

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.911 of 2023

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

Md. Tanveer @ Md. Tanveer Barkati, S/O Md. Abdullah, R/O Mohalla-
Bahadurpur, P.S- Mehshi, Distt.- East Champaran @ Motihari (Bihar).

... .. Appellant

Versus

The Union of India through the National Investigation Agency

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 918 of 2023

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

Md. Belal @ Irshad, s/o Md. Shahid, R/o Mohalla- Harpur Kishuni, Ward No.
10, Bara Chakia, P.S. Chakia, Dist. East Champaran @ Motihari (Bihar)

... .. Appellant

Versus

The Union of India through the National Investigation Agency

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 911 of 2023)

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. 918 of 2023)

For the Appellant/s : Mr. Tahir, Advocate

Mr. Abu Nasar, 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 (in short 'NIA').



2. These two appeals are arising out of the common order dated 27.07.2023 (hereinafter called 'the impugned orders') passed by learned Special Judge, NIA, Patna, Bihar (hereinafter called the 'learned trial court') in Special Case No. 02 of 2023/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 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, in course of the verification made there, 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 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 6-7 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 (A-1) 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 ours 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. In course of investigation, the NIA found some digital articles from the possession of the appellant Md. Tanveer Barkati (A-28), Md. Abid, (A-29) and Md. Belal @ Irshad (A-30). The extracted data revealed the association of Md. Belal (A-30) with the accused Riyaz Moarif (A-4), Md. Yaqub Khan (A-27) and some other accused. The NIA found from the extracted data “Redmi Note 11 mobile phone of A-30 containing voice messages related to Md. Yaqub Khan (A-27) which revealed the criminal conspiracy for extending the unlawful activities of the PFI. The extracted data of mobile phone Nokia TA1032 seized from A-28 shows his association with PFI. The mobile number of Riyaz Moarif (A-4), Yaqub Khan @ Sultan (A-27), Md. Sajjad Alam and Md. Belal were saved in the contact list.

8. As per the charge-sheet, in the raid conducted on 11.07.2022 in the premises where PFI activities were going on, the NIA had recovered five sets of document “India 2047: Towards Rule of Islamic India, internal document: not for circulation” in Urdu 49 cloth flags, two magazines, etc. The gist of the seized document brought out the criminal conspiracy hatched by the PFI. Paragraph ‘17.4’ of the charge-sheet provides the gist of the document, therefore we reproduce the same hereunder:-



“Page 1: India 2047

Towards Rule of of Islam in India

Page 2: Present state of Muslim community.

PFI is talking about 75% Muslim population in 9 districts.

Page 3: Here comes India 2047.

1. Dream of political power to the Muslim community & Islamic government in India in 2047
2. PFI is now expecting at least 10% of the Muslim population to subjugate the coward majority community
3. Four stages of progression towards Islamic rule

Page 4:

Stage 1: Unite Muslims & give training of weapons and explosives to PE cadres

2: Utilise National Flag, Constitution & Ambedkar to shield real intention of establishing Islamic rule

3: Alliances with SCs/STs/OBCs to divide Hindus

4: Use SC/ST/OBC for votes & infiltrate in Police, Army, Judiciary

Page 5:

-After completion of all 4 stages, declare a new constitution based on Islamic principles with the help of external forces.

- Use Babri Masjid for radicalization.

- Mass mobilization should be the priority.

Page 6: PFI in every house strategy. Recruitment of members.

- State units should continue organizing PE classes at grass-root level on a priority basis under the camouflage of Yoga sessions & Healthy People Healthy Nation campaign.

- Acquire plots in Muslim-dominated localities

Page 7: Collection of Information against Hindu/Sangh Parivar leaders. And, External help.

PFI has developed a friendly relationship with Turkey, Efforts are on to cultivate reliable friendships in some other Islamic countries.”



9. The co-accused Abid @ Aryan (A-29) stated during his examination that Md. Yaqub Khan (A-27) was in possession of firearms and used to terrorise people of other communities with the firearms to spread communal tension. He stated that he had arranged two rounds from his co-villager Nazre Alam @ Bechu and provided the same to Md. Tanveer Barkati (A-29). After apprising the same by Tanveer Barkati (A-28) Yaqub Khan (A-27) transferred Rs. 1,000/- through Paytm UPI to him (A-29) in lieu of 02 rounds. This fact has been corroborated by the bank account statement of HDFC bank account of Md. Abid in which payment of Rs. 1,000/- was transferred by A-27. Thus, active role of the appellant Tanveer Barkati (A-28) has been found in procurement of the two rounds of cartridges at the instance of Md. Yaqub Khan (A-27).

10. The charge-sheet further reveals that the investigation related to Bandhan Bank account of accused Md. Belal @ Irshad (A-30) brought out that he carried out several transactions with FIR named accused persons like Riaz Moarif (A-4) and his wife Shabana Khatun, Shanaullah (A-5) and Ansarul Haque (A-29). He also transferred funds to his close associate Md. Yaqub Khan @ Sultan @ Usman (A-27) through UPI for extending the unlawful activities of the PFI. He had also received Rs. 47,500/- from Rehab



India Foundation for using in unlawful activities of PFI. Belal @ Irshad (A-30) had several monetary transactions (approximately Rs. 3.5 lakhs) from one Md. Sajjad Alam, who is presently based in Dubai, United Arab Emirates. It is stated that the examination of witnesses reveal the association of these appellants with the co-accused and the PFI, their involvement in extending the criminal activities of PFI even after its ban by the central government, to fulfill the agenda of PFI i.e. Islamic rule in India. During investigation, the NIA recorded legally intercepted voice calls between Yaqub Khan (A-27), Md. Tanveer Barkati (A-28), Md. Abid (A-29) and others. The voice calls confirmed the criminal conspiracy hatched by PFI members who were in possession of a small firearm and were arranging for the targeted killing/attack of Hindu youth for extending the unlawful agenda of PFI.

11. Both the appellants gave their consent before the learned court of Special Judge, NIA, Patna for giving their voice samples for the purpose of matching/comparison with the recorded intercepted voice call but later on they did not provide their voice samples and thereby they resiled from their consent given before the court.



Submissions on behalf of the Appellants

12. Before this Court, learned counsel for the appellants has contended that the appellants are not named in the First Information Report. They were apprehended on mere suspicion on 05.02.2023. Nothing has been recovered from the house of the appellants. It is submitted that prior to its ban, the PFI was a registered organisation under the Societies Registration Act as it was formed to promote inter alia national integration, communal amity and social harmony and uphold the democratic set up secular order and rule of law in the country. It is stated that the seven pages booklet/document namely India 2047: Rule of Islamic India, Internal Document is a document planted by the prosecution to implicate the appellants with ulterior motive and nefarious design. It is submitted that Section 121, 121A, 153A and 153B IPC would not be attracted against the appellants.

13. On behalf of appellant Md. Belal @ Irshad it has been also contended that the Sections of UA(P) Act would not be attracted and no prima facie case is made out against him. It would appear that both the appellants have made identical kind of submissions.

14. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Vernon**



vs. State of Maharashtra and Anr. reported in **(2023) 15 SCC 56** to submit that in the said case, the Hon'ble Supreme Court having found that the appellant had remained in custody for almost five years and the materials on the record cannot justify his continued detention, pending final outcome of the case under the provisions of the 1860 Code and the 1967 Act, allowed bail. It is submitted that in the present case since the appellants have already remained in incarceration for over two years and the trial is not likely to be concluded in near future, they would deserve privilege of bail during pendency of the appeal. There are altogether 160-170 witnesses to be examined and presently cross-examination of PW-2 is going on.

Submissions on behalf of the NIA

15. Learned ASG representing the NIA has taken this Court through various paragraphs of the charge-sheet, the list of witnesses and the list of materials which are enclosed with the charge-sheet to demonstrate the facts which were revealed during investigation and the materials which have been collected and on which the prosecution relies to prove the case against the appellants. Learned ASG submits that the NIA is in possession of legally intercepted call records of the appellants from which their involvement, hatching of criminal conspiracy in furtherance of



unlawful object would be clearly proved. The intention of the appellants behind collection of funds through foreign residents, deposit of huge cash in different accounts and the procurement of weapon through the illegal funds received from UAE, all these would show that there was a deep conspiracy to wage war against the country. It is submitted that the statement of witnesses Md. Danish (W-99), Rishu Kumar Gupta (W-103), Md. Furquan Ahmad (W-104), Md. Asif Khan (W-106), Imteyaz (W-107), Md. Meraz (W-110), Md. Shamshad Khan (W-116) and Md. Arif (W-221) would show that Tanveer Barkati (A-28) was associated with the accused persons in the criminal conspiracy of PFI, he was involved in recruitment, training of the PFI cadres and in spreading religious enmity in a clandestine manner even after the ban of PFI by the Government of India. Learned ASG has also referred the photo identification and statements by witnesses Md. Rahmatullah Ansari and Md. Mahtoob Alam. The CDR connectivity with FIR named accused persons and the appellants is yet another material in support of the charge-sheet.

16. Learned ASG submits that in the present case, not only the offences alleged under the Code of 1860 but even the offences under the UA(P) Act falling under Chapter IV would be



attracted against the appellants, hence, rigours of Section 43D(5) would apply against them.

17. As regards the present stage of trial, learned ASG submits that there are altogether 160-170 witnesses who are to be examined by the NIA. Presently, PW-2 is being cross-examined. It is, however, submitted that the delay is taking place because the defence is taking much time in completion of the cross-examination of the witnesses. Learned ASG submits that the NIA is willing to examine at least 5-6 witnesses every month to complete the prosecution evidence within a reasonable time. It is submitted that so far as the judgment of the Hon'ble Supreme Court in the case of **Vernon vs. State of Maharashtra** (*supra*) is concerned, in the said case the appellant had remained in custody for almost five years and the materials on the record, as held by the Hon'ble Supreme Court, did not justify his continued detention whereas in the present case, the appellants are in custody for only little more than two years and there are sufficient materials on the record which would justify their continued detention, pending outcome of the case.

18. It is also submitted that the rigours of Section 43D(5) of the UA(P) Act would be attracted in this case for the reason that there is a direct connection between these appellants and the co-



accused Yaqub Khan (A-27), who had been actively participating in spreading religious hatred through his posts on social media and had arranged arms and ammunition for the targeted killing of a boy belonging to another religion. The submission is that even with regard to the role of Md. Belal @ Irshad (A-30), it has been found that he had several monetary transactions with the FIR named accused Reyaz Moarif (A-4) who was the General Secretary of the PFI, his wife Shabana Khatun, Md. Sanaullah (A-5) and Md. Ansarul Haque (A-29).

Consideration

19. We have heard learned counsel for the appellants and learned ASG for the NIA as also perused the records. A counter affidavit has been filed in this case and copy of the charge-sheet dated 07.01.2023 and two supplementary charge-sheets dated 03.08.2023 and 01.09.2023 have been enclosed as Annexure 'A', 'B' and 'C' respectively. So far as these two appellants are concerned, they have been chargesheeted with Supplementary Charge-sheet No. 1A/2023, dated 03.08.2023 (Annexure 'B'). By this supplementary charge-sheet, four accused namely Md. Tanveer Barkati (the appellant under consideration), Md. Abid @ Aryan (the appellant in Criminal Appeal (DB) 1157 of 2023), Md. Belal @ Irshad (the appellant under consideration) and Md. Irshad



Alam (the appellant in Criminal Appeal (DB) No. 130 of 2024 whose prayer for bail has been rejected *vide* order dated 15.05.2024 in Cr. Appeal (DB) No. 130 of 2024) have been chargesheeted.

20. Perusal of the charge-sheet would show that these two appellants are the residents of the State of Bihar in the District of East Champaran, Motihari. Regarding these two appellants, the charge-sheet in paragraphs '17.22', '17.33', '17.24' and '17.25' speaks as under:-

“**17.22** Investigation further brought out that Md. Belal @ Irshad (A-30) was also associated in this deep rooted criminal conspiracy of the PFI, a banned unlawful association with co-accused persons Riyaz Moarif (A-4), Yaqub Khan (A-27) and others. He was also came in contact with many members of PFI such as Md. Roslen (A-10) of Tamlinadu, Md. Sanaullah (A-5) of Darbhanga, Tousif (A-6) and Ansarul Haque (A-21) of Madhubani, Yaqub Khan @ Sultan @ Usman (A-27) of Motihari, Shamim Akhtar (A-3) of Bihar Sharif and Md. Afroz of Motihari. He has been involved in the training as well as physical education of the PFI cadres even after ban of the PFI as an unlawful association by the central Government. He had attended physical training programme at Gandhi Maidan, Chakia, East Champaran district and was also part of the training at Ahmad palace, Phulwarisharif, Patna on 29.05.2022 in which the PFI cadres of Bihar as well as Karnataka and other states had participated. He



had transferred Rs. 5000/- on 03.01.2023 and Rs 1000/- on 25.01.2023 through UPI to Yaqub Khan @ Sultan @ Usman to further criminal/unlawful activities of the PFI, a proscribed unlawful association.

17.23 During further investigation, on emerging the facts that Md Tanweer Barkati (A-28), Md Aabid (A-29) and Md. Belal @ Irshad (A-30) are associated with FIR named accused Riyaz Moarif (A-4) and his associate Yaqub Khan @ Sultan @ Usman and are involved in extending the criminal activities of PFI even after the ban of PFI as an unlawful association by the Central Government, they along with Md. Yaqub Khan @ Sultan @ Usman (A-27) were arraigned as accused in the instant case. Thereafter, Md Tanweer Raza Barkati, Md Aabid and Md. Belal @ Irshad were arrested in the instant case on 05.02.2023. The digital articles including mobile phones used by accused Md Tanweer Barkati (A-28) Md Aabid (A-29) and Md. Belal @ Irshad (A-30) in the said criminal conspiracy were also seized for further investigation.

17.24 Investigation further brought out that, after the arrest of Md. Belal @ Irshad (A-30) he disclosed that after declaration of Popular Front of India (PFI) as unlawful association by the Government of India in September, 2022, Riyaz Moarif (A-4) instructed him that training, recruitment and other activities of PFI will be carried out secretly. In this regard, Riyaz Moarif sent him one voice clip on WhatsApp wherein Riyaz Moarif asked him to send Yaqub Khan@ Sultan @ Usman to hideout located at Parsouni village in district Muzaffarpur, Bihar. He conveyed



the said messages to Yaqub Khan and his associate Afroz, through WhatsApp.

17.25 Consequent upon disclosure made by accused Md Belal @ Irshad (A-30), he took NIA team to the house of one Md Kadir Ansari s/o Muslim Ansari R/o Vill Parsuni, PS Baruraj, Muzaffarpur, Bihar where NIA team recovered and seized one Printed banner of PFI having image of PFI flag with caption “Registration’ Popular Front of India”, and two iron swords having length around 77 cm. On the basis of aforesaid seizure, a separate case was registered by NIA at the Baruraj PS of Muzaffarpur vide FIR No 32/23, Date 05.02.23 under sections 120B, 121, 121A, 153A, 153B of IPC and section 10 & 13 of UA(P) Act against five accused namely (1) Md. Belal @ Irshad, s/o Md. Shahid, r/o Harpur Kishuni, PS- Chakiya, East Champaran, Bihar, (ii) Riyaz Mourif @ Bablu, s/o Md. Islam r/o Kunawa, PS- Chakiya Dist-East Champaran Bihar, (iii) Yaqub Khan @ Sultan @ Usman s/o Ayub Khan, r/o Mogalpur, PS- Mehshi, East Champaran, Bihar, (iv) Md. Afroz, s/o Md. Badre Alam, r/o Kasba, PS Mehshi, East Champaran, Bihar and (v) Md. Kadir Ansari, s/o Md. Muslim Ansari, r/o Village Parsauni, PS- Baruraj, Dist- Muzaffarpur, Bihar.”

21. The charge-sheet speaks of close association of Md.

Belal @ Irshad (A-30) with Reyaz Moarif (A-4) and collection of funds from abroad as well as from his associates in India in the Bandhan Bank account of Md. Belal @ Irshad (A-30). He had also transferred Rs. 6,200/- to his close associate Md. Yaqub Khan @ Sultan @ Usman (A-27) on his mobile through UPI.



22. We find that in the matter of these two appellants, their close connections with Md. Yaqub Khan (A-27) and Reyaz Moarif (A-4) have been established to a large extent. We have noticed that it is Md. Yaqub Khan who has been found involved in putting social media posts with an intention to spread hatred among two sections of the society and he was propagating the undeclared aim and object of the PFI to establish Islamic rule in India and in furtherance of his object, he had planned killing of a boy of another religion and for this purpose, he had arranged for two rounds of ammunition from Md. Abid through Tanveer Barkati (the appellant under consideration). It is for this reason that the NIA has filed charge-sheet against these appellants not only under the Sections of the IPC and Arms Act but also under Section 10, 13, 17, 18 and 20 of the UA(P) Act.

23. We have further noticed that in the matter of illegal channelising of funds while no direct connection of the accused persons from State of Kerala and Karnataka with Reyaz Moarif (A-4) has been found, so far as the appellant Md. Belal @ Irshad (A-30) is concerned, his direct connection with Reyaz Moarif (A-4) and receipt of money in his Bandhan Bank account would make him stand at a different footing.



24. We noticed from the records that the NIA has cited several witnesses and has attached the list of documents as well as list of materials in support of the charge-sheet. It includes the analysis of the bank accounts of accused and appellants and the electronic digital evidences. The learned trial court has, having gone into the materials on the record, concluded that even after the proscription of the PFI organisation, Tanveer Barkati (A-28) and Belal @ Irshad (A-30) along with other co-accused persons remained actively involved in not only propagating the ideology of the PFI but also in planning to carry out unlawful acts, including arranging of arms and ammunition. The trial court having referred the judgment of the Hon'ble Supreme Court in the case of **Martin Burn Limited vs. R.N.Banerjee** reported in **AIR 1958 SC 79**, found that the Hon'ble Supreme Court has explained that the *prima facie* case does not mean a case proved to the hilt but a case, which can be said to be established if the evidence, which is led in support of the same, were believed.

25. While determining whether prima facie case has been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not? Whether that was the only conclusion which could be arrived at on that evidence? The trial court concluded that there are strong



demonstrative materials on record brought by the prosecution which would establish that the allegation against the accused it appears to be *prima facie* true. The learned trial court, therefore, held that keeping in view the rigours of Section 43D(5) of the UA(P) Act, 1967, the bail petition of the appellant should be liable to be rejected.

26. Since the rigours of Section 43D(5) of the UA(P) Act, 1967 is attracted in this case, the next plea of the learned counsel for the appellants with regard to being in custody for a little more than two years and chances of delay in conclusion of trial is required to be considered. These appellants have been arrested on 05.02.2023. The NIA has informed that altogether 160-170 witnesses are required to be examined in course of trial but presently only PW-2 is being cross-examined. Whatever be the reason behind this, the question would be as to whether considering the period of two years of incarceration of the appellants, at this stage, they may be allowed to be released on bail on this ground alone. In the case of **Union of India v. K.A. Najeer** reported in **(2021) 3 SCC 713** the Hon'ble Supreme declined to interfere with the order of the High Court. The High Court was pleased to grant bail to the respondent after noticing that he had remained in jail for over four years and the other co-



accused who had already undergone trial were sentenced to imprisonment for not exceeding eight years, therefore, the decision to consider bail was grounded in the anticipation of the impending sentence. This has been noticed by the Hon'ble Supreme Court in the case of **Gurwinder Singh v. State of Punjab** reported in **(2024) 5 SCC 403**. We have also gone through the judgment of the Hon'ble Supreme Court in the case of **Thwaha Fasal vs. Union of India** reported in **(2022) 14 SCC 766** and **Angela Harish Sontakke vs. State of Maharashtra** reported in **(2021) 3 SCC 723**. While it is true that the Hon'ble Supreme Court has held that the statutory restriction under Sub-section (5) of Section 43-D, *per se*, do not oust the jurisdiction of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution of India where there is no likelihood of trial being completed within a reasonable time, it may be noticed that the Hon'ble Supreme Court has granted bail to accused in the cases under UA(P) Act, 1967 after noticing that there is no likelihood of trial being completed within a reasonable time and the period of incarceration a detainee has already undergone, covers a substantial part of the prescribed sentences for the offences with which the latter has been charged. In the present case, an incarceration of little more than two years cannot be said to be a substantial part of the prescribed sentence for the offences with which these appellants have been charged.



27. The seriousness of allegations and the severity of punishment attached to the offences of which the appellants have been charged, at this stage, the appellants have not made out a case of violation of Part III of the Constitution. This Court has earlier rejected prayer for bail of the co-accused Reyaz Moarif (A-4) and Md. Irshad Alam in Cr. Appeal (DB) No. 42 of 2024 and Cr. Appeal (DB) No. 130 of 2024 *vide* order dated 14.05.2024 and 15.05.2024 respectively.

28. In result, this Court declines to interfere with the impugned orders, at this stage. Accordingly, these appeals are dismissed.

29. 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	AFR
CAV DATE	11.04.2025
Uploading Date	18.04.2025
Transmission Date	18.04.2025

