

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.875 of 2024

Arising Out of PS. Case No.-827 Year-2022 Thana- PHULWARISHARIF District- Patna

Abid K. M., S/o K Kader Abbu, R/o Razi Manzil, JEL Road, Post -
Kunjathur, P.S. - Manjeshwar, Distt. - Kasargod, Kerala.

... .. Appellant

Versus

The Union of India through National Investigation Agency

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 949 of 2024

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

Abdul Rafeek M., Son of Mohammad Byari, R/o- Mannapu House, Vill+Post-
IRDE Puttur Taluk, PS- Puttur Rural, Dist- Dakshin Kannada Karnataka.

... .. Appellant

Versus

The Union of India through National Investigation Agency

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 875 of 2024)

For the Appellant/s : Mr. Kundan Kumar Ojha, Advocate

For the Respondent/s : Mr. Dr. K.N. Singh (ASG)

Mr. Arvind Kumar, Spl. PP, NIA

Mr. Shivaditya Dhari Sinha, Advocate

Mr. Paritosh Parimal, Advocate

(In CRIMINAL APPEAL (DB) No. 949 of 2024)

For the Appellant/s : Mr. Kundan Kumar Ojha, Advocate

For the Respondent/s : Mr. Dr. Krishna Nandan Singh (ASG)

Mr. Arvind Kumar, Spl. PP, NIA

Mr. Shivaditya Dhari Sinha, Advocate

Mr. Paritosh Parimal, Advocate

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 appellants and learned
counsel for the National Investigating Agency (in short 'NIA').



2. These two appeals are arising out of the common order dated 28.06.2024 (hereinafter called 'the impugned orders') passed by learned Special Judge, NIA, Patna, Bihar (hereinafter called the 'learned trial court') in Special Case No. 07 of 2022/R.C. No. 31 of 2022.

3. By the impugned orders, the learned trial court has been pleased to reject the prayer for bail of the appellants during the ongoing trial. Both the appellants are aggrieved by and dissatisfied with the orders 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 are 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 and Athar Parvez, 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 6-7 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.

7. 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 ours trained PE cadres, we would



need held 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”

8. In course of investigation, the NIA carried out searches in the premises of the accused and suspects in the State of Bihar, Karnataka and Tamil Nadu. It is stated that from the house search of accused Tausif Alam (A-6), one green colour notebook “Divine” was found which revealed that the training was organized to attain the “Total Muslim Empowerment”. The seized document revealed the methodology as “Cadre-cum-Mass Movement. The NIA found that a criminal conspiracy was hatched with a *malafide* intention to cause violence, acts of terror which were bound to create an atmosphere of terror and insecurity, endangering the unity and integrity of the nation.

9. As regards these two appellants, it is stated that they were involved in channelizing the illegal funds. The appellants are said to be the members of the syndicate who were acting with hands in glove with other accused persons. These appellants were chargesheeted in supplementary Chargesheet No. 1B/2023 dated 01.09.2023 filed under Sections 120B, 121, 121A and 123 of IPC and Sections 10, 13, 17 and 18 of the UA(P) Act.

10. It is stated in paragraph ‘17.28’ that suspicious transactions in form of cash deposits were made from Md. Sinan



(A-31) and Abdul Rafeek M (one of the appellants) from the Canara Bank, Panemangalore, Bantwal and Vittala Branches of Dakshina Kannad District of Karnataka in the Canara Bank Account No. 6342101000497 of Md. Sajjad Alam. The cash amount less than Rs. 50,000/- were deposited in multiple transactions to avoid generation of Suspicious Transaction Report (STR). It is stated that Abdul Rafique M (A-34) and Abid K M (A-35) were involved in channelizing the illegal funds to PFI from United Arab Emirates and Saudi Arabia to various suspects in India for committing terrorist acts.

11. In paragraph '17.30' of the charge-sheet, it is stated that searches were conducted at several locations in Kasaragod district of Kerala and Dakshina Kannada District of Karnataka on 05.03.2023. During searches, large number of incriminating evidences were recovered and seized pertaining to huge illegal transactions including to above-mentioned arraigned accused Md. Sajjad Alam. Based on recoveries, on 06.03.2023, Md. Sinan (A-31), Sarfaraz Nawaz (A-32), Iqbal (A-33) and Abdul Rafeek M (A-34), all residents of Dakshina Kannada, Karnataka and Abid K M (A-35), resident of Kasaragod, Kerala were arrested in this case.

12. It is stated that Md. Sajjad Alam was associated with Chakiya unit of PFI along with Md. Yakub Khan @ Sultan @



Usman (A-27), FIR named accused Reyaj Moarif (A-4), Md. Tanveer @ Md. Tanveer Barkati (A-28), Md. Belal @ Irshad (A-30) and other members of PFI. Sajjad Alam had gone to Dubai in the beginning of the year 2022 and since then he is still there. He arranged illegal funds in Dubai and UAE and hatched criminal conspiracy with Iqbal (A-33) and further forwarded the same from Dubai to accused persons of District East Champaran, Bihar through the arrested persons at Dakshina Kannada of Karnataka and Kasaragod of Kerala. It is stated that these funds were further used in extending unlawful activities of PFI even after the ban of PFI by the Central Government. In paragraph '17.36' of the charge-sheet, it is alleged that these appellants along with Md. Sinan (A-31), Sarfaraz Nawaz (A-32) and Iqbal (A-33) used to collect money from Md. Sajjad Alam in Dubai, UAE and send the same to India through illegal channels. On instruction of Iqbal (A-33), Sarfaraz Nawaz (A-32) and Abdul Rafiq M (A-34) collected money from Abib K M (A-35) in India and deposited the same in the account of Md. Sajjad Alam using credentials of Md. Sinan (A-31).

13. The appellants have been chargesheeted for the offences punishable under Sections 120B, 121, 121A and 123 of IPC and Sections 10, 13, 17 and 18 of the UA(P) Act. Sanction for



prosecution under Section 196 CrPC and Section 45 (1) (i) of UA(P) Act in respect of accused persons for the offences under the relevant sections of the IPC and UA(P) Act as applicable has been accorded by the Ministry of Home Affairs, Government of India *vide* order dated 30.08.2023.

Submissions on behalf of the appellants

14. Learned counsel for the appellants have assailed the impugned order of the learned trial court. It is submitted that the appellants are not named in the FIR, however, their names are said to have transpired in course of investigation.

15. Learned counsel submits that the allegations against the appellants are that of channelizing transfer of illegal funds. The submission is that the appellants are not members of PFI as alleged by the prosecution agency. Regarding both the appellants, it is stated that they are running a small welding shop at their local market and they have no concern with any person in the State of Bihar.

16. It is their statement that they have transferred total Rs.40-50 thousand only using their account and UPI and such transfers have been done by the appellants for the commission of Rs. 100-500 for each transactions. They have stated that the appellants have transferred such small amounts without knowing



the identity of the recipient, for their petty gain and without any criminal intent.

17. Learned counsel submits that the appellants are not even remotely connected with the PFI and mere allegation of transferring amount without any corroborative evidence of using the same for procuring arms and ammunition and achieving any goal to commit terrorist act, does not attract any provision of the UA(P) Act as defined under Section 2(1)(k) of the UA(P) Act. It is submitted that they are rotting in jail since 06.03.2023.

18. Learned counsel further submits that in this case, this Court has earlier rejected the prayer for bail of the co-accused Md. Irshad Alam and Md. Reyaz Moarif in Criminal Appeal (DB) No. 130 of 2024 and Cr. Appeal (DB) No. 42 of 2024, however, it would appear from the materials on the record that so far as Md. Irshad Alam is concerned, the allegations against him are that of being involved in arranging arms and ammunition and conducting recce of a youth in order to kill him. The appellant Md. Reyaz Moarif (A-4) has been found to be the person directly in touch with the FIR named accused persons and he was operating the Syndicate Bank Account (now Canara Bank) of PFI as General Secretary of the PFI, Bihar State. The said account was opened in the name of Mehbood Alam Nadvi (A-7), President of PFI, Bihar



State, Reyaz Moarif (A-4), General Secretary of PFI, Bihar State, Abdur Rahman (A-24) as Treasurer of PFI, Bihar State in which Rs. Seven Lakhs was deposited twice from other PFI accounts. It is submitted that the case of Md. Reyaz Moarif (A-4) is also clearly distinguishable.

19. Learned counsel further submits that one accused, namely, Nooruddin Jangi @ Advocate Nooruddin Jangi has been granted bail by a learned coordinate Bench of this Court in Criminal Appeal (DB) No. 749 of 2023 after this Court found that the allegations against him would not be said to have been made out as he had never attempted to wage war or conspire against the Government of India.

20. This Court earlier rejected the prayer for bail of Md. Jalaluddin Khan @ Md. Jalaluddin in Criminal Appeal (DB) No. 514 of 2023 and that of Athar Parwez in Criminal Appeal (DB) No. 516 of 2023, however, these two appellants have already been granted bail by the Hon'ble Supreme Court in Criminal Appeal No. 3173 of 2024 and Criminal Appeal No. 5387 of 2024 respectively. It is submitted that the Hon'ble Supreme Court has recorded in the order allowing bail to Athar Parvez and Jalaluddin that in the chargesheet, there is no allegation that the appellant was a member of terrorist gang or organization. The PFI has not been



declared a terrorist organization within the meaning of Section 2(m) of the UA(P) Act, 1967. The PFI is not mentioned as terrorist organization in the first schedule of UA(P) Act, 1967 and from the statement of the charge-sheet witnesses, it would not be possible to record *prima-facie* finding that commission of offence under the UA(P) Act, 1967 would be attracted. Learned counsel submits that these observations would be equally available in case of these appellants.

21. Learned counsel for the appellants has also invited attention of this Court towards the observations of the Hon'ble Supreme Court in paragraphs '30' and '32' of the order in case of Athar Parwez (A-1) which according to learned counsel for the appellants, would equally apply in case of these appellants.

Submissions on behalf of the NIA

22. Learned ASG for the NIA has opposed the prayer for bail of the appellants. It is submitted that these appellants have been found involved in channelising illegal funds for the unlawful activities of the PFI. Attention of this Court has been drawn towards the relevant paragraphs of the chargesheet to submit that these two appellants had made some suspected deposits in some of the accounts of the members of the PFI. It is submitted that the extracted data of the mobile phones of Iqbal (A-33), Sarfaraz



Nawaz (A-32), Abdul Rafique M (A-34), Abid K M (A-35) are having hand-written details of account, names of account holder, amount to be deposited or deposited. The seized mobile phones of the appellants shall establish their association with the PFI and their involvement in deposits of illegal funds in different bank accounts. It is submitted that both the appellants were involved in channelising of illegal funds to accused persons Md. Belal @ Irshad (A-30), Reyaz Moarif (A-4), Md. Yaqub Khan @ Sultan @ Usman (A-27), Tanveer Barkati (A-28) and Md. Abid (A-29) of East Champaran, Motihari Module of PFI for extending terrorist activities of PFI even after its ban by the Central Government.

Consideration

23. We have heard learned counsel for the appellants and learned ASG for the NIA.

24. These two appellants are the residents of the State of Kerala and Karnataka. They are allegedly involved in channelizing of illegal funds. On going through the chargesheet which has been filed in case of these two appellants, we find that in paragraphs '17.28' and '17.29' of the chargesheet, it is stated that the suspicious transactions in form of cash deposit were made from Md. Sinan (A-31) and Abdul Rafique M from the Canara Bank Panemangalore, Bantwal and Vittala Branches of Dakshina



Kannada, District of Karnataka in the Canara Bank Account of Md. Sajjad Alam. The cash amount of less than Rs. 50,000/- were deposited in multiple transactions to avoid generation of suspicious transaction report and escape scrutiny of Law Enforcement Agencies. In these paragraphs, however, there is no disclosure of the date of deposit of money in the bank account of Md. Sajjad Alam, all that is stated in paragraph '17.30' is that searches were conducted at seven locations in Kasaragod District of Kerala and Dakshina Kannada District of Karnataka on 05.03.2023. During the searches, large number of incriminating evidences were recovered and seized pertaining to huge illegal transactions including to above-mentioned arraigned accused Md. Sajjad Alam. Again, in these paragraphs of the chargesheet, there is no mention of the date of deposit. This Court further finds that there is a general and omnibus kind of statement that this money was sent to the PFI members in pursuance of conspiracy for carrying out activities of the PFI.

25. It is noticed from the charge-sheet that during investigation Md. Yaqub Khan @ Sultan @ Usman (A-27) was found involved in hatching a conspiracy for a targeted killing of a Hindu boy to flare up the communal tension post-ban period and in his custodial examination, he corroborated the facts regarding



receiving of funds from Md. Belal @ Irshad (A-30) and its use in arranging ammunition for carrying out attack. This has been mentioned in paragraph '17.32' of the charge-sheet. In the charge-sheet filed by the NIA, there is no mention that Md. Yaqub Khan @ Sultan @ Usman (A-27) or Md. Belal @ Irshad (A-30) were found in touch with these appellants over telephone or through any mode of communication. In course of investigation, the mobile of Md. Yaqub Khan @ Sultan @ Usman was seized by the NIA. In paragraph '17.23' of the chargesheet, it is stated that even after declaration of PFI as unlawful association, Reyaz Moarif (A-4) conspired with Md. Yaqub Khan @ Sultan @ Usman, Md. Belal @ Irshad and other PFI members that the training, recruitment and other activities of PFI would be carried out secretly and for this purpose, Reyaz Moarif (A-4) had arranged a hideout at Parsauni village of Muzaffarpur in District of Bihar.

26. This Court finds in paragraph '17.23' of the charge-sheet also it is not the case of the NIA that these two appellants were connected to either Md. Yaqub Khan or Md. Belal @ Irshad or Reyaz Moarif. It is stated that the investigation and statement of witnesses established the association of Iqbal, Sarfaraz Nawaz, Md. Sinan, Abdul Rafique M and Abid K M.



27. Even assuming for the sake of argument that some money were transferred by these two appellants which they claim to be about Rs.40-50,000/- for commission, there is no specific material in the charge-sheet to show that these appellants had taken part or have committed unlawful activities as defined in the UA(P) Act. In the case of **Thwaha Fasal vs. Union of India** reported in **(2022) 14 SCC 766**, the Hon'ble Supreme Court has held that the Court should examine the materials forming part of the charge-sheet to decide, whether there are reasonable grounds for believing that the accusations against the persons applying for bail are *prima facie* true. While doing so, the Court must take the chargesheet as it is.

28. Keeping in view the aforementioned view of the Hon'ble Supreme Court, this Court has taken note of the case averred by the NIA in the charge-sheet as against these appellants.

29. In the case of **Athar Parwez** (*supra*), the Hon'ble Supreme Court has observed in paragraph '27' as under:-

“27. The Court had further gone to the extent of saying and rightly so that 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."

30. This Court finds that what has been held by the Hon'ble Supreme Court *prima-facie* in paragraph '27' that in the chargesheet, there is no allegation that the appellant was a member of terrorist gang or organisation equally applies in case of these appellants. There is no such allegation that the appellants are members of a terrorist gang or an organisation. The PFI of which the appellants are said to be members has not been declared a terrorist organisation within the meaning of Section 2(m) of the UA(P) Act, 1967. The UA(P) Act, 1967 would also be applicable to the case of the appellants.

31. Further, this Court finds that in case of **Athar Parwez** (*supra*), the Hon'ble Supreme Court observed in paragraph '30' as under:-

"30. Allegations against the Appellant with regard to having collected Zakat from the people for helping the PFI or recruiting members of PFI, suffice it to say at this stage, that on the day such activities were carried out by the appellant, PFI was not a banned organisation. None of the witnesses or the protected witnesses stated that the money so collected in the form of Zakat was ever misappropriated by the appellant or was in any



manner used for illegal activities. The statement of the protected witnesses has not mentioned anything specific that would be attributed to the appellant which could *prima facie* attract charges under the UAPA, 1967.”

32. Keeping in view the aforesaid observations of the Hon’ble Supreme Court in case of **Athar Parwez** (*supra*), when this Court goes through the allegations against these appellants, it is found that they are said to have sent some amount in the account of Sajjad Alam and in different accounts but nowhere in the chargesheet, the date of such deposits by the appellants have been disclosed. At the same time, there is no prima-facie material on the record that the money said to have been sent by the appellants in the account of Sajjad Alam were used for illegal activities post-ban period. This Court, therefore, finds that the observations made in paragraph ‘30’ of the judgment in the case of **Athar Parwez** (*supra*) would also be available to these appellants.

33. At this stage, this Court would briefly take note of the fact that Section 15 of the UA(P) Act defines the activities which would be covered under the word ‘terrorist ac. Section 16 provides for punishment for terrorist act, Section 17 and 18 of the UA(P) Act provides punishment for raising funds for terrorist act and punishment for conspiracy etc. So far as these appellants are concerned, in absence of any material on the record in the charge-sheet showing that they were collecting funds for any person



knowing that such funds are likely to be used, in full or in part, by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, it would not be possible to opine that there are reasonable grounds for believing that the accusation against the appellants is *prima-facie* true. In this view of the matter, in our opinion, the rigours of Section 43D(5) of the UA(P) Act would not stand against the prayer of the appellants for grant of bail.

34. An alternative submission has been advanced on behalf of the appellants saying that this Court being a constitutional court, in case of impossibility of the trial being concluded within a reasonable period, can relax the rigours of Section 43D(5) of the UA(P) Act, 1967 and the appellants may be enlarged on bail by this Court if it is found that their fundamental rights under Article 21 of the Constitution of India is being violated. The statutory restrictions shall give way to the fundamental rights under Part III of the Constitution of India. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. K.A. Najeer** reported in (2021) 3 SCC 713, **Javed Gulam Nabi Shaikh vs. State of Maharashtra** reported in (2024) 9 SCC 813 and **Thwaha Fasal vs. Union of India** reported in (2022) 14 SCC 766. It is stated that



there are 160-170 witnesses to be examined in this case and presently the cross-examination of only PW-2 is going on.

35. Since we have taken a view that the rigours of Section 43D(5) of the UA(P) Act, 1967 would not stand against the appellants for grant of bail, we need not go into the alternative submissions of the appellants. We have noted that the appellants are in custody for over two years and in case of **Athar Parwez** (*supra*) the Hon'ble Supreme Court has having taken note of the period of incarceration as well decided to enlarge him on bail. The said observation of the Hon'ble Supreme Court in paragraph '32' of the order of Athar Parwez shall be equally available to the appellants.

36. In view of the discussions made hereinabove, we are of the considered opinion that these appellants would deserve privilege of bail during pendency of the trial subject to such conditions as may be imposed by the learned Special Court as has been ordered by the Hon'ble Supreme Court in the case of **Athar Parwez** (*supra*), this Court would also direct the Special Court to enlarge the appellants on bail immediately on appropriate terms and conditions after hearing counsel for the respondent.

37. 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.

38. This appeal is allowed.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

Rishi/-

AFR/NAFR	
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