HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINANGAR

Reserved on: 23.10.2026
Pronounced on: 13.11.2026

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Whether the operative part or full judgment is pronounced: ***Full***

CrlA(D) No.1/2025
c/w
CrlA(D) No.114/2025

MOHAMMAD RAFIQ PHALOO
c/w
MOHAMMAD YASEEN BHAT

...APPELLANT(S)

Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Rehana, Advocate.
Mr. Wajid Haseeb, Advocate.

Vs.

UT OF J&K **...RESPONDENT(S)**

Through: - Ms. Maha Majeed, Assisting Counsel
Vice Mr. Mohsin Qadiri, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

OSWAL-J

01. Mohammad Yaseen Bhat (appellant in CrlA(D) No.114/2025) and Mohammad Rafiq Phaloo (appellant in CrlA(D) No. 01/2026) figure as accused No.1 and 2 along with 10 others in chargesheet titled ***"State vs. Mohammad Yaseen Bhat and others"*** arising out of FIR No. 23/2023 for commission of offences under Sections 10, 13, 18 of

UA(P) Act and Sections 121-A, 201 of IPC registered with Police Station Kothibagh pending before the Court of learned Special Judge designated under NIA Act, Srinagar (for short "the Trial Court").

02. The appellants had filed their respective bail applications before the learned Trial Court and the learned Trial Court, by way of two separate orders each dated 12.12.2025, dismissed the said bail applications. The appellants have now come up with these two separate appeals thereby assailing the orders supra whereby their prayer for grant of bail has been rejected.

03. Mohammad Rafiq Phaloo (appellant in CrlA(D) No.01/2026 has assailed order dated 12.12.2025 passed by the learned Trial Court on the grounds that the protected witnesses, whose statements have been recorded, have not supported the prosecution case vis-a-vis the appellant and also they have not spoken anything about the conspiracy allegedly hatched by the persons attending the Eid Milan party for revival of the JKLF-Y. It is also contended that the learned Trial Court has rejected the application by pressing into service Section 43-D of UAPA despite the fact that no prima facie case existed against the appellant for promoting unlawful activities and waging war against the Union of

India. It is also urged that the evidence so collected and relied upon by the learned Trial Court for rejection of the bail application comprises the alleged recovery of mobile phone, forensic analysis, seizure of resolution, identification of financial transactions and recovery of alleged anti-India propagandistic material, but there is no evidence on record to show or prove that the phone allegedly recovered from the possession of the appellant contains any material to establish the alleged conspiracy. Despite absence of any such evidence, the learned Trial Court has drawn a presumption that the appellant wanted to revive the activities of JKLF-Y.

04. It is also contended that the learned Trial Court has gravely erred in law by not considering the settled principle that the test of prima facie true under Section 43-D(5) of UAPA requires a careful, objective and judicious evaluation of the material on record and not a mere reproduction or acceptance of prosecution's allegations.

05. Mohammad Yaseen Bhat (appellant in CrlA(D) No.114/2025) has also assailed order dated 12.12.2025 on the identical grounds by contending that the prosecution case is based on hearsay evidence which is wholly inadmissible under law and cannot constitute the material

so as to satisfy the requirements in order to attract the rigour of Section 43-D of Unlawful Activities Prevention Act and on the face of story as projected by the police, the appellant deserves to be given concession of bail. Besides, the appellant has also cited his health condition for release on bail.

06. The respondent has filed its response stating therein that appellant-Mohd. Yasin Bhat had acquired arms training and exfiltrated POK a number of times to return only in 1992 along with Yasin Malik, whereas the appellant-Mohd. Rafiq Pahloo was involved in FIR No. 339/1989 of P/S Sadder regarding kidnapping of Rubiya Sayed and in FIR No. 22/1990 of P/S Sadder regarding killing of Airforce Officials. It is further stated that on 09.07.2023, Police Station, Kothibagh received reliable information that some persons along with the appellants had organized a meeting at Habib Restaurant. While ostensibly organized as an "Eid Milan party", the gathering served as a front for ex-members of the banned organization JKLF-Y and other separatist activists to coordinate unlawful activities. The primary objective was the revival of the prohibited JKLF-Y cadre to wage war against the Government of India, thereby compromising the sovereignty and security of the nation. On receipt of this information, FIR No.23/2023 under Sections

10, 13, 18 of the Unlawful Activities (Prevention) Act was registered in Police Station Kothibagh. A raid was conducted at the venue and 43 suspects were apprehended. After preliminary questioning and verification of their backgrounds, the investigation established the direct involvement of 10 accused and both the appellants. The appellants were formally arrested on 10.07.2023 following the recovery of mobile phones and other incriminating digital evidence. The investigation utilized forensic analysis of seized digital devices (DVRs and mobile phones) and site inspections. The key findings included a resolution letter dated 06.10.2022 recovered from the residence of the accused, confirming the appointment of appellant Mohammad Rafiq Phaloo alias Saleem Nana Ji as incharge of Jammu and Kashmir with Khurshid Ahmad Mir (based in POK) as representative for POK. Forensic reports revealed constant communication with foreign handlers including Farooq Siddiqui of Kashmir Global Council, a secessionist organization based abroad and active terrorists in Pakistan. The seized devices contained secessionist literature, KGC advocacy document and voice notes advocating for independent Kashmir and the release of convicted JKLF Chairman Mohammad Yasin Malik. Intercepted communications suggest the illegal transfer of foreign

currency (UK Pounds) intended for distribution among associates to sustain secessionist activities. The investigation proved a well-knit conspiracy by the accused to rejuvenate the banned JKLF-Y and Hurriyat factions under the guise of KGC, provoke the masses and lure youth towards anti-national activities through social media propaganda and hatred speech, and coordinate with cross-borders handlers to disturb public tranquility and challenge the territorial integrity of India. After the conclusion of investigation, the chargesheet was laid before the trial court. It is stated that the appellants are involved in the commission of serious offence carrying severe punishment up to imprisonment for life and there is cogent evidence available vis-à-vis their involvement. The appellants are dangerous and threat to the sovereignty and integrity of the nation, and further there are reasonable grounds for believing that the accused would jump the concession of bail if granted to them.

07. Heard learned counsel for the parties and perused the record.

08. Admittedly, the appellants were arrested on 10th July, 2023 and were charged for the commission of offences under Sections 10, 13, 18 of UAPA and under Section 121-A and 201 IPC in terms of order dated 02.04.2024, whereas the

other accused were not charged for Section 18 of the UAPA. It would be apt to observe that the appellant-Mohd. Yasin Bhat had challenged the order of framing charge through the medium of appeal bearing CrlA (D) No. 26/2024 but was subsequently withdrawn along with appeal against the order of rejection of application for grant of bail. The allegations against the appellants are that during search of their residential houses, incriminating objectionable material have been seized including a resolution dated 06.10.2022. In terms of the said resolution, the appellant Mohammad Rafiq Phaloo was appointed as incharge JKLF of Jammu and Kashmir. As per the allegations leveled in the chargesheet, both the appellants are ex-militants of JKLF-Y who have been conspiring with handlers across the border as well as organizations like Kashmir Global Council to unite different pro-freedom groups such as Hurriyat, JKLF, etc., and the news of NIA seeking death penalty for Yasin Malik reignited fire to conspire against the integrity and sovereignty of India and they were trying to provoke the masses in an attempt to overawe the Government by show of criminal force. During the personal search of the appellants also, their respective phones were recovered. It is further case of the prosecution that during search of house of appellant Mohammad Yaseen Bhat, two Samsung phones, one Nokia phone, one laptop, I-

card, press note of meeting held on 05.10.2022 between JKLF members issued by appellant Mohammad Rafiq Phaloo, posters of Maqbool Bhat, Amanullah Khan and Yasin Malik, photograph of appellants with Maqbool Bhat, Amanullah Khan, Yasin Malik, late Syed Ali Shah Geelani and Moulvi Umar Farooq, besides bank passbooks were recovered. During the forensic examination of the phone of the appellants, incriminating videos, voice notes, photographs, press release of Kashmir Global Council and letter pad of KGC were recovered. One such conversation was allegedly held with Khurshid Mir who is active terrorist of JKLF presently in POK. In one voice note, appellant Mohammad Rafiq Phaloo is chanting slogans like 'Aeen-e-Hind Manzoor Nahi' and 'Hindustan Murdabad'. During the search of house of father of appellant Mohammad Rafiq Phaloo, a resolution dated 06.10.2022, letterpad of JKLF, biography with regard to militant activities and history of militancy, JKLF logo, press cutting with regard to JKLF, two passbooks of J&K Bank, poster of JKLF with regard to release of Yasin Malik were recovered.

09. The appellants, admittedly, have been charged, besides others, for commission of offence under Section 18 of UA(P) Act and rigors of Section 43-D are applicable. Though when these appeals were filed, only four witnesses were examined,

but record of the Trial Court reveals that eight more witnesses have been examined by the prosecution and total twelve witnesses have been examined till date, but the fact remains that there are still material witnesses with regard to the disclosure memo, seizure memos, who have not been examined till date, though few have been examined. This Court is conscious of the fact that in the last more than two and half years, the prosecution has examined only 12 witnesses out of 68 witnesses, but the fact remains that the material witnesses are yet to be recorded.

10. The contention raised by the appellants that there is no evidence against the appellants cannot be appreciated at this stage, particularly when the material witnesses with regard to the seizure of the incriminating material are yet to be examined. Perusal of statements of the protected witnesses reveal that one witness has turned hostile, whereas another has not. This court would not like to examine the merits of the evidence led by the prosecution till date lest it shall prejudice the parties during trial. As already observed above, the material witnesses are yet to be examined.

11. This Court has examined the impugned orders passed by the learned Trial Court and we find that the learned Trial

Court has rejected the bail applications preferred by the appellants on various grounds including their antecedents, recovery of secessionist documents, voice notes, etc. The learned Trial Court has also observed that only four witnesses have been examined so far and other witnesses are yet to be examined. The criminal antecedents of the appellants cannot be ignored at this stage. The judgment of the Hon'ble Supreme Court of India in "Syed Iftikhar Andrabi Vs. National Investigation Agency" 2026 INSC 503, relied upon by the learned counsel for the appellant is not applicable in the present facts and circumstances of the case.

12. In addition, appellant Mohammad Yaseen Bhat has submitted that he is not in good health condition, whereas the perusal of the impugned order reveals that the learned Trial Court has considered the said ground and has observed that recent coronary angiography report dated 14.05.2025 revealed non-obstructive coronary artery disease and the report explicitly states condition can be managed with medication. Further, the Trial Court also observed that the gallbladder surgery is non-urgent elective surgery and can be scheduled and conducted while the appellant remains in custody. It is evident that appellant is being provided proper medical facilities and it is not the case of

the appellant that he is suffering from such disease which cannot be managed while in custody. Accordingly, this contention of the appellant Mohammad Yaseen Bhat is rejected.

13. In view of the foregoing discussion, and having regard to the nature and gravity of the offences alleged against the appellants, the material presently available on record, as well as the stage at which the trial is presently proceeding, we do not find any ground warranting interference in favour of the appellants at this stage. The material witnesses whose testimony bears directly upon the disclosure statements allegedly made by the appellants and the recoveries effected pursuant thereto are yet to be examined by the prosecution. Their examination would, therefore, be material for a proper consideration of the role attributed to the appellants and the evidentiary circumstances relied upon by the prosecution.

14. Accordingly, without expressing any opinion on the merits of the case, the present appeals are **dismissed**. However, the appellants shall be at liberty to approach the learned Trial Court by filing fresh applications for bail after the material witnesses pertaining to their disclosure statements and the recoveries are examined by the prosecution. Such applications, if filed, shall be considered

by the learned Trial Court in accordance with law and on their own merits, without being influenced by any observation made in the present order.

15. The learned Trial Court is requested to make all endeavour to expedite the trial and to ensure that the proceedings are taken to their logical conclusion at the earliest. The learned Trial Court shall also endeavour to avoid unnecessary adjournments and grant adjournments only for reasons germane to the progress of the trial, so that the proceedings are not unduly delayed.

(Sanjay Parihar)
Judge

(Rajnesh Oswal)
Judge

SRINAGAR
13.11.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **NO**

MADAN LAL VERMA
2026.11.13 16:23
I attest to the accuracy and
integrity of this document