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APEAL-357-2025

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 358 OF 2025

1. Sayyad Faisal Sayyad Khaleel  
Age- 29 years, Occ. Business,  
R/o. Mehmoodpura, Rozabaugh,  
Aurangabad, Tal & Dist. Aurangabad.

2. Abdul Hadi s/o Abdul Rauf Momin  
Age -33, Occ. Driver,  
R/o. Varun Apartment, Rehman Ganj,  
In front of Jawahar Garden Jalna,  
Tal & Dist. Jalna.

....APPELLANTS

[Orig. Accused No. 2 and 4]

VERSUS

The State Of Maharashtra

.....RESPONDENT

.....

Mr. N.R. Shaikh, Advocate for appellants  
Mrs. Kalpalata Patil Bharaswadkar, APP for State

.....

WITH

CRIMINAL APPEAL NO. 357 OF 2025

Shaikh Irfan Shaikh Salim Alias Irfan Milli  
Age-40 years, Occ. Urdu Tuitions,  
R/o. Makka Masjid Kiradpura, Aurangabad  
(Presently incarcerated Aurangabad  
Central Prison, for last 2 years)

...APPELLANT

[Orig. Accused No. 1]

VERSUS

The State Of Maharashtra

.....RESPONDENT

.....

Mr. Javed R. Shaihi and Mr. N.R. Shaikh, Advocate for Appellant  
Mrs. Kalpalata Patil Bharaswadkar, APP for State

.....

**CORAM : NITIN B. SURYAWANSHI AND  
SANDIPKUMAR C. MORE, JJ.**

**RESERVED ON: 18<sup>th</sup> JUNE, 2025  
PRONOUNCED ON: 07<sup>th</sup> JULY, 2025**

**ORDER : [PER NITIN B. SURYAWANSHI, J.]**

1. By these appeals filed under Section 21 of National Investigation Agency Act, 2008 ("NIA Act" for short), appellants challenge common order passed below Exhibits- 12,13 and 14 in Special Case No. 58/2023 by learned Additional Sessions Judge, Aurangabad, thereby refusing bail to them.

2. On 21.09.2022 FIR is lodged by Rahul Rode, Assistant Police Inspector, Anti Terrorism Squad, Aurangabad alleging that, a secret information was received that on 23.11.2021 near Jama Masjid of Chikalthana, training of karate was arranged for Muslim youths. At that place a banner i.e. "Healthy People Healthy Nation" was displayed. In the said program, Secretary Mohsin Nadvi of Popular Front of India Organization ("PFI" for short) has given a speech propagating that Muslims in India are subjected to mob lynching and Central Government is attacking Muslim people through Hindu organizations in different States. The coming period is difficult for Muslims. Therefore, PFI is working for making Muslim youths

physically capable. Similar program was held by PFI on 27.11.2021 at Samosa Ground, Katkat Gate, Aurangabad. In the said program, District President of PFI Irfan Milli and General Secretary Saber were present. They stated in their speeches that present period is difficult for Muslim community. Indian Government is daily conspiring against Muslims. Therefore with a view to resist the Indian Government with arms they are conducting camps. Therefore, Muslim youths should become members of PFI on large scale.

3. As per the secret information received from the sources on 3<sup>rd</sup> and 4<sup>th</sup> July, 2022, PFI had arranged arms and physical training at a hall in front of Masjid-a-Mansab Mir at Naregaon. In the said workshop District President of PFI Imran Shaha and other followers of PFI were present. Except limited trainees nobody else was allowed there. It was learnt that in the said workshop Muslim youths were trained and encouraged to fight against Indian Government with arms and might to protect Muslim religion. It is also learnt that Managing Committee members of PFI namely Sayyad Faisal Sayyad Khaleel resident of Aurangabad and Abdul Hadi, resident of Jalna (appellants in Appeal No. 358/2025) and Parvez Khan, resident of Aurangabad

gave hate speeches propagating that Central Government is implementing CAA, NRC, Hijab Ban, Triple Talaq Ban, which are against Muslim religion. They make statement which create unrest, discontent and incite the mob. They call upon Muslim people to fight with arms and to commit Jihad.

4. On 14.08.2022 a get together of Ulema was held under the campaign "Save The Republic". In that program Maulana Irfan Milli and Maulana Nasir Nadvi were present. In the said program speeches were given creating discontent and disaffection against the Central Government. A fake narrative was propagated that through NRC Muslim community is being harassed and by the violent action 20 Lakh Muslim community people are tried to be killed. It is also learnt that they are expressing their intention to establish new Government on the basis of Sharia law and for that purpose they are encouraging Muslim youths to store arms and if necessary aid can be taken from other countries.

5. The FIR is registered at ATS, Kalachowki Police Station, Mumbai for offences punishable under Sections 13(1) (b) of the Unlawful Activities (Prevention) Act, 1967 ("UAPA" for short), under Sections 121A, 153A, 120B, 109, 116, 201 of IPC

and Section 4 read with 25 of Arms Act and under Section 135 of Maharashtra Police Act.

6. Pursuant to the registration of crime appellants came to be arrested on 22.09.2022. During the course of investigation material connecting ISIS was allegedly found with appellants. Document namely "India 2047 towards rule of Islam in India, internal Document not for circulation" was also found with appellant- Sayyad Faisal . So also one book in Urdu language by name "Babri Masjid Kahi Hum Bhul Na Jaye" was found.

7. On completion of investigation charge sheet came to be filed by prosecution in the month of February-2023 under Sections 121A, 122, 153A, 120B, 109, 116, 201 of IPC, Section 13(1)(b) of UAPA, Section 4 read with 25 of Arms Act and under Section 135 of Maharashtra Police Act. Appellant Shaikh Irfan Shaikh Salim Alias Irfan Milli is arrayed as Accused No. 1 and Appellants- Sayyad Faisal Sayyad Khaleel and Abdul Hadi Abdul Rauf Momin are arrayed as Accused No. 2 and 4 in the charge sheet. The case is numbered as Special Case No. 58 of 2023.

8. Appellants preferred applications Exhibits-12, 13 and 14, for bail, which are rejected by the Trial Court. Hence, the present appeal.

9. Heard learned advocates for the accused and learned APP for State.

10. Learned advocate Mr. N.R. Shaikh, for appellants in Criminal Appeal No. 358/2025 by relying on the order of granting bail to Shaikh Umer (co-accused in the present crime) by the Apex Court submits that on the ground of parity, accused are entitled for bail.

11. On merit, he submits that FIR is lodged on 21.09.2022 and appellants are arrested on 22.09.2022, whereas PFI was declared as unlawful organization on 27.09.2022. So when the FIR was lodged PFI was not unlawful organization and hence no offence can be said to have been committed by the appellants. He submits that from the appellants Hard disk and cell phone, some literature was seized. Nothing incriminating was found with the appellants. He submits that, there is no material to show that there was any physical act of terrorism or overt act of violence at the time of conducting programs or thereafter. He submits that act of teaching karate is not an act of terrorism within the definition of UAPA. According to him, though amount of Rs. 8,00,000/- was found in the account of the accused, the same is not used for any terrorist activity. By

relying on the Division Bench decision at Nagpur in ***Mahesh Kariman Tirki and Ors. v. State of Maharashtra***<sup>1</sup>, he submits that, Section 43E of UAPA deals with recovery of arms or explosive or any other substance specified in Section 15 recovered from the appellants and used in the commission of terrorist Act. In terms of Section 15 UAPA seizure must be of some article used to create violence resulting in death, injury, damage, destruction etc. According to him unless there is seizure of bomb, explosive etc., sub clause (a) of Section 43E of UAPA has no application at all.

By relying on Mahesh Tirki (supra), ***Vernon vs The State of Maharashtra & Another***<sup>2</sup> and ***Barkathullah v. Union of India***<sup>3</sup>, he submits that mere recovery of literature in absence of allegation of overt act of violence and mere participation in seminars does not attract offences under UAPA. By relying on ***Devangana Kalita v. State of Delhi NCT***<sup>4</sup>, he submits that, right to protest against Government is a fundamental right. Even if inflammatory speeches are given, that does not amount to terrorist act. He further submits that even if allegations of prosecution are taken as it is at the most appellants can be said

1 AIROnline 2024 BOM 498

2 Criminal Appeal No. 639 of 2023

3 AIR Online 2023 MAD 1679

4 AIROnline 2021 Del 837

to have committed offences punishable under the provisions of IPC and Arms Act, for which two years and three years imprisonment is provided. Appellants have already undergone more than two years imprisonment. Though, the Trial has commenced, out of 145 witnesses cited by the prosecution, only five witnesses are examined so far. Therefore, there is no likelihood of trial concluding in near future. Therefore, by relying on *Jahir Hak v. State of Rajasthan*<sup>5</sup>, *Athar Parwez vs. Union of India*<sup>6</sup>, he submits that accused are entitled to be released on bail.

12. Learned advocate Mr. Javed R. Shaikh for appellant-Shaikh Irfan Shaikh Salim Alias Irfan Milli adopted the arguments of appellants Sayyad Faisal and Abdul Hadi. In addition, he submits that from appellant- Irfam Milli 7 inch knife, fighter, Rampuri knife and 1½ ft. sword were recovered. It cannot be said that these arms were used by appellant for toppling the Government. He submits that at the most offence under Arms Act can be said to be made out against appellant which is punishable with two years imprisonment. Appellant-Irfan Milli is in jail since two years and eight months and since

5 AIROnline 2022 SC 501

6 2024 INSC 995



trial is not likely to conclude in near future he may be released on bail.

13. By referring to definition of terrorist acts he submits that there is no material on record to show that appellant has indulged in any terrorist act. Therefore by relying on order passed in favour of co-accused Shaikh Umer he prays for releasing the appellant on bail. In support of his submissions he relied on *Jalaluddin Khan v. Union of India*<sup>7</sup>, *Javed Gulam Nabi Shaikh vs. State of Maharashtra and Others*<sup>8</sup>, *Union of India vs. K.A. Najeer*<sup>9</sup>, *Mohd. Muslim alias Hussain vs. State (NCT of Delhi)*<sup>10</sup> and *Javed Ahmad Hajam vs. State of Maharashtra & Anr.*<sup>11</sup>.

14. Per contra, learned APP strenuously opposed the appeals. She submits that appellants are involved in unlawful activity against the State. National security is of foremost important. PFI is radical organization which was indulging in seditious activity. They were taking secret meetings. Material seized from appellant Sayyad Faisal Sayyad Khaleel shows about mission of 2047. She submits that appellants are main accused.

7 AIROnline 2024 SC 542

8 (2024) 9 SCC 813

9 2021 3 SCC 713

10 2023 SCC OnLine SC 352

11 2024 (4) SCC 156

The case of Shaikh Umer is distinguishable from the case of present appellants as he was not named in the FIR and his name was subsequently added as accused in the charge sheet. These appellants arranged meetings and events, whereas Shaikh Umer only asked people to attend events and raised slogans in the events. She submits that appellants are responsible for delay in framing of the charge. So far as five witnesses are examined and trial is being conducted on day-to-day basis. If the accused are released on bail they will tamper the prosecution evidence. She therefore submits that appellants are not entitled for bail. In support of her submissions she relied on Union of India rep. by the Inspector of Police *National Investigation Agency Chennai Branch vs. Barakathullah* etc<sup>12</sup>.

15. Heard learned advocates for appellants and learned APP for State at length. Perused the record.

16. Admittedly, when the FIR was lodged on 21.09.2022 and appellants were arrested on 22.09.2022, PFI which was a registered organization was not banned. It was banned for a period of five years by Government of India by Gazette Notification dated 28.09.2022.

<sup>12</sup> 2024 SCC OnLine SC 1019

17. In Athar Parwez (supra) the Apex Court was considering the case of active members of PFI for bail. In para 27 of this citation it is observed; *"in the chargesheet there is no allegation that the Appellant was a member of a terrorist gang or organisation. It is worth mentioning here that the PFI of which the Appellant was a member has not been declared a terrorist organisation within the meaning of Section 2(m) of the UAPA, 1967. It was also found that the PFI is not mentioned as a terrorist organisation in the first schedule of UAPA, 1967. The chargesheet and the statement of witness 'Z' when seen as it is, it would not be possible to record prima facie finding that commission of offence under the UAPA, 1967 would be attracted as there are no reasonable grounds for believing that the accusations are prima facie correct."*

18. The aforesaid observations are squarely applicable to the case of appellants as in the present case also when the FIR was registered and appellants were arrested, PFI was not declared a terrorist organization within the meaning of Section 2(m) of UAPA. So also PFI was not mentioned in the first schedule of UAPA. Merely because appellants participated in the meetings, seminars or physical training of karate etc., prima

facie, it cannot be said that they have indulged in any terrorist act.

In Athar Parwez (supra) also the document titled “India 2047 towards rule of Islam in India, internal document not for circulation” was found and prosecution alleged that appellant along with other members of PFI aimed at disrupting sovereignty of India and cause disaffection against the country. The Apex Court thus in similar circumstances granted bail to Athar Parwez.

19. In Vernon (supra) the Apex Court has held that, “*as regards the acts specified in Section 15(1)(b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act.*”

*Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true."*

It is further observed that, "*witness statements do not refer to any terrorist act alleged to have been committed by the appellants. .... Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of the material. .... Mere participation in seminars by itself cannot constitute an offence under the bail restricting Sections of the UAPA, with which they have been charged."*

20. Coming to the facts of present case allegations against appellants- Sayyad Faisal Sayyad Khaleel and Abdul Hadi are that, they were present in the workshop dated 3<sup>rd</sup> and 4<sup>th</sup> July, 2022, wherein Muslim youths were trained and encouraged to fight against Indian Government. They both gave hate speeches propagating that Central Government is implementing CAA, NRC, Hijab Ban, Triple Talaq Ban, which are against Muslim religion and their statements create unrest, discontent and incite the mob.

The appellants have conducted camps wherein appellant- Sayyad Faisal Sayyad Khaleel has given

demonstration of different weapons. Video clips found in the mobile of appellant- Irfan Milli are allegedly anti national. Hate speeches and mob lynching videos about Babri Masjid were also found. 311 videos in one memory card and 1394 images were found with appellant- Abdul Hadi.

Weapons like sword, rampuri knife, fighter were recovered from appellant- Irfan Milli along with book against judicial system and electronic gadgets.

Keeping in mind the observations of the Apex Court in Vernon (supra) in absence of allegations of any overt act of violation and terrorist activities, mere participation in seminars/camps, prima facie, would not amount to terrorist act.

Though, weapons are recovered from appellant-Irfan Milli, it is not the case of prosecution that those were used for any terrorist activity and/or for toppling the Government.

21. Since the trial is in progress, we refrain from commenting upon merits of the allegations levelled against the appellants. Suffice it to say that, no material is brought to our notice showing involvement of appellants in any terrorist activity.

22. On the ground of parity also the appellants are entitled for bail as co-accused in the present crime Shaikh Umer

is released on bail by the Apex Court. We do not find any merit in the submission of learned APP that he was not named in the FIR and was subsequently arrayed as accused. Fact remains that he is arrayed as accused in the present crime along with other accused persons and all the accused are charged under Sections 121A, 122, 153A, 120B, 109, 116, 201 of IPC, under Section 13(1)(b) of UAPA and Section 4 read with 25 of Arms Act and under Section 135 of Maharashtra Police Act.

23. In Barakathullah (supra), Apex Court held;

*" 22. In the instant case, we are satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the respondents are prima facie true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents as mentioned in the charge-sheet, the period of custody undergone by the respondents being hardly one and half years, the severity of punishment prescribed for the alleged offences and prima facie material collected during the course of investigation, the impugned order passed by the High Court cannot be sustained. We are conscious of the legal position that we should be slow in interfering with the order when the bail has been granted by the High Court, however it is equally well settled that if such order of granting bail is*

*found to be illegal and perverse, it must be set aside.*

*23. This Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state. It cannot be denied that National security is always of paramount importance and any act in aid to any terrorist act – violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India.”*

In the present case, prima facie, we do not find reasonable grounds for believing that accusations against the accused are true. Therefore, mandate contained in proviso to Section 43(D)(5) would not be applicable to the case of accused. The prosecution could not point out criminal antecedents of appellants. Section 13(1)(b) prescribes maximum punishment of 7 years, out of which appellants have already undergone 2 years and 8 months imprisonment.

24. Taking into consideration the fact that there are total 145 witnesses cited by the prosecution and though trial is being conducted on day to day basis, so far only five witnesses are



examined and accused are in jail since more than two years and eight months, there appears no likelihood of trial being concluded in the near future. In ***National Investigation Agency v. Zahoor Ahmad Shah Watali***<sup>13</sup>, the Apex Court has held that, “Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the Constitutional Courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time.”

On this ground also, appellants are entitled for bail.

25. In the light of the aforesaid, we are inclined to allow the appeals.

26. The appeals are allowed with a direction that appellants be released on bail on appropriate terms and conditions to be fixed by the Special Court.

27. The appellants shall surrender their passports, if any, and shall attend the Special Court on each and every date fixed and shall co-operate with the Special Court for early disposal of the case.

13 (2019) 5 SCC 1

28. The appellants shall be produced before the Special Court on 10<sup>th</sup> July, 2025.

29. The Special Court shall enlarge the appellants on bail on appropriate stringent terms and conditions including the conditions mentioned above. Learned APP shall be heard on the terms and conditions.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)