

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1157 of 2023**

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

Aabid @ Md. Aabid, Son of Md. Rustam, Resident of Village - Bahadurpur,
P.S. - Mehsi, District - East Champaran.

... .. Appellant

Versus

The Union of India through National Investigation Agency

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Raju Kumar, 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 appellant and learned
counsel for the National Investigating Agency (in short 'NIA').

2. This appeal is arising out of the order dated
27.07.2023 (hereinafter called 'the impugned order') 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 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 were 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 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 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 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. During investigation, it has been revealed from the seized documents that the Popular Front of India (PFI) was working with an aim and object to establish Islamic Rule in India. It was planning for mass mobilization of the Muslim community for regaining ruling of Islamic rule in India and for which they



have set up the programme for training of the Muslim youths in handling of weapons and explosive devices. The seized documents were prepared and circulated by PFI for uniting their members to carry out their objectives clearly for mass upheaval endangering the security, safety and integrity of the nation. During the course of investigation, Section 13 of the UA(P) Act was invoked in the instant case.

8. The investigation brought out that the PFI follows a proper organizational structure comprising of several committees, councils as 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, Empowered India Foundation, Rehab Foundation, Kerala and Legal Council. It further revealed that the declared objective of PFI is ostensibly social service but its activities and undeclared objectives have strong communal and anti-national agenda. Initially, after investigation, charge-sheet was filed against four arrested accused persons i.e. accused Athar Parvez (A-1), Md. Jalaluddin Khan (A-2), Nooruddin Jangi @ Advocate Jangi (A-19) and Arman Mallick @ Imteyaz Ahmad (A-25) on 07.01.2023. Further investigation continued against the remaining FIR named accused persons and their associates. During investigation, house



search of FIR named accused Reyaz Moarif (A-4) revealed a video related to training of PFI members at Chakiya, District- East Champaran in Bihar in November, 2021. In this video, FIR named accused Ansarul Haque (A-21), Yaqub Khan (A-27) along with other PFI members were found undergoing training of the PFI. The Investigating Agency has found that even after the ban of the PFI, its cadres were still involved in propagating ideology of PFI and were planning for unlawful and criminal acts by arranging arms and ammunition. Accused Yaqub Khan @ Usman @ Sultan (A-27) a PE Trainer of PFI was in possession of firearm and was arranging ammunition for carrying out unlawful/criminal activities for extending the ideology of PFI even after ban by the central government.

9. Paragraphs '17.18' and '17.19' of the charge-sheet have been referred to to demonstrate that in January, 2023 Yaqub Khan (A-27) shared a video on social media in which Ramshila (stones) were being brought to Ayodhya through Mehshi, East Champaran, Bihar. He appealed to support reconstruction of Babri Masjid instead, at that place. We will take note of the relevant paragraphs of the charge-sheet under heading 'Consideration'.

10. So far as this appellant is concerned, it is stated that on 04th February, the house of Md. Yaqub Khan (A-27) and his



associates including this appellant were searched. On 04th and 05th February, Md. Tanveer Barkati (A-28), Md. Abid (A-29, the appellant) and Md. Danish were examined. It has come in course of investigation that Md. Tanveer Barkati (A-28) was associated with Reyaz Moarif (A-4) and Md. Yaqub Khan (A-27). He was aware of Reyaz Moarif (A-4) being accused in the instant case and also that Yaqub Khan (A-27) is an active member of PFI who is involved in recruiting Muslim Youths in PFI, their training and used to post communal videos on social media.

11. The examination of Md. Abid @ Aryan (the appellant) brought out that he along with Md. Yaqub Khan (A-27) and Tanveer Barkati (A-28) was associated with PFI. He corroborated the fact related to recruitment of Muslim youths in PFI by them through social video. He corroborated the fact that Yaqub Khan (A-27) was in possession of firearm and used to terrorize people of other community with firearm to spread communal detention.

12. This appellant has stated during his examination that he had arranged two rounds from his co-villager Nazre Alam @ Bechu and provided the same to Md. Tanveer Barkati. After apprising the same by Tanveer Barkati (A-28), Yaqub Khan (A-27) transferred Rs.1,000/- through Paytm UPI to him in lieu of two



rounds. This fact is corroborated by the bank account statement of HDFC bank account of Md. Abid (the appellant) in which the payment of Rs.1,000/- was transferred by Yaqub Khan (A-27) through Paytm in the HDFC bank account of the appellant on 23.02.2023. It has further come in paragraph '17.32' of the chargesheet that the examination of witness revealed the association of Tanveer Barkati (A-28) and Md. Abid (A-29), Md. Belal @ Irshad (A-30) and Md. Irshad Alam (A-36) with 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. the Islamic Rule in India.

Submissions on behalf of the appellant

13. Learned counsel for the appellant submits that the name of this appellant has transpired in this case after arrest of Md. Yaqub Khan (A-27), Shahid Reza and Reyaz Moarif who were chargesheeted vide 04th and 05th supplementary chargesheet dated 12.01.2024 and 16.03.2024 respectively for various offences under IPC, Arms Act and UA(P) Act.

14. Learned counsel submits that the appellant has got no concern with the offences alleged, nothing has been recovered from the possession or house of the appellant and the NIA has falsely implicated him in the instant case. It is submitted that the



appellant has been chargesheeted under Sections 120B, 153A and 153B of IPC, Section 120B IPC read with Section 25 and 29 of the Arms Act and Sections 10, 13, 18 and 20 of UA(P) Act but on perusal of the charge-sheet and the materials on the record, it would appear that there is no reasonable ground to believe that the accusations against the appellant are prima-facie true. It is submitted that the learned trial court has failed to appreciate the materials on the record while rejecting the prayer for bail of the appellant.

Submissions on behalf of the NIA

15. Learned ASG for the NIA has opposed the prayer for bail of the appellant. Attention of this Court has been drawn towards paragraphs '17.33', '17.34', '17.35' and '17.36' of the charge-sheet. It is submitted that this appellant who being a member of the PFI arranged for 02 rounds of ammunition. It is pointed out that the connection of this appellant with the several co-accused Md. Tanveer Barkati @ Md. Tanvir (A-28) and receipt of Rs.1,000/- in his HDFC bank account through Paytm UPI by Md. Yaqub Khan (A-27) on 23.02.2023 i.e. during post-ban period has been established.

16. Learned ASG submits that so far as the case of the appellant is concerned, it has transpired as a member of PFI



involved in criminal conspiracy of the instant case by forming a terrorist gang or abetting waging of war against the Government of India, in collecting men, arms or ammunition and preparing to wage war with the intention of waging war against the Government of India by promoting enmity between the two groups on the ground of religious and doing acts prejudicial to maintenance of peace and harmony.

17. It is submitted that in this case, Part IV of the UA(P) Act, 1967 is clearly attracted. The connection of the appellant with the co-accused Md. Yaqub Khan (A-27) stands established.

Consideration

18. We have heard learned counsel for the appellant and learned ASG for the NIA as also perused the records placed before us. Some of the relevant paragraphs of the charge-sheet which would be connecting this appellant with the unlawful activities of the PFI even after the ban was imposed upon the said organization by the Government of India, would be important to take note of. Para '17.21', '17.23', '17.24' and '17.25' are being reproduced hereunder for a ready reference:-

“17.21 The examination of Md. Aabid @ Aryan (A-29) brought out that he alongwith Md. Yaqub Khan (A-27) and Md. Tanweer Barkati (A-28), was associated with PFI. He corroborated the fact related to recruitment of Muslim youths in PFI by them through social media. He also



corroborated the fact that Md. Yaqub Khan (A-27) was in possession of firearm and used to terrorize people of other community with the firearm to spread communal tension. He further stated that he had arranged 02 rounds from his co-villager Nazre Alam @ Bechu and provided the same to Md. Tanweer Barkati (A-28). After apprising the same by Md. Tanweer Barkati (A-28), Md. Yaqub Khan (A-27) transferred Rs. 1000/- through Paytm UPI to him (A-29) in lieu of 02 rounds. This fact was corroborated by bank account statement of HDFC bank A/c no. 50100548291290 of Md. Aabid in which the payment of Rs 1000/- was transferred by Md Yaqub Khan (A-27) through Paytm UPI in the HDFC A/c no. 50100548291290 of Md. Aabid on 23.02.2023.

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, Reyaz 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 (i) 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- Mehsi, East Champaran, Bihar, (iv) Md. Afroz, s/o Md. Badre Alam, r/o Kasba, PS Mehsi, East Champaran, Bihar and (v) Md. Kadir Ansari, s/o Md. Muslim Ansari, r/o Village Parsauni, PS- Baruraj, Dist- Muzaffarpur, Bihar.”

19. From the above paragraphs, it would appear that this appellant had made available 02 rounds of ammunition and for this he had received Rs.1,000/- from Md. Yaqub Khan (A-27). What is important to take note of is the legally intercepted voice call between Md. Yaqub Khan (A-27), Tanveer Barkati (A-28), Abid



(A-29) and others. Paragraph '17.33', '17.34', '17.35' of the charge-sheet reads as under:-

17.33. During the investigation, examination of witnesses also brought out the sourcing of ammunition for the firearm and recce of a Hindu youth in order to target him. Witness also stated that in the end of January, 2023, Md. Yaqub Khan (A-27) had asked them telephonically for requirement of ammunition urgently to complete some task. He used coded language i.e. "7 नम्बर जो बकरी है, ओकरा तीन-चार गो दाना खरीदना है Urgently" and also "7 नम्बर का जो सोफा है उकर दू तीन गो पऊवा चाहिए". Later, 02 rounds ammunition was arranged by Md Yaqub Khan @ Sultan @ Usman (A-27) from Md Aabid (A-29) through Md Tanweer @ Md Tanweer Barkati (A-28). Witness also stated that Md. Yaqub Khan @ Sultan @ Usman (A-27) possesses firearm and encouraged Muslim youth to join PFI. He had imparted training of knife, sword and stick for self-defense to the newly recruited PFI members. Witness also stated that the prompt action by NIA saved life of a youth.

17.34 During the investigation, the recorded legally intercepted voice calls between Md. Yaqub Khan (A-27), Md. Tanweer Barkati (A-28) and Md Aabid (A-29) and others were received from Technical Cell, NIA, branch office Ranchi. The voice calls confirmed the criminal conspiracy hatched by the PFI members who were in possession of small firearm and were arranging ammunition for targeted killing/attack of a Hindu youth "Rishu" for extending the unlawful agenda of PFI. During this criminal conspiracy they carried out recce for targeted killing/attack.



17.35 During investigation, NIA, Ld. Court of Spl. Judge NIA cases Patna, Bihar has passed orders with directions to Director FSL, Patna and Jail Superintendent, Adarsh Central Jail, Beur, Patna for obtaining voice samples of Md. Yaqub Khan @ Sultan @ Usman (A-27), Md. Tanweer Barkati (A-28), Md. Aabid (A-29) and Md. Irshad Alam (A-36) in the instant case for matching/comparison with recorded intercepted voice call of said accused persons. In compliance to order of the Ld Court of Spl. Judge NIA cases Patna, Bihar, on approaching by NIA team, Md. Yaqub Khan @ Sultan @ Usman (A-27), Md. Tanweer Barkati (A-28), Md. Aabid (A-29) and Md. Irshad Alam (A-36) did not provide their voice samples even after providing their consents before the Ld Court.

20. Paragraph '17.39' of the charge-sheet records that "The analysis of call data record of Md. Abid @ Aryan (A-29) mobile no. 7766056316 revealed that he was associated in this criminal conspiracy with accused Md. Yaqub Khan (A-27) mobile no.7256846744. The CDR analysis of mobile no. 9507947743 used by Md. Irshad Alam (A-36) also confirmed his association with Md. Yaqub Khan @ Sultan (A-27) Mobile no.7256846744 and Md.Tanweer Barkati (A-28) mobile no. 9572424047 in the relevant phase of criminal conspiracy hatched by accused persons in this case."

21. In the above-mentioned background of the materials present on the record, we find that so far as the case of the present



appellant is concerned, he has been found to be involved in providing 02 rounds of ammunition to Md. Yaqub Khan (A-27). He has also received money from Md. Yaqub Khan. The NIA has found that Md. Yaqub Khan (A-27) was involved in propagating the ideology of PFI and was planning for unlawful/criminal acts by arranging arms and ammunition. In support of this, the NIA has brought on record the information available on the social media account of Md. Yaqub Khan @ Sultan @ Usman (A-27). Para '17.18', '17.19' and '17.20' of the charge-sheet amply demonstrate that Md. Yaqub Khan (A-27) was actively involved in propagating the unlawful undeclared ideology of the PFI. He was involved in mobilization of the Muslim community, he was involved in conducting training programmes and used to post communal videos on social media. In this act, the present appellant and his associates, namely, Tanveer Barkati (A-28) and Md. Irshad Alam (A-36) were actively involved. Para '17.18', '17.19' and '17.20' of the charge-sheet are being reproduced hereunder for a ready reference:-

17.18 Investigation brought out that, in January, 2023, Md. Yaqub Khan @ Sultan @ Usman (A-27) shared a video on social media in which Ram Shila (Stones) were being brought to Ayodhya through Mehsi, East Champaran, Bihar, appealed to support reconstruction of Babri Masjid instead, at that place. After this post, he was opposed vehemently and trolled on social media and altercation took place between his supporting PFI group and the group who had opposed his communal post. Thereafter, Md



Yaqub Khan (A-27) decided to kill a Hindu boy namely, Rishu on 04.02.2023 for commenting on his social media post and for scuffle with his group. For this purpose, He had arranged ammunition for the firearm and decided to eliminate the said Rishu, to flare up communal hatred. The investigation also brought out that the ammunition was supplied to him by Md Aabid (A-29) through Md Tanweer @ Md. Tanweer Barkati (A-28) in this criminal conspiracy.

17.19 On 04.02.2023 and thereafter. searches were conducted at Motihari district of Bihar at locations/premises of Md. Yaqub Khan (A-27) & his associates namely Md. Irshad Alam (A-36), Md Tanweer @ Md. Tanweer Barkati (A-28), Md. Danish, Md. Afroz Garhipar, Md Aabid (A-29), Md Mumtaj Ansari and Md. Belal @Irshad (A-30).

17.20 During further investigation, on 04 & 05.02.2023, Md. Tanweer Barkati (A-28), and Md Aabid (A-29) and Md. Danish were examined. During examination, Md. Tanweer Barkati A-28) stated that he was associated with Riyaz Moarif (A-4) and Md. Yaqub Khan @ Sultan @ Usman (A-27) of Popular Front of India. He further stated that he was aware of Riyaz Moarif (A-4) being accused in the instant case and also that Md. Yaqub Khan @ Sultan @ Usman (A-27) is an active member of PFI who is involved in recruiting Muslim youth in PFI, their training and used to post communal videos on social media. He was also associated with Md. Yaqub Khan in spreading religious enmity and encouraging people to join PFI. Md. Yaqub Khan @ Sultan @ Usman used to provide physical training and handling of stick, sword and knife to the recruited PFI members and he had also participated in such training imparted by Md. Yaqub Khan. He further stated that initially, he used to work for PFI openly but after the ban on PFI by the Central Government, they were working for PFI discreetly. Md. Tanweer Barkati (A-28) further stated that Md. Yaqub Khan @ Sultan @ Usman (A-27) had asked him to arrange ammunition, accordingly, he (A-28) asked his native villager Aabid @Aryan (A 29) for the same and Md. Aabid (A-29) provided him 02 rounds which was later collected by Md. Yaqub Khan (A-27). Md. Yaqub Khan (A-27) had transferred Rs 1000/- to Md Aabid@Aryan through PayTm UPI in lieu of the ammunition.

22. In the aforementioned background of the materials

present on the record, when this Court examines the provisions of



the UA(P) Act, even as it is noticed that the PFI was declared an unlawful association by virtue of a notification issued under Section 3 but it has not been declared a terrorist organization within the meaning of Section 2 (m), the acts which were being committed by the appellant in association with co-accused Yaqub Khan and Tanveer Barkati were in the nature of a terrorist act. The kind of social media post of Md. Yaqub Khan (A-27), then planning for a targeted killing of a Hindu boy and then preparation thereof is apparent on the face of the materials. In our opinion, the kind of planning done by Yaqub Khan in which this appellant participated by providing two rounds of ammunition in lieu of money was likely to strike terror in a section of people in India.

23. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of Md. Jalaluddin and Athar Parvez to submit that the PFI has not been declared a terrorist organization as it is not mentioned as such in the First Schedule of the UA(P) Act, 1967. Considering, *inter alia*, this aspect of the matter, Md. Jalaluddin and Athar Parvez have been granted bail.

24. We are fully alive to the above-mentioned submissions of learned counsel for the appellant. While it is true that PFI has not been declared a terrorist organization, a bare



perusal of the order of the Hon'ble Supreme Court in the case of Md. Jalaluddin and Athar Parvez would show that what had fallen for consideration by the Hon'ble Supreme Court in their cases were a completely different material. In their cases, there was no apparent material that they were connected with Md. Yaqub Khan, Tanveer Barkati, this appellant or Md. Belal in hatching a criminal conspiracy to kill a Hindu boy which was likely to cause a terror in a section of the society. There was no material in form of legally intercepted voice call of this appellant which indicated that they were talking of arranging firearm or ammunition for the purpose of killing of a Hindu boy. There was no allegation that they had posted any video on the social media with an intention to spread hatred between the two communities. In the background of these distinguishable facts and materials, the Hon'ble Supreme Court found that there was nothing which is alleged against the appellant which would bring the act or omission of the appellant within the ambit of the alleged offences committed by him/them under the UA(P) Act, 1967. It is important to read paragraph '36' of the order of the Hon'ble Supreme Court in the case of Athar Parvez which we reproduce as under:-

“36. It is clarified here that the observations made hereinabove 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 co-accused.”

25. While examining the case of the different accused, we have also tried to examine the materials which have been placed before us against each of the appellant. It is for this reason that after noticing the materials on the record against a particular appellant, we have taken a view on the basis of broad probabilities regarding the involvement of that accused/appellant in the commission of stated offence or otherwise. This is in conformity with the views expressed by the Hon’ble Supreme Court in the case of **National Investigation Agency vs. Zahoor Ahmad Shah Watali** reported in (2019) 5 SCC 1 which has been discussed in paragraph ‘18’ of the order of the Hon’ble Supreme Court in case of **Athar Parvez**. In the present case, there are reasonable grounds for believing that the accusation against the appellant is prima-facie true. Therefore, the rigours of Section 43D(5) of the UA(P) Act, 1967 would be attracted.

26. This appellant has been arrested on 05.02.2023. The period of incarceration of the appellant is presently little more than two years. In the case of **Union of India v. K.A. Najeeb** reported in (2021) 3 SCC 713, the Hon’ble Supreme Court refused to interfere with the order of the Hon’ble High Court granting bail to the accused in a case



under UA(P) Act, 1967. The High Court was pleased to grant bail after noticing that the accused 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 v. State of Maharashtra** reported in **(2021) 3 SCC 723**. The Hon'ble Supreme Court has taken a view 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 the grounds of violation of Part III of the Constitution of India and it would be within the jurisdiction of the Constitutional Courts i.e. the Hon'ble Supreme Court and the High Court to relax the rigours of such provision where there is no likelihood of trial being completed within a reasonable time and the period of incarceration a detenue has already undergone, covers a substantial part of the prescribed sentences for the offences with which the latter has been charged. Applying this principle as laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that the seriousness of the



allegations and the severity of the punishment attached to the offences of which the appellant has been charged, at this stage, it cannot be said that the appellant has already undergone an incarceration for a period which would cover a substantial part of the prescribed sentence for the offences with which he has been charged.

27. Thus, at this stage, we are not inclined to interfere with the impugned judgment of the learned trial court.

28. In result, the appeal fails. Let the trial be expedited.

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

