

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.252 of 2024

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

Md. Yaqub Khan @ Sultan @ Usman S/o Md. Ayub Khan R/o Mohalla - Mogalpur, P.S. - Mehshi, District - East Champaran

... .. Appellant

Versus

The Union Of India Through The National Investigation Agency Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 462 of 2024

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

Shahid Reza son of Azhar Alam R/o- Ward No 10 Officer Colony Chakia East Champaran, Ps- Chakia Dist- East Champaran

... .. Appellant

Versus

The Union Of India Through National Investigation Agency Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 252 of 2024)

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Advocate

For the Respondent/s : Dr. Krishna Nandan Singh (ASG)

Mr. Manoj Kumar Singh, Spl.PP

Mr. Ankit Kumar Singh (JC)

Mr. Pramod Kumar (PP, NIA)

(In CRIMINAL APPEAL (DB) No. 462 of 2024)

For the Appellant/s : Mr. Akash Anand, Advocate

For the Respondent/s : Dr. Krishna Nandan Singh (ASG)

Mr. Manoj Kumar Singh, Spl.PP

Mr. Ankit Kumar Singh (JC)

Mr. Pramod Kumar (PP, NIA)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2025

Heard learned counsel for the appellants and learned
counsel for the National Investigating Agency.



2. These two appeals are arising out of the common order dated 20.01.2024 (hereinafter called 'the impugned orders') passed by learned Special Judge, NIA, Patna, Bihar (hereinafter called the 'learned trial court') in Special Case No. 7 of 2022/R.C. No. 31 of 2022.

3. By the impugned orders, the learned trial court has been pleased to reject the prayer for bail of the appellants during the ongoing trial. Both the appellants are aggrieved by and dissatisfied with the orders of the learned trial court.

4. In order to appreciate the matter, it would be necessary to take note of the prosecution case.

Prosecution Case

5. The prosecution case is based on a self-written report dated 12.07.2022 of Akrar Ahmed Khan, the Inspector of Police-cum-Officer-in-Charge of Phulwarisharif Police Station, Patna. In the written report, the informant alleged that on 11.07.2022, at about 7:30 PM, he got an information that some miscreants are planning to do some occurrence during the proposed Patna visit of the Prime Minister of India, they are doing training for a fortnight for this purpose. On this information, the Officer-in-Charge of Phulwarisharif Police Station brought it to the notice of the senior officers. The senior officers constituted a team of police officers



and with the said team, the Officer-in-Charge/informant reached 'Ahmed Palace' situated in Naya Tola Nahar under Phulwarisharif Police Station. On reaching there, in course of verification, it came to his notice that some unknown persons are holding meeting on the second floor of the 'Ahmed Palace' during last two months and visit of unknown persons are frequent there. The informant came to know that during 6th-7th July also, a meeting had taken place in which some suspicious people had come.

6. It is alleged that as the informant was conducting the verification, in the meantime, Md. Jalaluddin (A-2) and Athar Parvez (A-1), who are the owner of 'Ahmed Palace', came there. In their presence, in presence of two independent witnesses, when the second floor of 'Ahmed Palace' was searched, in course of search from a room, he found a literature, namely, 'India 2047 towards Rule of Islamic India, Internal Document not for circulation' which was in seven pages and there were five copies of the same. In search, thirty pamphlets written in 'Urdu' and twenty five pamphlets written in 'Hindi' of Popular Front of India, 20 February 2021, forty nine flags made of clothes, red, green and white bearing blue colour star on the flag, booklets printed in 'Urdu' were found. The search team also found thirty chairs placed in the big hall and on a table, photocopy of lease deed on a non-



judicial stamp paper, showing the name of house owner of Farhat Bano, wife of Jalaluddin and the name of lessee as Athar Parvez, son of Abdul Qayum Ansari was found. The house owner informed that the second floor of the building was taken by Athar Parvez for purpose of giving training and training was provided on 6th-7th July 2022 in which people from other states had come and several doubtful person had also received training there. Athar Parvez, however, denied but when the police enquired from him in presence of Jalaluddin and local people, he told them that he was an active member of SIMI organization and after the SIMI organization was banned and the members of the same were in jail, he was providing them legal help. He informed that at present he was District General Secretary of SDPI party. He disclosed that the *parcha*, flags and the booklets are of Popular Front of India (in short 'PFI'). At the instance of the PFI, he is adding the former members of SIMI with this party and is establishing a secret organization. He disclosed that the main object of the organization is to take revenge against the atrocities upon Muslims and whosoever makes comment or abuses Islam religion, he is targeted and attacked. Recently, Nupur Sharma had said wrong against the religion, against her steps are being taken to take the revenge. For this reason, revenge had been taken in Amravati in Maharashtra



and Udaipur in Rajasthan. He further disclosed that in this planning, other persons are also actively participating with him. He named twenty five other persons who were members of the PFI in different areas and were conducting the activities of the PFI. He disclosed that there are other people whom he identifies by face and all of them came and got training here and they are motivated to raise their voice and unleash war against a particular community of the local society.

The Officer-in-Charge conducted a raid in the house of Athar Parvez in Mohalla, Gulistan from where a bag containing red, green and white colour flags inscribed with a blue colour star on the flag and copy of the lease deed were found. From the bag, the documents known as India 2047 towards rule of Islamic India, Internal document not for circulation and other documents were also found. The contents of the documents India 2047 towards Rule of Islamic India has been mentioned in the FIR which is being reproduced as under:

“... Popular Front of India (PFI) is confident that even if 10% of total Muslim population rally behind it, PFI would subjugate the coward majority community to their knees and bring back the glory of Islam in India.

External Help

In the scenario of full-fledged show down with the State, apart from relying on our trained PE cadres, we would need help from friendly Islamic countries. In the last few years, PFI has



developed friendly relationship with Turkey, a flag-bearer of Islam. Efforts are on to cultivate reliable friendship in some other Islamic countries”

7. On the basis of self-written information, furnished by the Officer-in-Charge of the Police Station, Phulwarisharif P.S. Case No. 827 of 2022 was registered under Sections 120/120(B)/121/121(A)/153(A)/153(B)/34 IPC.

Materials collected during Investigation

8. As the investigation progressed, NIA gathered materials which showed that even after the PFI was declared an “unlawful association” under Section 3 of the Unlawful Activities (Prevention) Act (hereinafter referred to as the ‘UA(P) Act’) on 27.09.2022 for a period of five years, these two appellants remained active and in furtherance of their unlawful criminal activities for extending the ideology of PFI, the appellant Md. Yaqub Khan (A-27) shared video on social media to support reconstruction of Babri Masjid at the same place where Ram Mandir was being constructed.

9. The NIA seized digital articles from the possession of accused Md. Yaqub Khan and Shahid Reza which were forwarded to Central Forensic Science Laboratory, New Delhi and the extracted data from the Samsung keypad mobile phone of Yaqub Khan (A-27) has been found containing mobile numbers of Reyaz



Moarif (A-4), Shahid Reza (A-38), Md. Belal (A-30) saved in the contact list. His conversation with Md. Tanweer Barkati (A-28) and Md. Irshad Alam (A-36) were also found in the call log. The digital article seized from the house search of FIR named accused Reyaz Moarif (A-4) revealed a video relating to training of PFI members at Chakia, District – East Champaran, Bihar in which Md. Yaqub (A-27) along with other PFI members were found undergoing training of PFI.

10. The NIA has found that in the end of January, 2023 while Ram Shila (Stones) were being taken to Ayodhya through Mehshi, East Champaran, Bihar, Md. Yaqub Khan (A-27) shared a video of the same on social media and had made an appeal to support reconstruction of Babri Masjid instead, at that place. After that post, he was opposed vehemently and trolled on social media and scuffles took place between his supporting PFI group and the group who commented on his communal post. Thereafter, Md Yaqub Khan (A-27) in association with Md Irshad Alam (A-36) and others conspired to attack a Hindu boy namely, Rishu on 04.02.2023 for commenting on his post on social media and for scuffle with his group. He had arranged a firearm and ammunition to eliminate the said Rishu, by wearing Bhagwa clothes to flare up communal hatred. The NIA investigation revealed that the



ammunition was supplied to him by Md Aabid (A-29) through Md Tanweer @ Md. Tanweer Barkati (A-28) in this criminal conspiracy.

11. These facts have been revealed in paragraph 17.22 of the charge-sheet No. 1D/2023 dated 12.01.2024 filed against these two appellants under Sections 120B, 121, 121A, 122, 153A, 153B IPC, Sections 25(1B)(a), 29 and 35 of the Arms Act and Sections 10, 13, 17, 18, 18A, 18B and 20 of UA(P) Act.

12. It is stated that in course of investigation, the NIA conducted a search on 04.02.2023 at the locations/premises of Md. Yaqub Khan (A-27) and his associates and thwarted an attempt of PFI cadres in creating atmosphere of terror, spreading religious enmity and hatred for extending the agenda of PFI. The mobile number of Yaqub Khan @ Sultan @ Usman (A-27) was legally intercepted. During examination, the co-accused namely Md. Mr. Tanweer Barkati (A-28) and Md. Aabid (A-29) stated that they were associated with Riyaz Moarif (A-4) and Md. Yaqub Khan @ Sultan @ Usman (A-27). The investigation revealed that Md. Yaqub Khan @ Sultan @ Usman (A-27) was in possession of a firearm and he asked Md Tanweer Barkati (A-28) to arrange ammunition for further activities of the PFI. Md. Tanweer Barkati (A-28) had knowledge that Aabid @ Aryan (A-29), an associate of



PFI and resident of his village was indulged in providing firearm and ammunition. Therefore, he requested Aabid @ Aryan (A-29) for providing him ammunition. Aabid @ Aryan provided him two rounds in the playground of his village and accordingly Md. Yaqub Khan @ Sultan @ Usman transferred Rs 1,000/- to Md Aabid @ Aryan through Paytm UPI. After some time, Md. Yaqub Khan @ Sultan @ Usman reached to them and received two rounds from him. Their bank account statements confirmed payment of Rs. 1,000/- by Yaqub Khan (A-27) through Paytm in the HDFC Bank Account of Md. Aabid on 23.01.2023. Md. Aabid @ Aryan (A-29) also corroborated these facts.

13. The appellant Yaqub Khan @ Sultan @ Usman (A-27) was arrested in the instant case on 19.07.2023. During his custodial interrogation he informed *inter alia* that at the instance of Riyaz Moarif (A-4), he got the youths to join the PFI and Riyaz Moarif instructed them to purchase folding knife and iron rod. Md. Yaqub Khan was allotted Chakia Unit, East Champaran in District of Bihar. In January, 2023, he posted a video on the social media that “*Aaj tum patthar le jaa rhe ho Ram Mandir ke liye jo ki Babri Masjid par banegi, humani anne wali nasle waha hi Babari Masjid phir se banayegi, insaallah, Nara-e Takbeer Allah Hu Akbar*”. The NIA found that this video was inflammatory in nature



and due to this, scuffle took place between the youth of two communities.

Recovery of Arms and Ammunition

14. During the custodial examination, Md. Yaqub Khan (A-27) disclosed that after the arrest of Tanweer Barkat (A-28), Md. Belal @ Irshad (A-30) and Md. Aabid (A-29) by NIA, he handed over his firearm, ammunition and sword to one of his associates Shahid Reza (A-38) of Officer Colony, Chakia, East Champaran for safe custody of the said weapons. On his disclosure, the house of Shahid Reza (A-38) was searched on 05.08.2023 morning by NIA and one countrymade pistol, two rounds ammunition, one air pistol, one sword and two knives were recovered and seized. During confrontation with Md. Yaqub Khan and Shahid Reza (these two appellants) in presence of independent witnesses, they confessed handing and taking over of the seized firearm and ammunition and other articles. The seizure list of the arms and ammunition recovered from the house of Shahid Reza and the arms which have been seized from the house of Shahid Reza are exhibits and material exhibits respectively in the present case.



Reasons for rejection of bail

15. The learned trial court having noticed the materials collected by the NIA in course of investigation held as follows:

“.... It can be seen from the materials available on record that the allegations supported by the available material, would indicate that the allegations against both these petitioners are not with regard to possession of incriminating literature, but of attending training programmes and possessing firearm to carry out the targeted killing of a youth of another community to flare up communal hatred and to damage the delicate fabric of the society. ...”

16. The learned trial court has held *inter alia* that

“The materials as brought out during the course of investigation against both the accused persons certainly make the allegations against them appear to be prima-facie true. The moment this Court arrives at such a conclusion, the rigours of Section 43B (5) of the UA(P) Act, 1967 along with its strict interpretation by the Hon’ble Supreme Court in Watali’s case which mandates rejection of any such petition kicks in.”

Submissions on behalf of the Appellants

17. Before this Court, learned counsel for the appellants has assailed the impugned judgment. It is submitted that there is nothing on the record which can even prima facie attract



allegations of conspiracy by the appellants. It is their common contention that the allegation of conspiracy under Section 120B would not get attracted.

18. Learned counsel has submitted that the appellants are not named in the FIR. The name of Yaqub Khan (A-27) transpired during the course of investigation of Baruraj P.S. Case No. 32 of 2023 dated 05.02.2023 under Section 120B, 121, 121A, 153A, 153B IPC and Sections 10 and 13 of the UA(P) Act. The said Yaqub Khan was apprehended on 19.07.2023. On the basis of the confessional statement of Yaqub Khan (A-27), Shahid Reza (A-28) had been brought within the purview of this case and he was arrested on 06.08.2023. Learned counsel for both the appellants have submitted that the appellants were not members of the PFI and they were not concerned with the activities of the said organization, however, it is one of their submissions that the PFI was a registered organization under the Societies Registration Act, 1860 which promote *inter alia* national integration and social harmony. The PFI has been banned for five years by the Home Ministry, Government of India *vide* an extraordinary gazette notification vide CG-DD-e-2809 2022-23917 Part-II.

19. It is their contention that the alleged seizure list are highly suspicious, doubtful concocted, manufacture and



afterthought. The offences punishable under Sections 121, 121A, 153A, 153B IPC would not be attracted against the appellants and the Sections of UA(P) Act, 1967 cannot be levelled retrospectively against the appellants. Learned counsel for the appellants has submitted that post ban of the 'PFI' if the appellants were participating in the activities of the PFI, they may only be held liable for the offence punishable under Chapter (III) of the UA(P) Act. Chapter IV or Chapter VI would not be attracted because there is no allegation of involvement in activities of terrorist organization or a terrorist act. Referring to Section 10, 13 and 18 of the UA(P) Act, 1967 learned counsel submits that the allegations against the appellant Yaqub Khan would not come within the meaning of these provisions. The activities are not unlawful activities within the meaning of Section 2(O) of the UAP Act.

20. Learned counsel for the appellant Shahid Reza (A-38) submits that his house was searched on 05.08.2023 and some arms and ammunitions are said to have been seized from his house. The name of this appellant transpired after 13 months, no money has been found from his house and he happens to be a student of Bachelor of Arts.



21. It is their contention that the Hon'ble Supreme Court has been pleased to grant bail to two accused namely Jalaluddin (A-2) and Athar Parwez (A-1) hence they would also deserve the privilege of bail during pendency of the appeal. It is informed that out of 160-170 witnesses, which NIA intends to examine, presently cross-examination of PW-2 is going on, hence the trial is not likely to be concluded in near future.

Submissions on behalf of the NIA

22. The prayer for bail of this appellant has been opposed by Dr. K.N. Singh, learned ASG representing the NIA. It is submitted that the case of these two appellants are that of indulging in unlawful activities, terrorising a particular community in the society in the name of religion by use of firearm and other lethal weapons. Evidences have been collected by the NIA in this regard. In course of search in the house of the appellant Shahid Reza on the basis of the disclosure statement of the Yaqub Khan (A-27), several arms and ammunitions have been found. Those arms and ammunitions are the material exhibits and there are sufficient materials which would prove more than *prima-facie* that if those evidences are believed, these appellants would be held liable for commission of the offence for which they have been charged.



23. Learned ASG has taken this Court through the various paragraphs of the charge-sheet to demonstrate that in this case there are digital evidences which are duly supported by the recoveries of firearms showing that the appellants were indulged in hatching of criminal conspiracy and abetting waging of war against the Government of India. For this purpose, they were collecting men, arms and ammunitions. They were promoting enmity between different groups on the ground of religion doing acts prejudicial for maintaining peace and harmony. It is submitted that the appellants are prima-facie guilty for imputation, assertions which are prejudicial to national integration. Section 10 of the UA(P) Act and Section 10 and 13 of the UA(P) Act are attracted for being a member of unlawful association and for carrying unlawful assembly. Section 17 of the UA(P) Act is attracted for raising funds for terrorist acts. Section 18 of UA(P) Act gets attracted for conspiracy by advocating/abetting, inciting directly or knowingly to facilitate the commission of a terrorist act or any act preparatory to the commission of a terrorist act. Section 18 of UA(P) Act shall be attracted for organizing training camps. Section 18B of the UA(P) Act for recruiting the PFI cadres and Section 20 of UA(P) Act for being a member of the terrorist gang. Sanction for prosecution under Section 196 CrPC and Section 45(1) of



UA(P) 1967 in respect of the accused persons Yaqub Khan and Shahid Reza has been accorded by the Ministry of Home Affairs, Government of India and sanction of prosecution under Section 39 of the Arms Act has also been accorded by the District Magistrate, Patna, Bihar. It is submitted that in presence of the materials available on the record, the rigours of Section 43D(5) of the UA(P) Act shall apply and the learned trial court has not committed any error in rejecting the prayer of appellants for bail.

24. As regards the order of the Hon'ble Supreme Court in the case of Md. Jalaluddin and Athar Parwez, it is submitted that those two appellants have been granted bail by Hon'ble Supreme Court after noticing that the allegation was of being member of the PFI during the pre-ban period. Paragraph '30' and '31' of the order passed in case of Athar Parwez have been placed before this Court to submit that the Hon'ble Supreme Court took a view that the acts and omissions alleged against the appellant in the said case would bring him within the ambit of UA(P) Act, 1967. The case of these appellants are, however, clearly distinguishable.

25. It is pointed out that in both the orders, the Hon'ble Supreme Court has clarified that the observations made in those orders are tentative in nature. Hon'ble Supreme Court has in



paragraph '36' of its order in case of Athar Parwez clarified in the following terms:-

“... 36. It is clarified here that the observations made hereinafter are tentative in nature with reference to the prayer made in the present appeal confining it to the case of the appellant. It shall have no bearing on the trial or on the case of the accused” It is submitted that each case has to be considered on its own facts and the materials which are available on the record. In the present case, the appellants cannot legally contend that their case would be standing identical with that of Md. Jalaludding and Athar Parwez.”

Consideration

26. We have heard learned counsel for the parties and perused the materials which have been placed before us for a prima-facie view at this stage for purpose of grant of bail to the appellants.

27. We have noticed that even as these two appellants are not named in the first information report lodged on 12.07.2022, their names surfaced in course of investigation of the case by the NIA. During investigation, the NIA not only gathered materials showing that Md. Yaqub Khan (A-27) and Shahid Reza (A-38) are associated with each other, they are also involved in procurement of lethal weapons to execute targeted attacks to flare up the



communal tension. They remained active in their pursuit to arrange the weapons post-ban period of the PFI. The gist of the seized document “India 2047 towards Rule of Islam in India, International Document: Not for Circulation” brought out the criminal conspiracy hatched by the PFI. It also revealed that the PFI allured Muslim youths to join the organisation by sharing views of atrocities committed against the Muslims. The digital evidence which were found from the mobile phone of Md. Yaqub Khan (A-27) in form of the video posted on 31.01.2023 would show that he had made an appeal to support reconstruction of Babri Masjid at the place where Ram Mandir was being constructed. When he was trolled on social media on this post, he decided to attack a Hindu boy for his comments on social media. A-27 arranged a firearm and amunition to eliminate him by wearing saffron clothes and to flare up communal hatred. A-27 was acting at the behest of Md. Reyaz Moarif (A-4). Reyaz Moarif had moved this Court earlier for grant of bail in Cr. Appeal (DB) No. 42 of 2024. This Court rejected his prayer for bail and refused to interfere with the order of the learned trial court rejecting his prayer for bail. The order dated 14.05.2024 passed by this Court Hon’ble Court in Cr. Appeal (DB) No. 42 of 2024 has been placed before this Court. It is this Reyaz Moarif (A-4) on whose instance



Md. Yaqub Khan @ Usman @ Sultan (A-27) along with Md. Belal @ Irshad (A-30) and other PFI members were indulged in the unlawful activities of the PFI.

28. There is another aspect which has been revealed during investigation by the NIA. It has come in the chargesheet filed against the appellants what the co-accused Md. Belal @ Irshad (A-30) had received Rs. 3,50,000/- from his associate Md. Sajjad Alam, Resident of Kuawan, P.S. Mehsi, District-East Champaran, Bihar. Md. Sajjad Alam is a close associate of FIR named accused persons. In July 2022, Md. Sajjad had gone to Dubai, United Arab Emirates and is based there till date. The flow of funds was also increased in the Bandhan Bank Account of Md. Belal (A-30) from the Canara Bank Account of Md. Sajjad Alam.

29. The chargesheet reveals that on the disclosure of Md. Yaqub Khan, NIA recovered and seized one country-made pistol, two rounds ammunition, one air pistol, one sword and two knives from the house of Shahid Raza (A-38) who is resident of Chakia, District-East Champaran, Bihar. These seized articles were handed over to him by accused Md. Yaqub @ Sultan @ Usman to keep them in safe custody. This was arranged from **Abid (A-29)** with assistance of his associate Md. Tanveer @ Md. Tanveer



Barkati (A-28) for targetting killing of a Hindu youth to flare up the communal tension.

30. So far as the material collected against these appellants are concerned, in paragraphs '17.49' to 17.51' of the chargesheet it is stated that during examination, witnesses stated about the association of Md. Yaqub Khan (A-27) with the other accused persons, the CDR connectivity with co-accused persons in this criminal conspiracy has been shown. Referring to the evidence against Md. Yaqub Khan (A-27), learned ASG has shown that the disclosure memo of Md. Yaqub Khan (A-27) dated 04.08.2023 under Section 27 of the Indian Evidence Act and recovery memo dated 01.08.2023 of social media accounts in respect of A-27 will prove that he is a member of PFI and he used different social media to propagate the ideology of PFI even after the PFI was banned and was declared an unlawful association. The disclosure memo of Md. Yaqub Khan (A-27) dated 04.08.2023 pointing out memo dated 05.08.2023 and 07.08.2023 will prove that co-accused A-27 along with other co-accused conspired for the criminal activities of the PFI and organised/undergone training of PFI at different locations in a clandestine manner. Search and seizure-cum-recovery memo dated 05.08.2023 related to residential premises of Sahid Raza (A-38) will prove recovery under Section



27 of the Indian Evidence Act of one country-made pistol (katta) with two rounds ammunition, one air gun, one sword and two knives from the house of Sahid Raza (A-38) on the disclosure of Md. Yaqub Khan (A-27).

31. Learned ASG has also shown to this Court that analysis of extracted data of mobile of the co-accused Md. Yaqub Khan (A-27) and Sahid Raza (A-38), account statement of Bandhan Bank Account of Md. Belal @ Irshad will prove his transactions with other PFI members it will also prove that he provided this to accused Md. Yaqub Khan (A-27) for further criminal activities of the PFI.

32. We have noticed from the list of documents which has description of the documents and the list of materials in Annexure 'C' to the chargesheet that the NIA had placed before the learned trial court the various documents and material exhibits to prove the guilt of the appellants.

33. We find from the kind of materials available on the record that the observations of the learned trial court in the impugned order that the materials available on the record supported the allegations against both the appellants are correct. So far as the rigours of Section 43D (5) are concerned, we reproduce Section 43D (5) as under:-



“**43D (5).** Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.”

34. The appellants have been chargesheeted for the offences committed under Sections 10, 13, 17, 18, 18A, 18B, 20 of UA(P) Act. The appellants have also been chargesheeted under various Sections of IPC and the Arms Act as stated hereinabove.

35. So far as the submission of the learned counsel for the appellants that from the materials collected by the NIA, the case of the appellants would not be covered under any of the provisions under Chapter IV of the UA(P) Act, 1967 is concerned, this Court is unable to agree with the said submission. Chapter IV deals with the punishment for terrorist activities. The definition Section 2 Clause (k) defines the words “Terrorist Act” which is the meaning assigned to it in Section 15 and the expressions “Terrorism and Terrorist” shall be considered accordingly.

36. Section 15 says (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic



security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country— (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause— (i) death of, or injuries to, any person or persons; or (ii) (iii) or (iiia)or (iv)

37. It is evident on reading of Section 15(1) of the UA(P) Act, 1967 that if the Act is with intent to threaten or likely to threaten the unity and integrity and security or sovereignty of India or it is likely to strike terror in the people or any section of the people in India by use of the kind of weapons mentioned in Clause (a) of subsection (1) of Section 15, it would be covered under Section 15 and will come within the meaning of the word 'terrorist'. In the present case, we have noticed from the materials on the record that these two appellants not only procured and preserved the firearms and other lethal weapons like sword, the procurement and preservation of the weapons were preceded by an intention to strike terror by killing one boy who had trolled A-27 on his comment against construction of Ram Mandir.

38. This Court finds that there are materials in possession of NIA which have been placed before the learned trial court, showing that



even after the ban was imposed against the PFI, these appellants were taking part in the activities of the said organization and they were involved in inciting the commissions of unlawful activity. The punishment prescribed for such offences under Section 10 and 13 of the UA(P) Act are severe and under Section 10(b) (i) and (ii), the punishment may extend to imprisonment for life.

39. This Court would agree with the submissions of learned ASG that so far as the case of Md. Jalaluddin Khan @ Md. Jalaluddin and Athar Parvez who have been granted bail by the Hon'ble Supreme Court are concerned, their cases would stand on a completely different footing inasmuch as it would appear from the materials which were available on the record in the said two cases that there was no material showing that they were involved in procurement of arms with an intent to strike terror in the society.

40. This Court has earlier rejected the prayer of the appellant Md. Irshad Alam in Criminal Appeal (DB) No. 130 of 2024 and the appellant Md. Reyaz Moarif in Criminal Appeal (DB) No. 42 of 2024. The case of these two appellants would not stand on a better footing.

41. Paragraph '23' of the judgment in case of Md. Jalaluddin and paragraph '36' of the judgment in case of Athar Parvez rendered by the Hon'ble Supreme Court would make it clear that the observations in the order are tentative in nature with reference to the prayer made in the said appeal and the same has been confined to the case of the appellant



of the said case with a clear note that it shall have no bearing on the trial or in the case of the co-accused.

42. The appellants are in custody for less than two years for the present. They have not undergone incarceration for a substantial period, hence it cannot be said that their continued detention would be in violation of their fundamental right under Part III of the Constitution of India. In the case of **Union of India vs. K.A. Najeeb** reported in **(2021) 3 SCC 713**, the Hon'ble Supreme Court declined to interfere with the order of the High Court granting bail to the accused under UA(P) Act, 1967. In the said case, the accused was in jail for over four years and the accused who had earlier faced trial were convicted but sentenced in between two to eight years. Thus, the accused had served substantive part of the sentenced attached to the offence of which he was charged. In the case of **Vernon vs. State of Maharashtra and Anr.** reported in **(2023) 15 SCC 56** and **Sk. Javed Iqbal vs. State of U.P.** reported in **(2024) 8 SCC 293**, their Lordships of the Hon'ble Supreme Court exercised their power as a constitutional court when it was found that the accused were in custody for more than five years to nine years during trial but the trial was not likely to be concluded in near future. However, at this stage, this view cannot be taken in case of these appellants. This argument shall remain open to the appellants for consideration at appropriate stage.

43. Considering the complete materials which have been brought to the notice of this Court and the law on the subject in the



UA(P) Act, as discussed above, we find no infirmity in the impugned orders of the learned trial court. These two appeals are therefore dismissed, at this stage.

44. It is made clear that the observations made hereinabove are tentative in nature and no part of it shall cause prejudice to the case of the either parties and it will have no bearing on the trial.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

Rishi/-

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