



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.1046 OF 2024

Mohammad Abdul Karim s/o
Mohammad Abdul Halim **... APPELLANT**

VERSUS

The State of Maharashtra **... RESPONDENT**

.....
Mr. Javed R. Shaikh, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent
.....

WITH

CRIMINAL APPEAL NO.1032 OF 2024

Mohammad Nisar s/o Mohd. Abdul Rashid... **APPELLANT**

VERSUS

The State of Maharashtra **... RESPONDENT**

.....
Mr. N.R. Shaikh, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving order : 20th JANUARY, 2025.

Date of pronouncing order : 17th FEBRUARY, 2025.

O R D E R (PER : R.G. AVACHAT, J.) :

Both these appeals are taken up together for decision as they arise from same crime, based on same set of facts. The orders challenged in both the appeals are of refusal to grant the appellants bail who are accused Nos.3 and 5 respectively in Special Case, No. 31/2023, pending on the file of learned Special Judge, Nanded, arising out of C.R. No.22/2022, registered with Anti Terrorist Squad (ATS) Police Station, Kala Chowki, Mumbai, for offences punishable under Sections 121-A, 153-A, 120-B, 109, 116, 201 of the Indian Penal Code (IPC) and under Sections 13(1)(B) of the Unlawful Activities (Prevention) Act, 1967 (UAPA). The crime was registered at the instance of Assistant Inspector of Police, attached to ATS, Kala Chowki Police Station, Mumbai on 22/9/2022.

2. The case, as has been alleged in the F.I.R. is as under :-

The appellants and four others (co-accused) are the members of Popular Front of India (PFI), a banned organisation. Both the appellants along with others attended various public meeting arranged in protest of the Central Government, passing certain bills/ Acts like CAA/ Abolition of Article 370, Anti-Hizab, Triple Talaq etc. During investigation of the crime, witnesses came forward to stake the involvement of the appellants in the alleged crime.

3. So far as appellant Mohammad Abdul Karim (accused No.3) is concerned, it has been alleged that, six mobile handsets, 2 Hard Disks have been seized from the accused persons. Their voice samples have been obtained. Data contents in the cell phones has been retrieved. Everything was sent to Forensic Science Laboratory (FSL), Kalina, Mumbai. A positive report has been received. This appellant was Treasurer of District Unit of the PFI, Parbhani. He indulged in inviting and even instigating Muslim youths to become members of PFI. He made provocative speeches, appealing to Muslims to be up in arms as against the Central Government which indulges in oppression of Muslim

community. As such, it is alleged that, this appellant made speeches which has effect of causing hatred between Hindus on one hand and the Muslims on the other. The speeches given by these appellants were against unity and integrity of the nation. He participated in Dharane Andolan dated 15/11/2019 held at Parbhani. He gave slogans, "Insaf Do, Insaf Do", "Babri Masjid Zindabad", "PFI Zindabad", Inqalab Zindabad" etc. It has further been alleged that, this appellant has similar criminal antecedents. Four different crimes have been registered against him with Police Station, Mondha, District Parbhani during the period 2019-2021.

4. It is further alleged that, this appellant instigated Muslim youths to help out Kashmiri Muslims since he felt that the Union of India, by deleting Article 370 from the Constitution of India, has acted against Muslims in Kashmir. He advocated that Kashmir belongs to Muslims and for its independence, all the Muslims shall help them. This appellant remained present in various meetings held by the members of PFI and others for propagating or inciting Muslims against the Union of India.

The acts of the appellant were prejudicial to the maintenance of unity, integrity and security of the nation.

5. As against the appellant Mohammad Nisar (accused No.5) is concerned, the allegations are, he has similar criminal antecedents. Four crimes have been registered against him at Police Station, Mondha. He was Secretary of District Unit of PFI. He was soliciting Muslim youths to become members of PFI (banned organisation). His cell phone's clone/ mirror image was seized and got analysed from FSL. It was found therein that one Yashwant Shinde, a witness in Bomb Blast case, Nanded made some statements. A video thereof has been preserved by him in his cell phone. The contents thereof are as under :

"नमस्कार मी यशवंत शिंदे, राष्ट्रीय सेवक संघाचा मी १९९५ साली जम्मू काश्मीरला प्रचारात होतो, अनेक वर्षे बजरंग दल, विश्व हिंदू परिषदचे काम पाहिले, अनेक महत्वाच्या जबाबदाऱ्या घेऊन काम केली. २००६ चा नांदेडला जो बॉम्बस्फोट झाला, त्या प्रकरणात मी काल २९ आगस्ट हजर राहून मला या प्रकरणात साक्षीदार करावे म्हणून मा. विशेष

न्यायालयास विनंती केली. न्यायालयाने माझा अर्ज स्वीकार केला आणि सरकारी वकील तसेच बॉम्बस्फोट खटल्यातील आरोपी आहेत त्यांच्या वकिलांना नोटीस पाठविली, बनविली आहे, दिली आहे, आणि पुढच्या महिन्यात २२ दिनांकाला माझे काल सादर केलेल्या तक्रार वरून त्यांचे काही ते मत मांडतील, २००६ साली बॉम्बस्फोट प्रकरणात पकडले गेले आहेत ते मैदानातील आहेत. मूळ आरोपी त्यांने प्लॅन रचला, कट रचला, ते अजून बाहेरच मोकळे फिरत आहेत. तपास यंत्रणेच्या अधिकाऱ्याने त्यांना हात ते बाहेरच फिरत आहेत. त्यातला मूळ आरोपी आहे मिलिंद परांजपे जो आज दिनांक आखिल भारतीय विश्व हिंदू परिषदचा राष्ट्रीय संघटक आहे. जो २००३-२००४ च्या सुमारास महाराष्ट्राचा संघटक होता. त्यानेच भाजपकडून सुपारी घेऊन २००३ ला बॉम्बस्फोट करण्यासाठी तरुणांना ट्रेनिंग देण्याचे त्याने कार्य हाती घेतलं होत. आणि २००४ च्या लोकसभा होण्याआधी देशभर अनेक ठिकाणी बॉम्बस्फोट होवून करून.”

6. With a view to increase members of PFI, he held various meetings. He instigated Muslims in Parbhani to up in arms against the Union of India as it was Pro-Hindus only. He also indulged in making provocative speeches so as to unite Muslims against Central Government's actions as regards

abolition of Article 370. He advocated for independence of Kashmir from India. As such, the actions of this appellant were anti-national, against unity, integrity and sovereignty of India. He is a hard-liner and gives provocative speeches. He even instigated the Muslim youths to fight against the Central Government with armed rebellions.

7. Heard. Learned Advocates for the appellants would submit that, there could not be ex-post facto criminal legislation. When the appellants attended the meeting of PFI in September 2022, the organisation was not banned. It was only 6 days thereafter the ban came to be imposed. Both the learned Advocates would submit that, no overt act, either causing injury to human being or loss of public or private property has been attributed to any of the appellants. They would further submit that, the statements of witnesses are stereo type. No particular day, date and time of alleged activities of the appellants have been stated. The learned Advocate for appellant Mohammad Nisar (accused No.5) would submit that, whatever has been alleged against this appellant would constitute exercise of his constitutional right of

freedom of speech and expression. He would further submit that, the PFI is not a terrorist organisation. Whatever recovered as a data from the cell phone had never been made public. He would further submit that, peaceful participation in demonstration against certain acts of the Central Government would in no way constitute breach of any of the provisions of a penal statute. He would further submit that, right to protest is a fundamental right that flows from the constitutionally guaranteed right to assemble peaceable and without arms, enshrined in Article 19(1)(b) of our Constitution. In support of his submission, he relied on the judgment of Delhi High Court in case of Devangana Kalita Vs. State of Delhi NCT [AIR Online 2021 Del 837].

According to the learned Advocates, the appellants have been behind the bars for about two and half years. Charge has not been framed. As such, the trial has not commenced. The prosecution has cited 40 witnesses. It will take time for commencement and conclusion of the trial. Pre-trial detention would amount to punishing the appellants without proof of the alleged offence. They would further submit

that, the speedy trial is a constitutionally guaranteed right under Article 21 of the Constitution of India. Relying on some other authorities, both the learned Advocates urged for allowing the appeals.

8. The learned A.P.P. would, on the other hand, submit that the appellants have criminal antecedents. The material collected during the investigation undoubtedly indicate the activities of the appellants to be subversive to the unity and integrity of our nation. The learned A.P.P. placed on record the entire charge sheet and relied on particular statements of certain witnesses. He would further submit that, it is not a case of so many witnesses. The prosecution could not be blamed for delay, if any, in commencement of the trial. It is the appellants and the co-accused who moved number of applications, resulting into delay in commencement of the trial. The prosecution is ready to produce its evidence. The number of witnesses to be examined is not large. The trial will be concluded within reasonable time. He would further submit that, considering the seriousness of the offence, their criminal antecedents and material relied indicating their involvement in

the alleged crime, warrant dismissal of the appeals. The learned A.P.P. placed the reliance on the following decisions of the Supreme Court and the Bombay High Court :-

- (1) Criminal Appeal No.704/2024 Gurwinder Suingh Vs. State of Punjab, decided on 7/2/2024)
- (2) Criminal Appeal No.883/2023 with companion appeals Kazi Ahmed Khan Vs. State of Maharashtra, decided on 11/6/2024

9. Considered the submissions advanced. Perused the report submitted by the investigating officer along with the relevant police papers. The PFI came to be banned and declared as an unlawful association w.e.f. 27/9/2022. The public meeting for the “Dharane Andolan” held at Parbhani, wherein the appellants allegedly participated, was dated 15/11/2019 i.e. long before the PFI came to be declared as an unlawful association.

10. The only offence with which the appellants are sought to be prosecuted under the UAPA of 1967, is for indulging in unlawful activities, an offence punishable under

Section 13(1)(b) of the UAPA. Section 2(o) defines unlawful activity to mean, “unlawful activity” in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), –

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;”

The said offence is punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

“13. Punishment for unlawful activities :-

- (1) Whoever -

- (a) takes part in or commits, or
 - (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
- (2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five year, or with fine, or with both.
- (3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.”

11. The restrictions on granting of bail specified in sub-section (5) of Section 43-D has no application to this offence since the restriction applies to an offence punishable under Chapter IV and VI of the UAPA. Meaning thereby, the prayer of the appellants for bail would be governed by general law regarding grant/ refusal of bail. In such case, the rule is ‘bail’ and not ‘jail’. In paras 30 and 31 of the judgment in case of **Natasha Narwal Vs. State of Delhi NCT [AIR Online 2021 Del 832]**, it has been observed :-

30. Though grant of bail involves exercise of discretionary power by the court, as always, the exercise of discretion must be judicious and not Signing Date:15.06.2021 CRL.A.82/2021 Page 22 ! of 72 ! 10:30:51 perfunctory or as a matter of course. In granting bail the court must keep in mind not only the nature of accusations but also the severity of the punishment and the nature of evidence in support of the accusations. Apart from being prima facie satisfied as regards the charges levelled; the court must also reasonably assess the apprehension of flight risk, evidence tampering and witness intimidation; with careful regard to the genuineness of the prosecution. The court must also consider the character, behaviour, means, position and standing of the accused and the likelihood of the offence being repeated. Ash mohammad vs. Shiv Raj Singh & Anr. , (2012) 9 SCC 446 : para 8 and 11 : (2012 AIR SCW 5243).

31. Furthermore, we remind ourselves that the object of bail is neither punitive nor preventative but is principally to secure the presence of the accused at the trial; and that punishment begins only after conviction and that everyone is deemed to be innocent until duly tried and found guilty. It is well settled that detention in custody pending completion of trial can cause great hardship to an accused; that it is improper for any court to refuse bail as a mark of disapproval of the past conduct or to refuse bail to a person yet to be convicted only to give him a taste of imprisonment as a lesson. "Necessity" to secure the attendance of an accused at the trial, the Hon'ble Supreme Court has held, is the operative test. Sanjay Chandra Vs. CBI, (2012) 1 SCC 40 : para 21-23 : (AIR 2012 SC 830). It also requires to be understood that though the larger interest of the public or the State and other similar considerations

are also relevant, there is no hard and fast rule and each case has to be considered on its own facts, circumstances and merits. (P. Chidambaram Vs. CBI, 2019 SCC OnLine SC 1380 : para 22 : (AIR 2019 SC 5272).

12. It is reiterated that, no overt act attributing the appellants of causing any injury to human being or loss of any public or private property has been attributed. They are alleged to have assembled along with other Muslim youths in protest of Central Government actions/ decisions in passing the bills such as CAA/ Abolition of Article 370, Anti-Hizab, Triple Talaq etc. Moreover, the action of the appellant Mohammad Nisar (accused No.5) in keeping in his cell phone data regarding one Shri Yashwant Shinde (detailed above) would in no way constitute an offence under any of the penal statutes. Perusal of the statements of the witnesses would suggest that the appellants had participated in protest organised in front of the office of Collectorate, Parbhani in April 2022. There are general allegations made by witnesses that the appellants and the co-accused would make provocative speeches and instigate other Muslim youths to rise for the occasion and be up in arms against certain policies of the

Central Government. The appellants feel that the Central Government is anti-Muslim.

13. It is true that there are statements of certain persons indicating the appellants to have given slogans and urged the Muslim youths to come together in protest. The appellants are also alleged to have instigated the Muslim youths to assist Muslims in Kahmir for ensuring independence of Kashmir.

14. The other offences with which the appellants are sought to be prosecuted under Indian Penal Code are Sections 121-A, 153-A, 120-B, 109, 116, 201. It is reiterated that, although the appellants prima facie found to have indulged in instigating activities against the Union of India, we find that, considering the nature of offences alleged to have been committed and there being no restriction of Section 43-D(5) of UAPA being applicable, the case would be governed by the general principles of bail.

15. We do not propose to make further observations on the merits of the case so as to ensure that the Trial Court shall not be influenced thereby. Suffice it to say that the appellants are behind the bars for about two and half years. The trial has not yet commenced (Charge not framed). The witnesses proposed to be examined are 40 in number. There are other accused. Each one might have been represented by a different lawyer. It would necessarily take time for commencement and conclusion of trial. In the facts and circumstances of the case, pre-trial detention of the appellants is not warranted. The apprehension of the prosecution that the appellants may flee away or tamper with the prosecution witnesses can be taken care of by imposing stringent conditions.

16. In the result, we are inclined to allow the appeals in terms of the following order :

ORDER

(i) The Criminal Appeals are allowed.

(ii) The order dated 03/10/2024, passed by Additional Sessions Judge, Nanded below Exh.No.22 in Special Case No.31/2023, refusing to grant appellants bail is hereby set aside.

(iii) The appellants be released on bail in connection with Special Case No.31/2023, pending on the file of learned Special Judge, Nanded, on their executing P.R. bond in the sum of Rs.15,000/- (Rupee fifteen thousand) each with one surety in the like amount.

(iv) The appellants shall co-operate in the trial of the case. They shall regularly attend the Trial Court except in compelling circumstances. Until conclusion of trial, they shall mark their presence at Nanalpeth Police Station, Parbhani from 9.00 p.m. to 10.00 p.m. every day, except on the day on which they would be attending the Trial Court.

(v) The appellants shall surrender their passports, if any, with the investigating officer. The appellants shall not leave Parbhani and Nanded districts without prior permission of the Trial Court.

(vi) If the prosecution finds the appellants to have indulged in tampering of evidence, or other activities causing hindrance in the smooth trial, it may move the Trial Court for cancellation of bail. Needless to mention, the Trial Court would decide such application on its own merits, considering the parameters regarding cancellation of bail.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-