerala dated 2nd May, 2024 is placed on record. The same captures the mental health condition of the wife as 'adjustment disorder with depressed mood (disorder)'.

Brief Facts:

5. A brief background of this case is that on 13th April, 2022 the National Investigation Agency (hereinafter, the 'NIA') registered a **RC-14/2022/NIA/DLI** against the Appellant under Sections 120B/153A of the Indian Penal Code, 1860 and Sections 17/18/18B/20/22/38/39 of the Unlawful Activities (Prevention) Act, 1967. On 22nd September, 2022 the



NIA arrested the Appellant.

6. It is a matter of public record as is also captured in the order dated 29th September, 2022 passed by the Division Bench of the Kerala High Court in **WP (C) No. 222/2019**, that one day after the arrest of the Appellant, a flash hartal was called in Kerala by the PFI without giving the mandatory 7 days public notice. In view thereof, the Kerala High Court had impleaded the PFI through its General Secretary as also Mr. Abdul Sarthar, State General Secretary on 23rd September, 2022. Despite the Court's order that the said flash hartal is illegal and unconstitutional, widespread road blockages were effected, resulting in violent acts being perpetrated against the people of Kerala. There was substantial destruction and damage to the public and private property of Kerala during the hartal and a slew of directions were passed by the Court. The Kerala High Court fundamentally held the PFI responsible and accountable for the widespread violence in Kerala on 23rd September, 2022. The order of the Kerala High Court dated 23rd September, 2022 is extracted hereinunder for reference:

"The following persons are suo motu impleaded as additional respondents in these writ petitions, taking note of the illegal call for hartal made by them on 22.9.2022 for scheduling the hartal on the next date i.e., 23.9.2022.

1. Popular Front of India,
represented by State General Secretary.

2. Sri. A. Abdul Sathar,
State General Secretary
Popular Front of India,
Kerala State Committee

2. In our order dated 7.1.2019, we took note of the peculiar circumstances in the State of Kerala where calls for hartal, which ordinarily would not be viewed



as illegal, have over the years come to carry an implied suggestion that the general public if they did not co-operate with those calling the hartal, might face threats of violence or actual violence. In that context, we had observed as follows at paragraph 7 of the order dated 7.1.2019:

“

7. We feel that directions have to be issued to ensure that a call for a hartal/general strike does not have the effect of affecting the fundamental rights of those who do not align with the cause of those calling for the hartal/general strike. Such directions which are necessitated on account of the State's experience with hartals/strikes in the last few years must also ensure that sufficient time is given to the State/District administration to put in place safeguard measures to avoid any harm to those who choose not to support a call for hartal/general strike. Taking cue from the provisions under the Industrial Law of this country, we feel that as an interim measure, and pending disposal of these writ petitions, a balance can be struck between the fundamental right of a person, including a political party, to call for a peaceful hartal or general strike, and the fundamental rights of those who choose not to align with the said persons. Our law contemplates that when there is a conflict of fundamental rights, the law must lean in favour of the paramount collective interest (See: Mazdoor Kisan Shakti Sangathan v. Union of India – AIR 2018 SC 3476). In the instant cases, the rights of the majority of private citizens, including students and daily wage workers to pursue their academic pursuits or earn their livelihood, would definitely



outweigh the fundamental right of persons calling for the strike/hartal. We therefore direct that any person, including any political party or other Association of persons, that proposes to call for a general strike or hartal, shall give 7 clear days' public notice of its intention to do so. The said period of seven clear days will, in our view, enable citizens who are opposed to the call for hartal/strike to approach this Court with their apprehensions as regards such call, and this Court can then examine the legality of such call for hartal/strike. The said notice period would also, in our view, enable the State/District administration to take such measures as are necessary to safeguard the interests of the people of this State, in the event of any hartal/strike being permitted to be conducted in a lawful manner. We make it clear that hartals/strikes called without adhering to the above procedure, would be deemed illegal/unconstitutional, and while the same would entail adverse consequences to the person/party calling for the hartal, the said person/party would also be liable, on the principles of strict liability, for any loss/damage caused to citizens and government pursuant to the call for hartal/general strike.

.....
.....”

3. Despite the aforementioned order, which made it clear that flash hartals, namely those hartals/strikes called without adhering to the procedure of giving seven days clear public notice, would be deemed illegal/unconstitutional entailing adverse consequences to the persons/party calling for the hartal, apart from visiting the person/party with liabilities for any loss, damage caused to the citizens



and Government pursuant to the call for hartals/general strike, we note that a call for a flash hartal has been made yesterday by the Popular Front of India.

4. The action of the aforementioned persons in calling for the hartal without following the procedure contemplated in our earlier order, prima facie, amounts to contempt of the directions of this Court in the order aforementioned. While we are suo motu initiating separate action for contempt of this Courts order, dated 7.1.2019, we issue the following directions in the wake of the situation that has now arisen, where an illegal call for hartal has been made by the aforesaid persons, to the prejudice and inconvenience of the general public:

(1) The police establishment in the State shall ensure that adequate measures are put in place to prevent any damage/destruction to public/private property of Government/citizens who do not support the call for hartal. In particular, the police shall also take steps to monitor any such activity by the supporters of the illegal hartal and shall place before this Court a report giving details of such instances and the extent of damage, if any, caused to public/private property. The said details would be necessary for this Court to take remedial action to recover such losses from the perpetrators of the illegality.

(2) The police establishment shall also keep in mind the provisions of the relevant Penal Laws, including the provisions of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 as also the provisions of Section 188 of the Indian Penal Code while registering cases against those found to be flouting the law. Adequate police protection shall also be granted



to all public utility services that apprehend violence, at the hands of those supporting the illegal hartal. We take of the submission of the learned Director General of Prosecution Sri. T. A. Shaji that Circulars/instructions to the above effect have already been issued by the State Police Chief last evening.

(3) We note with some concern, that in the Media reports about the flash hartal today, there is a mere mention of the call for a flash hartal, without mentioning the details of the interim order passed by this Court, which has the effect of rendering such calls for hartal without seven days public notice, as illegal. We, therefore, deem it necessary to once again request the Media to ensure that whenever such illegal flash hartals are called for, and it is apparent that the said hartal called is in violation of the orders passed by this Court, the public be duly informed of the said fact. This, in our view, would suffice to a large extent, in allaying the apprehensions of the general public as regards the legality of the call for hartal and also dissuade providers of public utility services from heeding to such calls for illegal hartals in future.

Post these writ petitions on 29.9.2022 for the report of the State Government.”

7. Thereafter, vide order dated 29th September, 2022, the Kerala High Court held the PFI responsible for the damage and destruction that was caused in Kerala on 23rd September, 2022 as also imposed monetary fines on the PFI. Relevant portion of the order of the Kerala High Court dated 29th September, 2022 is extracted hereinunder:

“ In our last order dated 23.09.2022, we had impleaded the following persons (1) Popular Front of India, represented by State General Secretary and (2)



Sri. A. Abdul Sathar, State General Secretary, Popular Front of India, Kerala State Committee as additional respondents in these writ petitions, and issued notice to them, taking note of their illegal act of calling for a flash hartal in the State without complying with the requirement of giving seven days public notice for the same. The said action being in violation of our earlier interim order dated 7.1.2019, we had also separately initiated suo motu contempt proceedings against them.

2. While the violent acts against people and property were being carried out even as we were considering the above writ petitions on 23.09.2022, we directed the State Administration through the interim order passed on that day to take immediate action to prevent the violent attacks that were being unleashed on an unsuspecting public, and to take steps to safeguard public and private property against vandalism and destruction at the hands of the hartal supporters, and to file a report before us before the next date of posting.

3. Today, when the matter was taken up for orders, a report was placed before us by the Government Pleader wherein details of the steps taken by the State Government to prevent untoward acts of violence as also the extent of destruction caused to public property have been enumerated. The relevant extract of the report reads as follows:

“13. Strict and unbiased legal action was initiated in all instances of violations reported during Harthals and legal provisions under Indian Penal Code, Kerala Public Ways (Restrictions of Assemblies and Possessions) Act 2011, Prevention of Damage to Public Properties Act 1984 and Prevention of Damage to Private Properties Act 2019 etc. were invoked appropriately.

14. It is further submitted that the directions issued by the Hon'ble Supreme Court on Destruction of Public and Private Properties, as



well as the directions and guidelines issued by the various High Courts were strictly followed in its letter and spirit to ensure normal life of the public during Hartal.

15. It is respectfully submitted that police has made 687 preventive arrests in the State of Kerala to avoid any untoward incidents related to the Harthal call by PFI.

16. It is also submitted that after being taken such preventive measures, the Additional Respondent Party had indulged in violent incidents such as blocking public pathways, preventing vehicular traffic, attacking vehicles, pedestrians, shops and other establishments and throwing bombs at few places. The harthal sympathizers also obstructed Police by applying force with an intention to deter them from carrying out their official duty.

17. It is submitted that the loss to the public property was mainly borne by the Kerala State Transport Corporation. **The PFI workers attacked the KSRTC buses at several places and smashed the wind screen. KSRTC was suffered an estimated loss to the tune of 25 lakhs approximately.** Stoppage of the schedule was also caused loss to the Kerala State Road Transport Corporation and hence the loss incurred to the KSRTC will be much higher. In few incidents the Drivers/Passengers of the ill fated bus also sustained injuries. For the destruction of Public Properties a total of 63 cases were registered and 48 arrests were already made. More arrest will be made in the coming days. The damage to the Public Road couldn't be calculated, since the reports from the experts are not received.

18. Private vehicles and private establishments are also suffered from the wrath of the Harthal



sympathizers. A total number of 50 cases were registered in the State and a loss to the tune of Rs.12,31,800/- was estimated approximately. 60 accused persons were arrested on the day of harthal itself.

19. The blockage of public path was also witnessed in some parts of the State and a total number of 118 cases were registered in this connection and 1054 accused persons were arrested.

20. Apart from the above, few incident of attack against Police personnel were also reported during the harthal day. In Eravipuram Police Station, Kollam City a motor cycle born PFI activist had attacked and made a murderous attempt on Police Personals on duty. In this connection a case in Crime No.1268/2022 U/s 294(b), 506, 333 & 307 IPC was registered and the case is being investigated.

21. Almost all the accused in the incidents that took place on the day of PFI Harthal were identified and many of them were already arrested and the remaining will be arrested soon. Till 26.09.2022, 417 FIR were registered in connection with the incidents during Harthal, 1992 persons were arrested and 687 preventive arrest were made.”

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5. We are of the firm view that the 12th and 13th respondents are wholly and directly responsible for the injuries inflicted on the members of our citizenry by their supporters, as also for the damage/destruction caused to public/private property by the said persons.

We are justified in drawing this conclusion based on the judgments of the Supreme Court in *Re: Destruction of Public and Private Properties v. State of Andhra Pradesh* – [2009 (2) KHC 374]; *Tehseen S Poonawalla v. Union of India* – [2018 KHC 6513] and *Kodungallur*



Film Society and Another v. Union of India and Others
– [2018 (5) KHC 297].

The tenor of our earlier order of 2019 was unambiguous when it stated that calls for flash hartals would be viewed as illegal and unconstitutional acts, irrespective of the person, political party or association of persons which called for the same, and that those who violated the said order would be liable for the consequences that flowed from their illegal acts.

6. It is of some concern that notwithstanding our declaration that the very calling of a flash hartal was an illegal and unconstitutional act, the State Administration did virtually nothing to prevent the hartal organizers from going ahead with their illegal demonstrations and incidental road blockages on 23.09.2022. The media reports also reveal that the police force played only a passive role in dealing with the situation till we pronounced our order dated 23.09.2022, and began taking effective steps only thereafter. An effective compliance with our earlier order dated 7.1.2019 would have necessitated the State administration to ensure that no public procession, gathering or demonstration took place in the State if the same was in connection with a call for a flash hartal.

7. We once again re-iterate that our declaration and directions in the order dated 7.1.2019 were solely in connection with flash hartals and not in relation to general strikes or demonstrations that do not call for the participation of the general public or intend to disrupt the free movement of people and vehicles, or to peaceful hartals/demonstrations conducted after due public notice. While the very call for a flash hartal is illegal and unconstitutional, as it is not preceded by adequate public notice, the holding of peaceful demonstrations of the nature described above is one that can be justified as traceable to the fundamental rights of the demonstrators under Article 19 (1)(a). It must be borne in mind, however, that even the latter right is not an absolute one and, on every occasion where a



*demonstration takes place, a balancing exercise has to be carried out between the rights of the demonstrators under Article 19 (1)(a) and those of the general public under Article 21 and if the said rights come into conflict with each other, the former must give way to the latter (See: **Mazdoor Kisan Shakthi Sangathan v. Union of India** – AIR 2018 SC 3476)).*

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9. **The additional 12th and 13th respondents herein cannot feign ignorance of the above constitutional obligations more so when they claim to be representing members of a pluralistic society. Their action of inciting their supporters and goading them into the violent acts that were witnessed across the State on 23.09.2022 cannot be legally countenanced. They must be held responsible and made accountable for their illegal actions. We therefore deem it appropriate to issue the following directions:**

- **The additional 12th and 13th respondents shall, within two weeks from today deposit an amount of Rs.5.20 crores with the Additional Chief Secretary, Home Department, towards the damages estimated by the State Government as well as the KSRTC as arising from the destruction/damage caused to public/private property in the State.**
- ”

As per the above orders, the Kerala High Court found that the PFI was responsible for the flash Hartal which took place in the wake of the arrest of the Appellant and imposed a fine of over Rs. 5 crores on PFI for damage caused to public and private property.

8. The orders passed by the Kerala High Court were challenged before the Supreme Court in **SLP Civil 10350/2023** and by order dated 17th April, 2023, the SLPs were withdrawn with liberty to file a review. The said review



petition was listed before the Division Bench wherein vide order dated 5th December, 2023 it was held that the quantification of the amount of Rs.5.20 crores which was directed by the earlier order does not deserve to be recalled.

9. On 27th September, 2022 the Government of India declared the PFI and its associate frontal organisations as an *unlawful association* for a period of five years. The relevant portion of the notification dated 27th September, 2022 is extracted hereinunder:

“And Whereas, the PFI and its associates or affiliates or fronts have been involved in the violent terrorist activities with an intent to create a reign of terror in the country, thereby endangering the security and public order of the state, and the anti-national activities of PFI disrespect and disregard the constitutional authority and sovereignty of the state and hence an immediate and prompt action is required against the organisation;

And Whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the PFI and its associates or affiliates or fronts, the PFI and its associates or affiliates or fronts, will use this opportunity to –

(i) continue its subversive activities, thereby disturbing public order and undermining the constitutional set up of the country;

(ii) encourage and enforce terror based regressive regime;

(iii) continue propagating anti-national sentiments and radicalize a particular section of society with the intention to create disaffection against the country;

(iv) aggravate activities which are detrimental to the integrity, security and sovereignty of the country;

And Whereas, the Central Government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the PFI, it is necessary to declare the PFI and its associates or affiliates or fronts to be unlawful association with immediate effect;



Now, Therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala as an "unlawful association";

And Whereas, the Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the PFI and its associates or affiliates or fronts as an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the said Act, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette"

10. On 18th March, 2023 the NIA filed the charge sheet in this case and subsequently, cognizance was taken by the Special Court.
11. The Appellant's daughter passed away in a vehicle accident on 18th April, 2024, consequent to which, the Special Court on 18th April, 2024 granted custody parole to the Appellant from 19th April, 2024 to 21st April, 2024 for 6 hours each day for attending the final rites of his deceased daughter.
12. It is now stated that due to the death of the Appellant's daughter, his wife is in severe depression and is facing mental health issues. Consequently, the Appellant sought interim bail before the Special Court, which was



however rejected vide order dated 31st May, 2024. It is against this order of the Special Court the present appeal has been filed.

13. On the last date of hearing *i.e.*, 14th August, 2024, the Court considered the stand of the Appellant and had suggested to the Appellant's Counsel to take instructions on whether the Appellant would be willing for custody parole for a period of two weeks in Delhi so that his wife could travel to Delhi to meet him. The relevant portion of the order dated 14th August, 2024 is extracted hereinunder:

"5. In view of the various apprehensions made by ld. SPP for NIA with respect to the custody parole of the Appellant in Kerala, ld. Counsel for the Appellant seeks time to take instructions on the question as to whether the Appellant is willing to go for custody parole for a period of two weeks in Delhi so that his wife could travel to Delhi and meet him."

14. On this aspect, the Appellant disagreed to opt for custody parole in Delhi and presses for the appeal itself to be decided on the aspect of interim bail.

Submissions:

15. Mr. Pujari, ld. Counsel appearing on behalf of the Appellant submits as under:

- i. The Appellant is not guilty of indulging himself in any terrorist act. He has been arrested on the ground that he was the Chairman of the PFI. However, on the date when the Appellant was the chairman of PFI, the organisation was not declared as an unlawful organization. Under such circumstances, the Appellant deserves to be granted bail to be with his family in Kerala, subject to various strict and stringent conditions



which have also been handed over to the Court. The same are extracted hereinunder for a ready reference:

- “12. That, lastly, to allay the concerns of the Respondent, the Appellant undertakes the following:*
- a. The Appellant will stay in the house and not meet anyone except doctors or necessary relatives.*
 - b. The Appellant will give a list of relatives whom he will meet.*
 - c. The Appellant will report to the local police station everyday. If required, the NIA can deploy security personnel, the cost of which I will incur.*
 - d. The Appellant will incur cost of his own travel and as well as any NIA officer who maybe deployed as security.*
 - e. The Appellant undertakes not to use a phone or any communication device, save and except as required for medical purposes.*
 - f. The Appellant will offer his wife's and any relative's phone or device that, the NIA seeks inspect as and when required.*
 - g. Any travel for the purposes required for the Appellant's wife will be duly informed in advance.*
 - h. Any other condition that this Hon'ble Court deems fit.”*
- ii. Bail ought to be granted to the Appellant on humanitarian grounds due to the deteriorating mental health condition of the wife of the Appellant. The Appellant in the present case is seeking bail only to be in company of his wife.
- iii. The Appellant though, being the Chairman of PFI cannot be presumed to be involved in any criminal activity as there is no direct allegation against him. Further, the PFI as an organisation, has engaged itself in various charitable activities, for example, it made substantial donations to the State of Uttarakhand during the floods.



iv. Reliance is placed on the following orders passed by the Supreme Court to argue that the rigors of Section 43-D(5) in The Unlawful Activities (Prevention) Act, 1967 (UAPA) would not apply when bail is sought on humanitarian grounds:

a. Order dated 10th November, 2022 in *Special Leave to Appeal (Crl.) No. 9216/2022* titled *Gautam Navlakha v. National Investigation Agency & Anr.*

b. Order dated 10th August, 2022 in *Criminal Appeal No. 1206/2022* titled *Dr. P. Varavara Rao v. National Investigation Agency & Anr.*

16. On behalf of the Respondent, NIA, a counter affidavit has been filed opposing the grant of interim bail to the Appellant. Various statements of protected witnesses have been relied upon to argue that the PFI had several detrimental objectives directed against the country and releasing the Appellant, who is the chairman of PFI, would endanger public safety.

17. The stand taken by the NIA is put forth by Mr. Rahul Tyagi, Id. SPP for the NIA, who submits as under:

i. It was in fact, the arrest of the Appellant on 22nd September, 2022 that led to a flash hartal causing large scale violence and destruction in Kerala on 23rd September, 2022. Reliance is placed on two Division Bench decisions of the Kerala High Court being, *WP(C) No. 222/2019* dated 29th September, 2022 and *RP No. 1054/2023* dated 5th December, 2023. The said decisions of the Kerala High Court shed light on the condition of Kerala post arrest of the Appellant and other office bearers and members of the PFI. The Kerala High Court in both the said decisions has observed that post arrest of the members of PFI, a call



was made by the members of the organisation to hold a hartal on 23rd September, 2022. The said hartal was illegal and caused great damage and destruction to the people and property in Kerala.

- ii. The decision of the Coordinate Bench of this Court in ***Abubacker E. v. National Investigation Agency (MANU/DE/3645/2024)*** is relied upon, where the Appellant therein was an integral member of the National Executive Council of the PFI and is also the co-accused in ***RC 14/2022/NIA/DLI***. The Court in the said case, denied bail to the Accused therein, considering the grave allegations and averments made against him. The submission on behalf of the NIA is that in the case of co-accused Abu Bakar, the Id. Division bench of this Court considered the case on both, interim bail on medical ground as well as regular bail. The Court after considering the same has made observations in respect of the PFI and has denied bail to the Accused therein. The Id. Counsel submits that the same rationale and logic would apply to the present case.
- iii. On the ground taken by the Appellant herein with regard to bail i.e., his wife being not well, it is submitted that there are various other family members who stay in vicinity of the Appellant's wife, the same can take care of the Appellant's wife. Thus, the ground for interim bail is not made out.
- iv. A list of relevant dates and events have been handed over to the Court, to argue that immediately after the Appellant was arrested, apart from the violent attacks which took place in the entire of Kerala, which has been taken note of by the Id. Division Bench of High Court of Kerala in the afore stated two judgments, the PFI and its frontal organisation



were also declared as unlawful organisations for a period of 5 years on 27th September, 2022. The Unlawful Activities (Prevention) Tribunal (*hereinafter, the 'UAPA Tribunal'*) has also upheld the declaration of PFI as an unlawful association on 21st March, 2024.

- v. A chart is also placed on record showing that there are 58 FIRs registered against PFI and various of its members. Further, the Appellant herein is the chairman of PFI and there is a grave apprehension of the Appellant influencing the witnesses in the present case if given bail.
- vi. Reliance is placed on the decision in ***Mohd. Hussain Molani v. National Investigation Agency (MANU/DE/1915/2020)*** to argue that in the said case, bail was sought by the Appellant on the ground that his wife is unwell. The Court in this case while denying bail to the Appellant therein, held that on a *prima facie* basis, there is sufficient material on record to show involvement of the Accused in a serious offence like aiding a terrorist organisation.
- vii. Reliance on the judgment, ***Athar Pervez v. State (MANU/DE/0607/2016)*** is made which dealt with Section 37 of the NDPS Act. The Court in this case held that the merits of the matter would have to be considered for interim bail and the Court in the present case can go into merits, to form its opinion.
- viii. The recent decision of the Supreme Court in ***Union of India (UOI) rep. by the Inspector of Police, National Investigation Agency, Chennai Branch v. Barrakathullah & Ors. (MANU/SC/0475/2024)***, is also relied upon. The Supreme Court in this case while considering the bail applications of office bearers, members, and cadres of the PFI held that



there exists a *prima facie* case against the Accused persons and consequently, set aside the order of the Madras High Court wherein bail was granted.

ix. The NIA has further placed reliance on two notifications dated 27th September, 2022 and 27th March, 2023 by the Government of India declaring the PFI as an unlawful organisation and sets out the reasons and background for the same. The Court in the present case ought to go into the details of the two notifications to form its opinion in the present case.

18. On a query from the Court, the Id. SPP for the NIA distinguishes the case of ***Jalaludin Khan v. Union of India (2024 INSC 604)*** from the present case by arguing that in the said case, the Petitioner therein had merely given the premises on rent to members of the PFI and only under those circumstances, the Hon'ble Supreme Court has granted bail.

19. In rejoinder, Mr. Adit S. Pujari, Id. Counsel submits that reliance placed by the NIA on the flash hartal that took place in Kerala and the judgments of the Kerala High Court ought not to affect the grant of interim bail to the Appellant as the Appellant was not involved in the flash hartal in any manner. Id. Counsel further submits that the Appellant was arrested on 22nd September, 2023 *i.e.* one day before the hartal itself. It is the submission of Id. Counsel Mr. Pujari that the PFI was declared an unlawful association on 26th September, 2022 *i.e.* after the Appellant was arrested.

20. Id. Counsel Mr. Pujari further submits that even if the Appellant is granted interim bail, there would be no event which would be held by the Appellant under the PFI banner as the organisation stands banned.



Analysis

21. In the present appeal, the Court is merely dealing with the question as to whether a case is made out for grant of interim bail to the Appellant on the basis of the medical condition of his wife. The regular bail application of the Appellant is pending before the Trial Court and, thus, the stand of the Appellant is that no opinion ought to be expressed by this Court on merits.

22. On a perusal of the material on record, it can be ascertained that the Appellant is the Chairman of the PFI and is also a part of the National Executive Committee of the organisation. Further, according to the NIA, the Appellant is responsible for executing criminal objectives of the PFI which are detrimental to the safety and security of the Country. The Appellant has a wide following amongst members of the PFI who work on his directions and also have appeared to cause intimidation and commit violence. According to the NIA, the Appellant is capable of creating fear in the public and even intimidate witnesses.

23. The allegations against PFI are that its prime objective as an organisation is to establish Sharia/ Islamic law in India. The PFI is alleged to be engaged in the following acts:

- I. Using the social and political activities of the PFI and its frontal organizations to attract large number of Muslim youths.*
- II Inciting enmity and hatred against the Hindus by propaganda of Islam in danger in India and atrocities being committed against the Muslims by Hindus and Hindu organization.*
- III. Identifying Muslim Youth gullible to such propaganda and radicalizing them for participating in Jihad.*
- IV. Organising terrorist camps where arms training*



- was imparted for commission of violent and terrorist acts.*
- V. *Raising funds and disbursing them for terrorist activities and for procurement of weapons.*
 - VI. *Creating Hit Squads by recruitment of radicalised Muslim youth to eliminate Hindu leaders and to create an army.*
 - VII. *Inciting its members to join ISIS and implement ISIS tactics for establishment of Caliphate in India”*

24. In the backdrop of these allegations, the prayer for interim bail of the Appellant on medical grounds of his wife, is to be considered.

25. It is not in dispute that the Appellant’s daughter has passed away in an accident on 18th April, 2024. Vide order dated 18th April, 2024, the Appellant was given custody parole in the following terms to enable him to attend the last rites of his daughter:

“1. The present application is moved on behalf of accused/applicant OMA Salam (A-1) to enlarge the applicant/accused on Custody Parole for three days to carry out final religious rites of his daughter and to mourn it.

2. It is submitted inter alia in the application that accused/applicant is seeking Custody Parole of three days to carry out final religious rites of his daughter Fathima Thazkiya who expired today i.e. 18.04.2024 at 12:15am in the Fatima Mata Mission Hospital, Kalpetta, Wayanad, Kerala. That funeral of the daughter of the applicant is fixed on 19.04.2024 at around 07:00am and being the father of the deceased, applicant/accused is responsible to conduct all religious rituals of his daughter as well as to console the entire family. Ld. Counsel for the applicant/accused has also placed on record a copy of Consultation Record of Fathima Thazkiya of Fatima Mata Mission Hospital, Kerala, thereby certifying that Ms. Fathima Thazkiya,



daughter of the applicant, has expired on 18.04.2024 at 12:15am.

3. Ld. SPP for NIA has submitted that they have no objection if the custody parole is granted to accused on humanitarian ground.

4. I have heard contentions of both the parties and perused the record.

5. **Having considered the submissions made by Ld. Counsel for accused and the NIA, on humanitarian grounds, considering that accused/applicant wants to perform last rites of his daughter, custody parole of accused/applicant OMA Salam (A-1) for three days i.e. starting from 19.04.2024 for six hours from 10:00am to 03:00pm excluding travel time of journey for reaching to the place where final religious rites of the daughter of applicant/accused is scheduled to be held on 19.04.2024 and at the home of applicant/accused, is hereby granted, in terms of Rule 1203 of Delhi Prison Rules.**

5.1 It is contended on behalf of applicant/accused that travel by Air may be allowed and they are ready to bear the expenses. Request is allowed. Accordingly, all the expenses are to be borne by accused/applicant and his family as accused would be required to be taken from Delhi to Kerala and for the security reasons accused cannot be taken by any other mode of transportation other than air, therefore such expenses would be borne by accused/applicant. 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 to participate in the last rites of his daughter. In this regard for maintaining the dignity of the ceremony, those police officials who would accompany the accused 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 venue. Jail Superintendent concerned is directed to ensure adequate safety /



security measures are taken while taking the accused for custody parole. Jail authorities are also directed to coordinate with local Police Station/NIA 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.

5.2 Further, since accused is granted three days Parole, he be lodged in the nearest Central Jail and this order shall be construed as directions for same. The accused shall not be allowed to use phone, both land-line and mobile, nor accused shall be allowed to have access to internet.

6. With these observations, application stands disposed of.

7. Copy of this order be sent to the Jail Superintendent concerned for his information and necessary action. Copy of this order be also given dasti."

26. The medical reports of the Appellant's wife which are relied upon by the Appellant for seeking interim bail on the ground of ill health of his wife have been perused. The medical prescription dated 2nd May, 2024 issued to the Appellant's wife by the Government Medical College Manjeri, Malappuram, Kerala records that the Appellant's wife is suffering from '*adjustment disorder with depressive mood (disorder)*' and she has been prescribed some medicines.

27. The prescription would show that the medicines that have been prescribed are medicines to be regularly taken on a long term basis for this condition. The medical condition is neither debilitating nor of a nature which requires an urgent intervention. The said medical condition is a mental health condition which could remain for a prolonged period.

28. There can be no doubt that mental health of an individual is as



important as physical health, however, the Court would have to take into consideration various factors while considering an application like the present one.

29. From a perusal of the relevant facts of the present case as also the material on record, it is clear that the Appellant is not an insignificant person in the PFI. He is the admitted Chairman of the PFI and was also part of the National Executive Committee of the said organisation. He managed and administered the PFI for several years and holds considerable influence within the organisation.

30. The aforesaid Division Bench orders of the Kerala High Court dated 29th September, 2022 and 5th December, 2023 would reveal that on arrest of the Appellant on 22nd September, 2022 the PFI organised a hartal on 23rd September, 2022 which caused widespread violence, including attacks against the police and people of Kerala as also destruction of private and public property of Kerala.

31. In the present appeal, the Court has to weigh the reasons set out by the Appellant on humanitarian grounds and the serious possibility of harm being caused to the general sections of the public, especially, in Kerala where the Appellant appears to be having a large following.

32. On the last date of hearing i.e. 14th August, 2024, the Court, in fact, had considered the stand of the Appellant and had suggested the Appellant's Counsel to take instructions on whether the Appellant would be willing to go for custody parole for a period of two weeks in Delhi so that his wife would travel to Delhi to meet him. On this aspect, the Appellant disagreed to opt for custody parole in Delhi and presses for the appeal itself to be decided on the aspect of interim bail.



33. This stand taken by the Appellant clearly shows that the intention of the Appellant is not to merely meet his wife but to visit the state of Kerala, which in the opinion of the Court, is fraught with severe risk and likelihood of unforeseen consequences considering the influence that the Appellant wields.

34. Substantial arguments have been addressed on the issue of grant of interim bail on medical grounds. The Appellant has relied upon the order of the Supreme Court in ***Gautam Navlakha v. National Investigation Agency & Anr. (supra)*** to argue that the Court ought to consider granting bail to the Accused on medical grounds.

35. The Court has perused the said order of the Supreme Court. The facts of the same would show that the issue raised in the said case did not relate to grant of interim bail. The Petitioner therein was over 70 years of age and had no criminal antecedents. Further, the Petitioner in that case was himself suffering from severe medical conditions and considering the same, the Supreme Court had permitted the Petitioner therein to remain under house arrest.

36. The Appellant has further relied on the order of the Supreme Court dated 10th August, 2022 in ***Dr. P. Varavara Rao v. National Investigation Agency & Anr. (supra)*** wherein permanent bail was granted to the Accused therein on medical grounds. The present case distinguishes itself from ***Dr. P. Varavara Rao (supra)***. In the said case, the Petitioner therein was of 82 years of age and was under house arrest. On the question of bail, the Supreme Court while granting bail to the Petitioner therein, held that he was himself suffering from various ailments and his condition had actually deteriorated while being in custody. Thus, the decisions in ***Gautam Navlakha (supra)*** and ***Dr. P.***



Varavara Rao (supra) are clearly distinguishable.

37. On the other hand, Id. Counsel for the NIA has relied upon the decision in *Abubacker E. v. National Investigation Agency (supra)* which relates to the co-accused in the same very charge sheet which is filed against the Accused in the present case. The Petitioner therein was also a member of the PFI. He sought bail on medical grounds as he was detected with cancer and was terminally ill. The Court in the said case, while considering the question of grant of interim bail to the Accused, observed that once an organisation is declared as a terrorist organisation or as an unlawful association under the contours of UAPA, certain consequences may follow. At this juncture, the defence cannot contend that the acts done by the association, prior to it being declared as unlawful must be disregarded. That would be against the legislative object of the UAPA. The Court further, in the said case, while denying bail to the Accused held as under:

“84. Once any such organization is declared as ‘terrorist organization’ or ‘unlawful association’, as the case may be, certain additional consequences may flow and emanate therefrom but merely because these organizations were not declared so at the relevant time would not mean that the acts of terrorism committed by them would stand disregarded and that the accused would be absolved of any prosecution. If such defence contention is accepted then it would lead to absolute absurdity and irrationality as in such a situation, any individual or association or organization could continue conspiring and doing terror activities, detrimental to the unity and sovereignty of the country, and then seek immunity from prosecution on the premise that it had not been declared so at the earlier point of time. This could never have been the intention of the legislature while bringing in UAPA.”



xxxx

88. We have already noted that the goal was to establish Caliphate by the year 2047 and at times, it takes years to achieve any such distant objective. To say that there was no proximity between the alleged preparatory act and the ultimate objective, would not be, therefore, appropriate as such kind of activities are unrelenting, perpetual and unceasing. The organization had been holding terror camps, recruiting and radicalizing Muslim youths and imparting weapon-training for the purposes of commission of terrorist act across the country and, therefore, it cannot be said that there was no proximity between the two or that the weapon-training was merely an act of defence, particularly when the statements of witnesses, clearly, speak to the contrary and indict the appellant. Such statements also go on to show that objective of such weapon-training was with the idea of overthrowing the democratically elected government to replace the Constitution of India with a Caliphate Shariya Law. The planning of targeted killing of Hindu leaders and attacking the security forces and establishing Caliphate by 2047 would clearly indicate that the target was to challenge the 'unity and sovereignty of India' and not merely to 'overthrow the government'. Thus, the objective and manner of achieving the same, both, seem culpable.

89. We are also not impressed with the argument of the appellant that he was merely acting in furtherance of ideology of the organization. If such ideology smacks of malafide and is replete with conspiracy related to terrorist acts, adhering to the same, certainly, would also be punitive.

90. Non-recovery of any weapon from the possession of the appellant has no significance in the context of the overall allegations against the appellant. Of course, weapon-training was with respect to the use of sharp weapons but that does not mean that the terrorist act cannot be committed while using those, particularly



when the training was for masses.

91. Thus, in view of the material collected by the investigating agency and the statements of witnesses recorded during the investigation, it cannot be said that the allegations were merely to the extent of ideological propagation of the activities of PFI. It was certainly much more than that.

92. Be that as it may, on careful analysis of the evidence collected by the investigating agency and after comprehending the crux of the allegations, we find that there is prima facie commission of offences falling under Chapter-IV and Chapter-VI of UAPA and at this preliminary stage, we cannot disregard such material. At this initial juncture, we have to attach full significance to these allegations as well as to the statements of witnesses.

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Plea of Release on Medical Ground

99. We have already noted the medical condition of the appellant.

100. He is in his seventies and is suffering from Parkinson's disease and underwent surgery for treatment of his cancer. It is admitted that he is no longer suffering from any kind of malignancy. It is, however, contended that due to Parkinson's disease, his cognitive ability has been severely affected. He is also suffering from coronary artery disease, small vessel ischemic disease and is also a patient of hypertension and diabetes and, therefore, he is required round-the-clock monitoring and assistance to carry out his daily activities.

101. During the course of arguments of appeal, we had directed the Jail Superintendent to send report about his latest medical condition. As per the report received from Medical Officer Incharge, Central Jail Dispensary, he was, though, referred to AIIMS Hospital for admission, he did not choose to go there.

107. Be that as it may, in view of the aforesaid directions



given by learned Trial Court, we do not find any compelling reason to release him on the basis of his medical condition either. Needless to supplement, in case his medical condition further deteriorates or gets worsened, Jail Superintendent would immediately rush him to AIIMS, without seeking any formal direction from the Court. This be, however, brought to the notice of the learned Trial Court, who may seek report about his medical condition and would be at liberty to take appropriate call with respect to the fact whether in view of his fading medical condition, he is entitled to be released on bail on medical ground or not.

Conclusion

108. The final outcome is inevitable.

109. The allegations and averments appearing in charge-sheet coupled with the statements made by the witnesses, including the protected witnesses, the tone and tenor of the speeches made by the appellant, the fact that appellant was earlier closely associated with SIMI and when it was banned, he switched to PFI; the manner in which he has been sanctioning amount from PFI bank account and the overall impact of the material so collected by the investigating agency; leave no element of uncertainty in our minds about the fact that the case of the prosecution, with respect to the commission of offences falling under Chapter-IV and Chapter-VI of UAPA, is prima facie true.

110. There is nothing before us which may suggest infringement of his fundamental rights.

111. As regards, his medical complications, learned Trial Court has already given the requisite directions, which we also feel to be very appropriate.

112. Resultantly, finding no substance in the present appeal, we hereby dismiss the same.”

38. In the opinion of this Court, the above decision of the Coordinate Bench of this Court in *Abubacker E. (supra)* comes very close to the facts of the



present case, at least insofar as the stand of PFI is concerned. In the *Abubacker E. (supra)* case, the Petitioner therein was an integral member of the National Executive Council of the PFI. Further, he was himself terminally ill. The Court in the said case while considering the medical condition of the Accused and other relevant facts, denied bail to the Accused.

39. Recently, the Supreme Court in *Union of India (UOI) rep. by the Inspector of Police, National Investigation Agency, Chennai Branch v. Barrakathullah & Ors. (supra)*, was considering the bail application of office bearers, members, and cadres of the PFI. The Supreme Court while setting aside the order of the Madras High Court wherein bail was granted to the Accused persons therein, held that where the Court is satisfied after perusing materials on record that there exists a *prima facie* case against the Accused, the stringent provision under Section 43-(D) (5) of the UAPA would be applicable for not releasing the Accused on bail. The relevant portion of the said judgment is extracted hereinunder for a ready reference:

“22. In the instant case, we are satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the respondents are prima facie true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents as mentioned in the charge-sheet, the period of custody undergone by the respondents being hardly one and half years, the severity of punishment prescribed for the alleged offences and prima facie material collected during the course of investigation, the impugned order passed by the High Court cannot be sustained. We are conscious of the legal



position that we should be slow in interfering with the order when the bail has been granted by the High Court, however it is equally well settled that if such order of granting bail is found to be illegal and perverse, it must be set aside.

23. This Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state. It cannot be denied that National security is always of paramount importance and any act in aid to any terrorist act - violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India.

24. In that view of the matter, the impugned order passed by the High Court is set aside. The respondents shall forthwith surrender themselves before the appellant-NIA. Since, the chargesheet has already been submitted before the Special Court, it is directed that the Special Court shall proceed with the trial as expeditiously as possible and in accordance with law, without being influenced by any of the observations made by this Court in this order.”

40. This Court in the judgment of **Arvind Yadav in JC through his Pairokar v. Govt of NCT Delhi through Standing Counsel (2021:DHC:1965)** decided on the issue of granting bail to the Petitioner therein under the contours of the NDPS Act. One of the fundamental grounds on which the Petitioner therein was seeking bail was the ill health of himself and his wife. In the said case, the Petitioner’s wife was medically diagnosed with various physical ailments and was also stated to have been in depression



due to the period of incarceration incurred by the Petitioner. The Court in this case, while denying interim bail to the Petitioner, held that the Petitioner's wife is stable and the medical records do not suggest any immediate medical treatment or hospitalization. The relevant portion of the said judgment is extracted hereinunder for reference:

“3. As regards the interim bail on medical grounds is concerned, it is contended that the petitioner is suffering from various respiratory ailments including asthma and was treated at Central Jail Hospital Mandoli for the same where he was prescribed various medications. Due to incarceration of the petitioner, wife of the petitioner has been physically and mentally affected. The wife of the petitioner is suffering from severe osteoporosis, depression and had to undergo a hip surgery and needs support. The petitioner was granted interim bail vide order dated 22nd April, 2020 which was extended from time to time. The interim bail of the petitioner was further extended and on completion thereof he surrendered on 31st March, 2021.

Xxx xxx xxx

14. As regards the prayer of the petitioner seeking interim bail on the ground that his wife is suffering, the petitioner has enclosed copy of the discharge summary of his wife Ms.Rekha Yadav, who had been advised cervicotrochanteric fracture right hip for which the surgery was performed in September, 2020 and as per the report received the patient has already recovered from the injury and the surgery and is stable. Further the petitioner has surrendered on 31st March, 2021 and thus had adequate time to take care of his wife. As regards the petitioner's medical condition is concerned, the documents on record do not suggest any immediate medical treatment or hospitalization. Thus this Court finds no ground to grant interim bail as well to the petitioner.”



41. In another case decided by the Division Bench of this Court in ***Mohd. Hussain Molani (supra)*** where the Appellant concerned was a member of the Lashkar-e-Tayyiba (LeT) and interim bail was sought on behalf of the Appellant on the ground that his wife is unwell. The Court, while denying bail to the Accused therein observed that there was *prima facie* sufficient material on record to show involvement of the Accused in a serious offence like aiding a terrorist organisation. The relevant portion of the judgment is extracted hereunder:

“23. In view of the above medical report of Government City Hospital, Kuchaman City, Rajasthan and opinion of Dr. L. Shyam Singh, which do not suggest any major surgery, this Court is of the opinion that imminent presence of the appellant, who is alleged to be a Hawala operator and is involved in a serious offence of transfer of funds to terrorist organization like LeT, is not required at the time of suggested surgery and is, therefore, not entitled to interim bail.

This Court is further of the opinion that there are other family members like father, mother, brothers and sisters of the wife of the appellant to look after appellant's wife and can give consent for surgery. In the opinion of this Court, even the patient herself can give the consent as there is no bar regarding the same.

24. Learned counsel for the appellant has, however, argued that appellant has to arrange funds for surgery. However, the hospital discharge report of Unique Hospital nowhere mentions that wife of the appellant has been discharged for want of funds nor there is any such request made by the patient or her relatives to the hospital that operation cannot be performed because of paucity of funds. On the other hand, the record reveals that the family of the appellant has taken the wife of the appellant from one hospital to another i.e. first to a



Government hospital and thereafter to a Private one which prima facie shows that they are capable of taking care of the medical expenses of a private hospital and there is no paucity of funds. Besides the above facts, the Bank Accounts of the wife of the appellant reveals that family of the appellant are not living in poverty and therefore, in the opinion of this Court insufficiency of funds is not coming in the way of surgery of appellant's wife and, therefore, release of appellant is not required on the ground that he has to arrange the funds for surgery, if at all it is to be done."

42. In ***Athar Pervez (supra)***, the Division Bench of this Court while dealing with a case under Section 37 of the NDPS Act, laid down the following with respect to the nature of interim bail:

*"17. The expression "interim" bail is not defined in the Code. It is an innovation by legal neologism which has gained acceptance and recognition. The terms, "interim" bail/"interim" suspension of sentence, have been used and accepted as part of legal vocabulary and are well known expressions. The said terms are used in contradistinction and to distinguish release on regular bail during pendency of trial or appeal till final adjudication. Applications for "interim" suspension or bail are primarily moved and prayed for, when the accused or convict is not entitled to or cannot be granted regular bail or suspension of sentence, or the application for grant of regular bail is pending consideration and is yet to be decided. **"Interim" bail entailing temporary release can be granted under compelling circumstances and grounds, even when regular bail would not be justified. Intolerable grief and suffering in the given facts, may justify temporary release, even when regular bail is not warranted.** Such situations are not difficult to recount, though making a catalogue would be an unnecessary exercise.*

18. We have referred to the terms "bail" and "interim"



bail and have set out the difference between the two, for this distinction is of significance and importance when we decide the question under reference. Thus, when the nomenclature “bail” and “interim” bail are not defined by statute or when such terms can connote and have different meanings, the “bail” and “interim” bail could have contrasting and dissimilar implications.

19. By its very nature, “interim” bail is a temporary liberation for a fixed period of time. It is a bail on pro-tem basis. [See Sunil Fulchand Shah (Supra) and Mukesh Kishanpuria (Supra)]. “Interim” bail should not and cannot be a substitute and an alternative for regular bail. It should be granted for the minimal time deservedly necessary.”

43. The decision in **Athar Pervez (supra)**, clearly holds that interim bail is a bail which is to be considered in case of intolerable grief and suffering which may justify temporary release while regular bail is pending.

44. In terms of the said decision, the question that arises in the present case is whether such a situation has arisen. Clearly the answer is in the negative.

45. In a recent judgment of the Supreme Court in **Jalaludin Khan (supra)**, bail application of the Appellant therein was considered, who had some connection with the PFI. The Court in the said case granted bail to the Appellant therein while observing as under:

“17. We must note here that the appellant's son conducted the negotiations for giving the first floor on rent. Taking the charge sheet as correct, it is not possible to record a prima facie finding that the appellant knowingly facilitated the commission or preparation of terrorist acts by letting out the first floor premises. Again, there is no allegation in the charge sheet against the appellant that he organised any camps to impart training in terrorism.”



46. The allegations against the Appellant in the said case are not comparable to the present case. In the case of *Jalaludin Khan (supra)*, the allegation against the Appellant therein was that he rented the first floor of his property to the PFI. It was under those circumstances, the Appellant therein was granted bail. The facts of the present case are clearly distinguishable.

47. The Appellant in the present case is a person of great influence and was the chairman of the PFI, which is now a banned organisation. The observations of the Kerala High Court in orders dated 29th September, 2022 and 5th December, 2023 sufficiently captures the events that took place on 23rd September, 2022 *i.e.* one day post arrest of the Appellant herein. The observations of the Kerala High Court reveal the nature of influence that the Appellant wields.

48. Considering the facts of the present case as also the nature of influence the Appellant exerts, enlarging him on interim bail would not only entail flight risk but also the possibility of several witnesses being influenced in the present case.

49. Upon considering the fundamental ground of interim bail made by the Appellant *i.e.* his wife not being well, the Court on perusal of the medical records as also the overall facts of the present case holds that the present case does not reveal a situation which justifies grant of bail. The extraordinary circumstances on medical grounds, that too ignoring the provisions of the UAP Act, that would warrant interim bail in the present case are not made out.

50. Moreover, the Appellant has an immediate family consisting of 10 siblings and their families. Although some of his siblings may have passed away, all of them have children and extended families. The appellant himself



has four children *i.e.* two sons and two daughters. Hence, there are sufficient family members to take care of the Appellant's wife.

51. The plea of interim bail made by the Appellant is, accordingly, rejected and the appeal is dismissed.

52. It is, however, made clear that the present observations would not have any bearing on the regular bail application.

53. The copy of this judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

54. Copy of this judgment be uploaded *forthwith*.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 30, 2024