IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.907 of 2024

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

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Sarfaraz Nawaz, S/o Abdul Rehman, R/a No. 1-119 Karubara Keri, Sajipa Munnuru Village - Panemmangalore, Bantwal Taluk, Distt. - Dakshin Kannada, Karnataka.

... ... Appellant

Versus

The Union of India through National Investigation Agency

... ... Respondent

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Appearance :

For the Appellant/s	:	Mr.Kundan Kumar Ojha, 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)

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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 appellant and learned counsel for the National Investigating Agency (in short 'NIA').

2. This appeal is arising out of the order dated 13.06.2024 (hereinafter called 'the impugned order') passed by learned Special Judge, NIA, Patna, Bihar (hereinafter called the 'learned trial court') in Special Case No. 07 of 2022/R.C. No. 31 of 2022.

3. By the impugned order, the learned trial court has been pleased to reject the prayer for bail of the appellant during the ongoing trial. The appellant is aggrieved by and dissatisfied with the order 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 and 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 6^{th}-7^{th} July also, a meeting had taken place in which some doubtful 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 6^{th}-7^{th} 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 could come and get 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 being back the glory of Islam in India.
> External Help
> In the scenario of full-fledged show down with the State, apart from relying on ours trained PE cadres, we would need held 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. During investigation, the name of the appellant transpired alleging his involvment in illegal channelising of the funds from United Arab Emirates/Saudi Arabia and depositing the same in the bank account of different entities including the accused persons of East Champaran (Motihari) Module of the PFI of this case. The data extracted from the mobile of the appellant and the co-accused persons connected with this case were sent for laboratory analysis and the analysis datas showed the involvement of the appellant in transfer of funds using UPI in the Bank account of Sajjad Alam (A-39). It is alleged that the statement of witnesses established the association of the appellants with other co-accused persons and their involvement in transfer of illegal funds from abroad to different persons of India for committing terrorist act. The appellant was a member of PFI and he was working towards establishing Islamic Rule in India by 2047 and to overthrow the democracy in India. He was arrested on 06.03.2023 from Dakshina Kannada District from the State of Karnataka.

8. Learned counsel for the appellant has submitted that the appellant is not a member of the PFI as alleged by the prosecution agency rather he was running a small welding shop at his local market and he had no concern with any person of the State of Bihar.

9. It is further submitted that the petitioner had transferred total Rs.40-50,000/- only using his account and UPI and such transfers have been done by the appellnat for commission of Rs.100-500/-. It is submitted that there is absolutely no allegation pointing out commission of any act within the meaning of terrorist act as defined under Section 2(k) r/w Section 15 of the UA(P) Act.

10. It is submitted that although some of the witnesses have spoken about the collection of funds and sending it to different accused persons but there is no whisper in the arguments of the prosecution agency about the nature of evidence or documents collected by them to make them believe or come to the conclusion about their alleged links with the terrorist organisation. It is pointed out that in view of the previous FIRs in RC No. 14/2022/NIA/DLI dated 13.04.2022 and FIR in RC No. 42/2022/NIA/DLI dated 19.09.2022 on the same set of allegations against another set of accused with a verbatim reproduction of the same offences is nothing but a violation of the 'doctrine of sameness' as laid down by the Hon'ble Supreme Court in the case of **T.T. Antony vs. State of Kerala** reported in **(2001) 6 SCC 181**.

11. It is pleaded on behalf of the appellant that all transactions of the appellant pertains to the period prior to the imposition of ban on PFI organisation, therefore, no *prima facie* offence under UA(P) Act would be made out against the appellant. It is submitted that there is absolutely no prima-facie evidence that any fund deposited by the appellant has ever been used for committing any terrorist act. The appellant is not connected with the State, he is not a member of the PFI and there is absolutely no material to connect the appellant with any of the offences alleged. The submission is that in this case the rigours of Section 43D(5) of the UA(P) Act, 1967 would not be attracted.

12. It is lastly submitted that the appellant is in jail for over two years, charges have been framed but there is no progress in the trial and till date only one witness has been completely examined, the cross-examination of the second prosecution witness is in progress and with this pace, examination of 160-170 witnesses which the NIA intends to produce would take several years. An alternative submission is that even if the rigours of Section 43D(5) is attracted, this Court being a constitutional court directs release of the appellant on the ground of violation of the fundamental right of the appellant because of the prolonged incarceration without there being any chance of early conclusion of trial.

13. The prayer for bail of the appellant has been opposed by learned ASG for the NIA. It is submitted that the seized documents from the second floor of the Ahmed Palace which was rented out to the accused Athar Parwez (A-1) by the wife of Md. Jallaludin (A-2), it would appear that the seized documents were prepared and circulated by PFI for uniting their members to carry out their objective clearly for mass upheavel endangering the security, safety and integrity of the nation even at the cost of resorting to violence for which manifesto clearly indicated for imparting training in arms and explosies to their members. It is for this reason that Section 13 of the UA(P) Act was invoked in the instance case. It is submitted that the investigation brought out that the outfit, though advertises to be promoting national integration with communal and social harmony, it is engaged in anti-national and anti-social activities, including kidnapping, murders, intimidation, hate campaigns, rioting, Love Jihad, and religious extremism. It has its external linkage and connections with various Islamic terrorist groups like ISIS and ISKP. It is submitted that during investigation, the bank account statement of the accused persons, Popular Front of India and Rehab India Foundation were obtained and analysed. The analysis of the Syndicate Bank Account (now Canara Bank) of the PFI, Bihar and HDFC Bank Account of Rehab India Foundation revealed that the money was also transferred in the accounts of the persons including FIR named accused persons in the name of scholarship etc. Reyaz Moarif (A-4) has also received Rs.28,000/- from the bank account of the said PFI, Bihar in his Punjab National Bank for the criminal activities of PFI. The Directorate of Enforcement *vide* a Provisional Attachment Order No. 14 of 2022 and 15 of 2022 both dated 01.06.2022 has attahced the bank account of PFI including the bank account of PFI, Bihar and Rehab India Foundation. The same has also been confirmed by the Adjudicating Officer *vide* orders dated 23.11.2022 and 24.11.2022.

14. In the chargsheet, as regards this appellant, it is stated in paragraph '17.42' that Md. Sinan (A-31), Sarfaraz Nawaz (A-32, this appellant), Iqbal (A-33), Abdul Rafiq M (A-34) of the Dakshin Kannad, District of Karnataka and Abid K M (A-35) of Kasargod, District of Kerala were involved in channelising illegal funds from United Arab Emirates and Saudi Arabia <u>to various suspects in India</u>. During searches conducted at seven locations in Kasargod District of Kerala and Dakshina Kannada District of Karnataka on 05.03.2023, large number of incriminating evidences were recovered pertaining to illegal transactions. Thus, the allegation against this appellant is that of channelising the illegal funds. The appellant has been chargesheeted in the second supplementary chargesheet filed on 01.09.2023 against five arrested accused namely Md. Sinan (A-31), Sarfaraz Nawaz (the appellant and A-32), Iqbal (A-33), Abdul Rafiq M (A-34) and Abid K M (A-35).

(*emphasis supplied*)

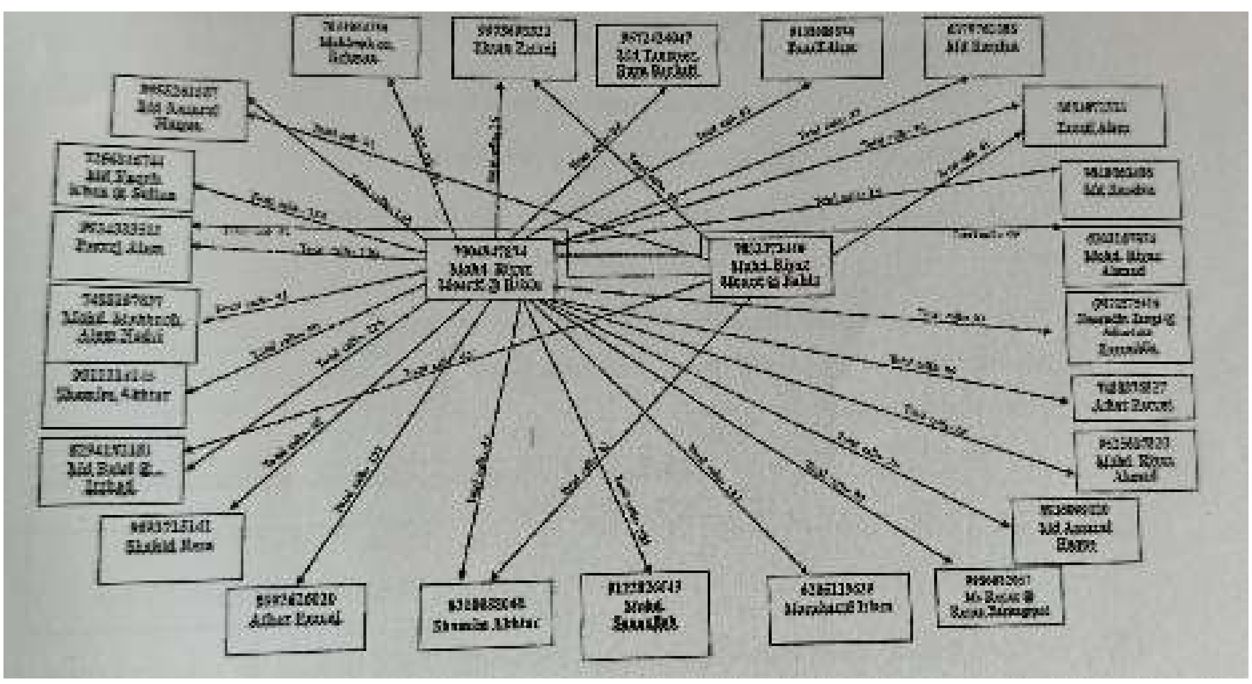
Consideration

15. We have heard learned counsel for the appellant and learned ASG for the NIA as also perused the records placed before this Court. At the outset, we find that in paragraph '17.63' of the supplementary chargesheet no. 1D/2023 enclosed with the counter affidavit of NIA, the role of one Reyaz Moarif @ Babloo (A-4) who happened to be the then General Secretary and Vice President of the PFI has been mentioned. It is alleged that he had hatched a criminal conspiracy with other co-accused persons of PFI for accomplishing Islamic Rule in India by 2047. He radicalised Muslim youths to join PFI and took bayeth (Oath) for working on the agenda of PFI. He collected funds for the activities of the PFI, organised training camps for imparting training on martial, attack using knives, iron rod, chopper and other weapons, subverting their to abet waging of war against the Government of India. The Investigating Agency has analysed the call data record of mobile numbers 7004947874 and 7033373446 of Reyaz Moarif (A-4). Paragraph '17.64' of the charge-sheet specifically names the persons with whom Reyaz Moarif (A-4) has been found connected with. We, therefore, reproduce paragraph '17.64' of the chargesheet as under:-

> "17.64 Analysis of Call data record of mobile number 7004947874 & 7033373446 of Reyaz Moarif (A-4) revealed that he was associated with the FIR named accused persons of the PFI namely Athar Parvej (A-1) mobile no. 8292626020, Tausif Alam (A-6) mobile no. 8084072313, Shamim Akhtar (A-3) mobile no.

9311114145, Mohammad Sanaullah @ Aakif (A-5) mobile no. 7739774394 & 9122826649, Noorudin Jangi (A-19) mob. no. 9871575416, Ehsan Parvej (A-8) mobile no.9973693322, Md. Reyaz @ Reyaz Farangipet (A-20) mob. No. 9980082057, Mehboob ur Rehman (A-11) mob. no. 7044064786, Md Ansarul Haque @ Ansar Bhai (A-21) mob. no. 8936099120, Ehsan Pervej 9973693322, Md. Roselan (A-10) 9840063406 and Mazaharul Islam @ Mazhar Imam (A-23) mobile no. 6205119635 in the criminal conspiracy of the PFI. He was also connected with other co-accused Md Yaqub khan @ Sultan @ Usman (A-27) Mob. no. 7256846744, Md Tanweer Raja Barkati (A-28) mobile no. 9572424047, Md. Belal @ Md. Irshad (A-30) mobile no. 8294182181, Shahid Reza (A-38) mobile nos. 9693715141 & 8207674451 and other PFI members for extending the criminal conspiracy of PFI even after ban of the PFI by Central Government.”

16. The above connection has been shown with a graphic detail in the charge-sheet and we have extracted the same hereunder for a ready reference:-



17. It is evident from paragraph ‘17.64’ of the chargesheet no. 1D/2023 that the analysis of call data record of Reyaz Moarif (A-4) is not showing his connection with Sajjad

Alam or Sarfaraz Nawaz (the appellant). In paragraph '17.42' of the charge-sheet although it is alleged that this appellant and some other co-accused were involved in channalising illegal funds from United Arab Emirates and Saudi Arab to various suspects in India but it nowhere shows that how much amount were sent by the appellant and in whose account. There is a mere assertion that illegal funds have been channelised to various suspects in India. The words "suspect in India" clearly shows that the Investigating Agency is not sure about the nature and the purpose of transfer of fund in so-called suspected accounts. There is no material to show that such funds were transferred by the appellant in the suspected account for carrying on any terrorist act within the meaning of Section 15 of the UA(P) Act, 1967.

18. Some of the accused namely Nooruddin Jangi @ Advocate Nooruddin Jangi and Athar Parwez who are shown connected to Reyaz Moarif (A-4) have been granted bail by this Court and the Hon'ble Supreme Court.

19. This Court further finds that the account of the PFI was already attached on 01.06.2022 i.e. much before the date of the FIR in this case and the provisional order had been confirmed by the Adjudicating Officer *vide* orders dated 23.11.2022 and 24.11.2022. The charge-sheet nowhere says that on which date and in which account the appellant transferred the amount. This has to be understood *prima-facie* in the light of the assertion of the appellant that he had deposited a total of Rs.40-50,000/- for earning commission and those were made prior to imposition of ban on PFI organisation. There is nothing on the record to show that such transfers would fall within the definition of 'terrorist act' and the transfer would be taken as raising funds for 'terrorist act' as envisaged under Section 17 of the UA(P) Act, 1967. The chargesheet does not contain any description of the so-called suspected accounts in which the appellant had made transfer of money.

20. This Court further finds that the case of the appellant would be clearly distinguishable from the case of Md. Irshad Alam and Md. Reyaz Moarif whose prayer for bail has been rejected by this Court in Criminal Appeal (DB) No. 130 of 2024 and Cr. Appeal (DB) No. 42 of 2024. The role of Md. Reyaz Moarif (A-4) as discussed in the charge-sheet has been taken note of hereinabove, no connection of the present appellant has been shown while analysing the details of the two mobile phones of Md. Reyaz Moarif (A-4).

21. There is no allegation much less any material that the appellant has transferred any money in the account of PFI Bihar through said Md. Reyaz Moarif (A-4). Similarly, so far as Irshad Alam is concerned, his prayer for bail was rejected by this Court after noticing the transcript of the talks between the said appellant and the co-accused Md. Yaqub Khan @ Usman @ Sultan (A-27). This Court has noticed in the case of Md. Irshad Alam, the materials on the record and the legally intercepted telephonic talk which he had with the other activists of the organisation in which he was found arranging the arms and ammunition and conducted recce of a youth in order to plan his targeted killing. The case of the present appellant is clearly distinguishable.

22. This Court further finds that in this case, till date three accused persons have been enlarged on bail. One Nooruddin Jangi @ Advocate Nooruddin Jangi was granted bail by a learned coordinate Bench of this Court in Criminal Appeal (DB) No. 749 of 2023 whereas two other accused, namely, Md. Jalaluddin Khan @ Md. Jalaluddin (A-2) and Athar Parwez (A-1) have been granted bail by the Hon'ble Supreme Court in Criminal Appeal No. 3173 of 2024 and Criminal Appeal No. 5387 of 2024 respectively. In case of Athar Parvez, which is a recently decided case by the Hon'ble Supreme Court, while noticing the facts of the case, the Hon'ble Supreme Court has observed that in the charge-sheet, there is no allegation that the appellant was a member of a terrorist gang or organisation. The PFI of which the appellant was allegedly a member has not been declared a terrorist organisation within the meaning of Section 2(m) of the UA(P) Act, 1967. As regards the funds received by Athar Parwez (A-1), the Hon'ble Supreme Court has observed in paragraph '30' of the order as under:-

> "**30**. Allegations against the Appellant with regard to having collected Zakat from the people for helping the PFI or recruiting members of PFI. Suffice it to say at this stage, that on the day such activities were carried out by the Appellant, PFI was not a banned organisation. None of the witnesses or the protected witnesses stated that the money so collected in the form of Zakat was ever misappropriated by the Appellant or was in any manner used for illegal activities. The statement of the protected witnesses has not mentioned anything specific that would be attributed to the Appellant which could prima facie attract charges under the UAPA, 1967."

23. We have taken note of paragraph '30' notwithstanding the fact that so far as the case of the appellant is concerned, the investigating agency has not found any money transferred by the appellant in the account of the PFI, Athar Parwez or Md. Reyaz Moarif.

24. In the light of the aforementioned discussions, keeping in view what transpired from the charge-sheet placed before us, we are of the opinion that there is no reasonable ground for believing that the accusations against the appellant of raising funds for terrorist act are prima facie true. For taking this view, the Court is merely expected to record a finding on the basis of broad probabilities, as has been observed by the Hon'ble Supreme Court and we are doing the same taking the materials placed before us as they are. Thus, the rigors of Section 43D(5) of the UA(P) Act, 1967 would not be attracted in this case.

25. In view of our above opinion, we need not go into the alternative submission of learned counsel for the appellant. The appellant has remained in custody for over two years and the views expressed by Hon'ble Supreme Court in case of Athar Parwez would cover the case of this appellant as well.

26. In result, we set aside the impugned order of the learned trial court and direct release of the appellant on bail immediately on such terms and conditions as may be deemed just and proper by the learned trial court. The learned trial court shall determine the terms and conditions to be imposed upon the appellant after hearing learned counsel for the respondent.

27. 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/-

AFR/NAFR	
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