

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1029 OF 2024

Mohammad Irfan Daulat Khan @ Maulana Irfan Khan (Nadavi)	Appellant
Versus	
The State of Maharashtra	Respondent

Ms. Payoshi Roy, Advocate for the Appellant.
Ms. M.M. Deshmukh, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

RESERVED ON : 21st APRIL, 2025

PRONOUNCED ON : 28th APRIL, 2025

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. Heard Ms. Payoshi Roy, learned counsel for the Appellant and Ms. M.M. Deshmukh, learned APP for the Respondent-State.

2. This Appeal is filed for setting aside the order dated 5.3.2024 passed by the learned District Judge-1 & Special (NIA) Judge, Nashik below Exhibit-19 in NIA Special (ATS) Case

No.24/2023. In effect, the Appellant is seeking his release on bail in connection with that case. The said case arises out of C.R. No.20/2022 registered with Anti Terrorism Squad, Kalachowky Police Station, Mumbai under Sections 109, 116, 120-B, 121-A, 153-A, 201 of IPC along with Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA').

3. The Appellant was arrested on 13.11.2022 and since then he is in custody. The investigation is over and the charge-sheet is filed on 2.2.2023. As of today, the charges are framed but no prosecution witness is examined yet. It is the submission of the learned counsel for the Appellant that more than 150 prosecution witnesses are to be examined in this case.

4. While rejecting the Appellant's bail application, learned Special Judge observed that there was *prima facie* case against the Appellant. There were links between him and the co-accused. There were phone calls between him and the co-accused. There used to be secret meetings between the accused persons. The people were asked to keep articles for protection in their homes, like, a big knife, air gun, glass bottles, swords, extra diesel and

petrol, red chilly powder and wooden logs. It was further observed that the offence was serious in nature and though no overt act or violence was committed, Section 121A of IPC involving plan to wage war against the State was applied. There were statements of eye witnesses about speeches inciting hatred. The apprehension expressed by the Special PP. that there were chances of the Appellant tampering with the prosecution witnesses was accepted by the learned Judge. Based on all these considerations, the Bail Application was rejected. The Appellant has challenged this order in the present Appeal.

5. The FIR was lodged on 22.9.2022 by API Sukhdeo Kale. The FIR was lodged against five accused on the allegations that they were spreading hatred in the minds of the Muslim people against Government of India. There was reference to various meetings held by the Popular Front of India [PFI] and spread of similar messages. The FIR does not name the present Appellant. The investigation was carried out and the prosecution story is reflected in the charge-sheet. According to the prosecution case the charge-sheet is filed against seven accused. The Appellant is shown as accused No.7 in the said charge-sheet. The material collected

against each of these accused is mentioned in the charge-sheet itself. The material against the present Appellant is referred to hereinafter in the background of the submissions made before us.

6. We are informed that the PFI was banned on 28.9.2022 and the FIR in this case was lodged on 22.9.2022.

7. Ms. Payoshi Roy, learned counsel appearing for the Appellant made the following submissions.

SUBMISSIONS OF MS. ROY, LEARNED COUNSEL FOR THE APPELLANT :

- i. Her main thrust of argument was that the co-accused who were attributed much more serious roles were granted bail by the Hon'ble Supreme Court and therefore on the ground of parity the Appellant also deserve to be released on bail. The Appellant was arrested on 13.11.2022. Thus, more than two and a half years have passed but there is no progress in the trial except for framing of the charges.
- ii. There are more than 150 witnesses to be examined by the prosecution.
- iii. At the highest, without admitting, the allegations against the Appellant would attract Section 153-A of IPC which provides

for maximum punishment for three years. The Appellant has almost completed the entire sentence for that offence.

- iv. She heavily relied on the observations of the Hon'ble Supreme Court in granting bail to the other accused and in particular to the accused No.2 Kayyum Abdul Shaikh @ Abdul Kayyum Badulla Sheikh and accused No.3 Razi Ahmed Khan. According to Ms. Roy, the charge-sheet itself shows that there are much more serious allegations against these two particular accused. She also relied on the order granting bail to the accused No.6 Unais Umar Khaiyyam Patel.
- v. The FIR was lodged before the PFI was banned. The limitations of Section 43-D(5) of the UAPA do not apply. The allegations against the Appellant is that he was attending the meetings of PFI members, but, at that time the PFI was not banned. Though there are allegations that he had attended a particular meeting, the location of his mobile phone does not support this allegation. Some provocative images were found on his mobile phone. He had allegedly uploaded certain videos on YouTube channel, but, even then those videos may

at the highest attract the provisions of Section 153-A of IPC.

The worst and serious images were found with accused Nos.2 & 3, who are granted bail by the Hon'ble Supreme Court.

vi. The investigating agency had received one C.D. in a packet. It contained four audio clips. According to Ms. Roy, these audio clips are inadmissible because the source is unknown and it is not possible to prove the contents of such electronic record. In any case, the conversation attributed to the Appellant in respect of the two out of the four audio clips is not even incriminating. The images found on his phone were not circulated by him.

vii. There is no offence made out under UAPA. On the basis of these submissions, she sought release of the Appellant on bail during pendency of the trial.

SUBMISSIONS OF LEARNED APP MS. M. M. DESHMUKH :

8. Learned APP Ms. Deshmukh, on the other hand, submitted that the charges are already framed hence the trial has now started. She relied on the two audio-clips in the Appellant's voice, which according to Ms. Deshmukh, are quite incriminating.

She submitted that it is not a question of only Section 153-A of IPC, but, the matter pertains to Section 121-A of IPC which is a much more serious offence. The prosecution has applied Section 120-B of IPC and, therefore, it is to be read with Section 121-A of IPC attracting punishment upto life imprisonment.

9. However, Ms. Deshmukh could not counter the submissions of Ms. Roy regarding the principles of parity in view of the fact that the Hon'ble Supreme Court has granted bail to the accused Nos.2, 3 & 6.

REASONS :

10. We have considered these submissions. Since Ms. Roy has heavily relied on the principles of parity, we may briefly refer to the material against the accused Nos.2, 3 & 6.

11. Accused No.2 is Kayyum Abdul Shaikh. As mentioned earlier, the investigating agency has received a C.D. having four audio clips. Out of them, the two audio clips were in respect of the conversation between the accused No.2 Kayyum and the accused No.6 Unais. The conversation revealed that the accused No.2 Kayyum was working as a Media Convener of PFI. He was instrumental in getting members for PFI and had taken part in

imparting training for destroying the evidence by using technology. A mobile phone and a laptop were seized from the accused No.2 Kayyum. There were objectionable videos, audios and chats. There are about 9-10 such images and about four such objectionable videos. There are various incriminating chats by the said accused No.2.

12. The Hon'ble Supreme Court vide the order dated 17.2.2025 passed in Criminal Appeal No.788/2025 granted bail to the accused No.2 Kayyum. In paragraph-6 of the said order, four factors in favour of the said accused Kayyum were considered as follows :

- “(1) he has undergone incarceration for a period of 2 years and 4 months and 190 witnesses are to be examined;
- (2) there is no likelihood of the trial being concluded in near future;
- (3) accused nos. 3 and 6 have already been granted bail by this Court and
- (4) as stated earlier, stringent conditions for bail under Section 43(D)(5) of the 1967 Act are not applicable in this case. Therefore, the appellant is entitled to be enlarged on bail, pending the trial.”

13. As far as the accused No.3 Razi Ahmed Khan is

concerned, the charge-sheet mentions that he was an influential office bearer of PFI. A mobile phone and a laptop were seized from him. They contained clips and images, which, according to the prosecution case, were creating rift between Hindus and Muslims. There were various images which are described in the charge-sheet as far as this accused No.3 Razi Khan is concerned.

14. The Hon'ble Supreme Court granted bail to the accused No.3 Razi Khan bail vide order dated 2.12.2024 passed in Criminal Appeal No.4940/2024. The Hon'ble Supreme Court observed thus :

“We have perused the report of the Regional Forensic Science Laboratory, Nasik, Maharashtra and the text of the conversation attributed to the appellant. Prima facie, we do not find anything incriminating in the conversation. There are 190 prosecution witnesses to be examined and the appellant has undergone incarceration for a period of about 2 years. In this case, the stringent conditions imposed by Section 43(D)(5) of the Unlawful Activities (Prevention) Act, 1967 (for short, "the 1967 Act") will not apply as the offence alleged against the appellant under the 1967 Act is only under Section 13(1)(b). Therefore, the appellant deserves to be enlarged on bail on the same stringent conditions on which a co-accused - Unais Umar Khaiyyam Patel was released in Criminal Appeal No.4722 of 2024.”

15. As far as accused No.6 Unais Patel is concerned, the

material refers to two audio clips received through a C.D. from an unknown source. The conversation, according to the prosecution, was objectionable. His mobile phone and laptop show that he had worked on different websites which could be accessed and used only by a person well conversed with the technical aspects of software. He was using his knowledge for web-page design, on-line marketing, photo editing, making banners and posters, instant video making, web hosting, team meetings, java codings predictions, screen capture and screen recording and fast coding etc.. His Twitter account showed some objectionable statements.

16. He was granted bail by the Hon'ble Supreme Court vide the order dated 22.11.2024 passed in Criminal Appeal No.4722/2024 with the following observations.

“As far as the Unlawful Activities (Prevention) Act, 1967 (for short, "the 1967 Act") is concerned, the offence alleged as against the appellant is under Section 13(1)(b) of the 1967 Act. As the said offence falls in Chapter III of the 1967 Act, stringent conditions for grant of bail under sub-section (5) of Section 43(D) of the 1967 Act will not apply. The allegation against the appellant is that he was helping the members of the Popular Front of India to deal with IT related issues. There are three factors in favour of the appellant which make out a case for grant of bail: (1) The limited role ascribed to him; (2) He has

undergone incarceration for a period of 2 years and 2 months and 190 witnesses are to be examined; and (3) as stated earlier, stringent conditions for bail under Section 43(D)(5) of the 1967 Act are not applicable in this case. Therefore, the appellant is entitled to be enlarged on bail, pending the trial.”

17. In this background, the material against the Appellant can be considered. According to the charge-sheet he was the main promoter of PFI in Malegaon. He was a *Maulana* and yet he was inciting emotions of vulnerable people. His mobile phone was seized. The C.D., as mentioned earlier, had four audio clips. The Appellant's voice featured in two of those audio clips. The Appellant had got his mobile phone formatted but the data from the mobile phone was recovered in forensic examination. It had certain images which showed that he was inciting the people against the Government and was creating rift between two religious groups. Ms. Roy submitted that the images were less serious than the images which were found with the accused Nos.2 & 3 in particular. It is difficult to observe at this stage that the images found with the present Appellant were less serious but in any case they were similar in nature to the images found with the accused Nos.2 & 3. There were five offences pending against him between the year 2013 – 2022 but all of them were less serious

than the present pending trial.

18. The affidavit filed by the Assistant Commissioner of Police, Anti Terrorism Squad, Pune Shri Anil Shewale refers to this material and lays emphasize on the two audio clips. The first clip is in respect of a banner. The speaker (which according to the prosecution is the Appellant) was saying that said banner needed to be corrected. This conversation is hardly incriminating.

19. The second audio clip attributed to the Appellant mentions that the articles of protection needed to be kept in different mohallas and mosques. There is a conversation about helping poor, widows and similar people. There is a reference to some survey in respect of these issues and there was an offer to convene classes for offering *namaz*. Again this conversation can hardly be called as incriminating conversation.

20. There are statements of various witnesses but their names are withheld for their safety purposes. Therefore, we are referring to those statements by page numbers from the Petition.

21. The statement of a witness at page No.333 of the Petition refers to the event dated 14.6.2022 when the PFI office was opened at Malegaon. According to this witness, the Appellant

was present for that event.

22. The witness at page No.334 has stated that the Appellant had told this witness that if he wanted to work with PFI, he had to complete five days' basic course. This witness completed that course and in that course, sessions were held for personality development, time management, legal awareness training etc.

23. The witness at page No.344 has stated that the Appellant used to attend the mosque for offering *namaz*.

24. The witness at page No.359 has stated that the Appellant was spreading awareness regarding education, *namaz*, staying away from addictions, helping others etc. Apart from this, he was emphasizing that the *Muslims* should be prepared to retaliate if they were attacked.

25. The witness at page No.361 has stated about the Appellant's speeches about leading life by helping people, staying away from addiction etc.

26. All these statements show that they are not incriminating statements and in fact some of the statements show that the Appellant was trying to impart good education of staying away from addictions and helping the poor people.

27. The result of the above discussion is that as submitted by Ms. Roy the principles of parity will apply to the present Appellant with the accused Nos.2, 3 & 6 who are granted bail by the Hon'ble Supreme Court.

28. The statements of some of the witnesses shows that the Appellant was spreading good messages. The trial has not progressed beyond the stage of framing of the charges. There are more than 150 witnesses. Therefore, the trial is not likely to get over soon. Based on all these aspects, the Appellant deserves to be released on bail. It is made clear that these observations are made only for the purpose of deciding the question of grant or refusal of bail to the Appellant. The trial Court shall not be influenced by these observations. Based on this discussion, the Appellant has made out a case for grant of bail.

29. Hence, the following order:

:: O R D E R ::

- i. The Appeal is allowed.
- ii. The order dated 5.3.2024 passed by the learned District Judge-1 & Special (NIA) Judge, Nashik below Exhibit-19 in Special (ATS) Case No.24/2023, is set aside.

iii. The Appellant is directed to be released on bail in connection with NIA Special (ATS) Case No.24/2023 before the learned District Judge-1 & Special (NIA) Judge, Nashik, arising out of C.R. No.20/2022 registered with Anti Terrorism Squad, Kalachowky Police Station, Mumbai, on his executing P. R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount; subject to following conditions:

- I] The Appellant shall deposit his Passport, if any, with the investigating agency, before the Appellant is released on bail.
- II] The Appellant shall report to the ATS Kalachowky police station, Mumbai on every alternate Saturday, between 4:00p.m. to 5:00p.m.
- III] The Appellant shall not tamper with the evidence and shall not influence or tamper any witness.
- IV] The Appellant shall remain present on all the dates before the Trial Court and shall co-operate in expeditious disposal of the Trial.

iv. The Appeal is disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
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