*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 30.04.2024
Judgment delivered on: 28.05.2024

\+ CRL.A. 623/2023 & CRL. M.A. 20963/2023

ABUBACKER E. ..... Appellant

VERSUS

NATIONAL INVESTIGATION AGENCY ..... Respondent

**Memo of Appearance**

For the Appellant: Ms. Nitya Ramakrishnan, Senior Advocate with Mr. Adit S. Pujari, Mr. A. Nowfal, Mr. Shaikh Saipan, Ms. Aprajita Sinha, Mr. Shaurya Mittal, Ms. Mantika Vohra, Mr. Shereef K.A. and Mr. Arif Hussain, Advocates.

For the Respondents: Mr. Rahul Tyagi, SPP with Mr. Vikas Walia, Mr. Sangeet Sibou, Ms. Priya Rai, Mr. Jatin, Mr. Mathew M. Philip, Mr. Durga Das, Mr. Harsh Sehrawat, Advocates with Ms. Nidhi Shivhare (DSP) and Mr. T.V. Rajesh (DSP) for NIA.

**CORAM:**
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**
**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT**

**MANOJ JAIN, J**

**Factual Background**

1. Appellant has challenged order dated 09.06.2023[1] whereby he has been denied bail.

[1] Order dated 09.06.2023 passed by learned Addl. Sessions Judge-03 (New Delhi) Patiala House Courts, New Delhi in RC 14/2022/NIA/DLI

2. Let us take note of the relevant facts.

3. The Central Government had credible information that the members, office-bearers and cadres of Popular Front of India (PFI) along with others were conspiring, raising or collecting funds within India or from abroad for committing or getting committed terrorist acts in various parts of India, including States of Kerala, Tamil Nadu, Karnataka, Uttar Pradesh and Delhi etc. FIR was accordingly registered at Police Station NIA on 13.04.2022 for commission of offences under Section 120-B & 153-A IPC and under Section 17, 18, 18B, 20, 22, 38 & 39 of the Unlawful Activities (Prevention) Act, 1967 (in short UAPA) indicting various members of PFI.

4. Name of appellant Abubacker E. also figured in such FIR. He has been claimed to be integral part of its National Executive Council (NEC).

5. As per the allegations appearing in FIR, two PFI members i.e. Ansad Badruddin and Masud Ahmed, who were involved in terror acts, had received funds from five PFI bank accounts and qua one bank account of Canara Bank, New Delhi, the appellant was found to be the one of authorized signatories.

6. It was also mentioned in the FIR that all the named accused persons, including appellant herein, were involved in the acts, preparatory to the commission of terrorist act, with an intention to strike terror in the minds of general public and they were also involved in

providing training to members and others to commit terrorist acts. These persons were also involved in process of radicalizing and recruiting Muslim youths to join proscribed organizations.

7. It was averred that they were promoting enmity amongst different groups, thereby causing communal disharmony in the society and provoking Muslim youths to commit violent and unlawful activities while supporting and furthering the proscribed terrorist organizations like ISIS (Islamic State of Iraq and Syria) and SIMI (Students' Islamic Movement of India).

8. Appellant was arrested on 22.09.2022 and charge-sheet was submitted before the learned Trial Court on 18.03.2023.

9. We may also mention, right here, that by virtue of notification dated 27.09.2022 issued by Ministry of Home Affairs, Popular Front of India (PFI) and its associates, affiliates or various fronts were declared as unlawful associations. The Central Government constituted *Unlawful Activities (Prevention) Tribunal* and referred the above notification to the Hon'ble Tribunal for adjudicating whether or not there was sufficient cause for declaring PFI and its associates/affiliates as an unlawful association and said Tribunal passed order on 21.03.2023 confirming the aforesaid declaration. Consequently, another notification to said effect was published in the Gazette of India on 27.03.2023.

10. We may also note that said organization i.e. PFI was found to be a registered society and such society is also arrayed as accused in the present charge-sheet.

11. During the course of investigation, plentiful of evidence was collected which suggested that PFI was acting through its NEC members including appellant Abubacker E. and they had conspired and covertly aimed to establish Islamic/Shariah Law in India by or before the year 2047 by overthrowing the democratic and constitutional system of government by raising an army of jihadists, who would lead the armed struggle for establishing *Caliphate* in India and to achieve said objective, the following steps were being taken: -

*(i) Using social and political activities of PFI and its frontal organizations to attract large number of Muslim youths.*

*(ii) Inciting enmity and hatred against the Hindus by propaganda of Islam in danger in India and atrocities being committed against the Muslims by Hindus and Hindu organizations.*

*(iii) Identifying Muslim youth gullible to such propaganda and radicalizing them for participating in Jihad.*

*(iv) Organizing terrorist camps where arms training was imparted for commission of violent and terrorist acts.*

*(v) Raising funds and disbursing them for terrorist activities and for procurement of weapons.*

*(vi) Creating 'Hit Squads' by recruitment of radicalized Muslim youth to eliminate Hindu leaders and to create an army.*

*(vii) Inciting its members to join ISIS and implement ISIS tactics for establishment of Caliphate in India.*

12. We may also note that charge-sheet indicates that Ansad Badruddin (a PFI cadre) along with Feroz Khan were arrested by UP, ATS in Lucknow on 16.02.2021 when they were planning to cause bomb blasts on the occasion of '*Basant Panchami'* with the objective of striking terror amongst the people of a particular religious community. During interrogation of said accused, it came to fore that leadership of PFI was financing such people to carry out terrorist acts in different parts of the country. Investigation also revealed that YouTube videos downloaded from official account of PFI, the accused persons, who were NEC members of the PFI, could be seen addressing large gatherings of people and provoking them against Indian Government and instigating the crowd towards violence against the persons belonging to a particular religious or political group.

13. Search-warrants were also obtained from NIA, Special Court, New Delhi and various offices of PFI, situated across the country, were raided. One of the co-accused in the present case i.e. A-13, voluntarily, made

confessional statement under Section 164 Cr.P.C. During searches conducted by NIA, hundreds of digital devices were seized and were forwarded to CERT-In (Indian Computer Emergency Response Team) for forensic analysis and scrutiny report of such data revealed as under: -

> *(i) The accused persons / PFI cadres were maintaining a database of detailed information about the leaders of certain organizations who oppose the ideology of PFI. Such information was being collected by the PFI cadres in local areas after conducting reconnaissance of aforesaid leaders/persons. Such database included minute details of the identified persons, such as names, parentage, addresses, photographs, occupation, post/designation in the organization, physical attributes of the person, vehicles used by them, timings of leaving / entering the house, mounting of surveillance on targets then identifying their regular travel routes etc.*
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> *(ii) There are provocative photos, videos, and pamphlets about sensitive issues like Babri Masjid demolition, Gyanvapi Mosque matter, which have either been judicially decided or pending disposal in the court. In these videos/photos/pamphlets, the accused persons/PFI cadres use the term 'Shaheed' (Martyr) for Babri Masjid and are advocating the use of violence against the people not conforming to the PFI's ideology.*
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> *(iii) Many incriminating videos & documents like Voice of Khurasan, Sawat Al Hind published by ISIS and similar foreign Jihadi groups, documents published by Al-Sahab media on Kashmir, Martyrdom operation and some training/motivating videos released by ISIS & Al-Qaeda are found.*
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> *(iv) There are videos of senior PFI leaders/NEC members openly making highly provocative speeches, inter alia, calling the Indian government to be Anti-minorities. In these videos, the accused persons/PFI cadres are instigating the crowd to protest against the Government.*

*(v) There are screenshots, images etc. of religious texts/verses in the devices of accused persons/PFI cadres suggestive of justifying violence.*

14. The allegations against the appellant and others have been elaborated in Para-17.36 of chargesheet.

15. The general allegations against the appellant herein and his co-accused are that in terms of conspiracy, they were involved in conspiracy to commit unlawful violent terrorist acts and were facilitating funds for weapon-training and that they were responsible for the conduct of illegal activities of PFI. They were involved in radicalizing and recruitment of innocent Muslim youths with objective to form PFI Army and planning to attack and kill targeted persons and to overthrow the democratically elected Government of India and to establish Islamic Caliphate by 2047. Such acts were intended to wage war against Government of India and to create communal disharmony in the society and disrupting the sovereignty and integrity of India.

16. According to the investigating agency, appellant was also integral part of conspiracy and was closely supervising the entire mechanism of recruitment, radicalization, organizing terror camps in the garb of physical fitness/yoga classes and imparting weapon-training. He even facilitated transfer of funds into the bank accounts of individuals who were involved in terrorist activities and was authorized signatory of Canara Bank account of PFI from where a sum of Rs. 2.30 lacs was

transferred into two bank accounts of Ansad Badruddin, as referred above.

17. It has also been alleged in the charge-sheet that appellant was previously associated with Students' Islamic Movement of India (SIMI), a banned organization.

18. Appellant moved bail application under Section 439 Cr.P.C. read with Section 43D(5) of UAPA before the learned Trial Court.

19. Bail was sought on merits as well as citing his poor medical condition.

20. Learned Trial Court did not find any merit in his such application and dismissed the same.

21. Such order is under challenge before us.

## Assertions of Appellant

22. Grounds taken before us are more or less similar.

23. These can be divided, broadly speaking, under various heads i.e. applicability of bar provided under 43-D(5) of UAPA on Constitutional Courts, plea for release on medical grounds, plea for release on merits of the case and plea for release on account of infringement of Fundamental Rights.

24. His medical condition has been cited as under: -

*"The Appellant suffers from multiple serious and rare medical ailments, including Parkinson's Disease, along with hypertension, diabetes and loss of vision. The Appellant has been undergoing intensive medical treatment and care at various hospitals since 2019, when he was diagnosed with a rare and malignant form of cancer, 'Gastroesophagal junction adenocarcinoma'. Although the Applicant underwent extensive treatment including chemotherapy and surgery in January 2020 and was able to treat the cancer, the surgery for the same involved surgical removal of 80% of his abdominal and intestinal area, because of which his digestive system is completely compromised."*

25. We may also note that learned Trial Court, while dismissing the bail application, had also directed as under: -

*"However having so concluded I find that since the immediate priority for accused, even if released on bail, would be to get treatment for his medical issues. Which this court can provide even while he being in judicial custody. Therefore, in view of concerns raised on behalf of accused/ applicant and also taking into consideration age, weakness, previous medical history and requirement of continuous treatment, following directions are being given: -*

*(i) Accused is directed to be admitted for all his medical complications in All India Institute of Medical Sciences (AIIMS) if he and his family members so desires. Upon his admission jail authorities are directed to transfer complete file of his medical treatment so that worthy Doctors of AIIMS can provide best of the treatment to the accused while admitted in that hospital.*

*(ii) While being admitted in All India Institute of Medical Sciences accused would be considered to be in judicial custody. However, at the same time would be permitted to meet only one family member of accused whose identity and credentials would be duly verified to meet the accused every day as per Doctor's advice.*

*(iii) Since the accused would be considered to be in judicial custody, therefore jail authorities would ensure that accused would be kept under proper security and vigil by deputing some*

> *of jail personnels and accused would be kept at such place where he would be under surveillance of CCTV cameras.*
>
> *(iv) While being admitted in All India Institute of Medical Sciences, accused would be provided assistant/helper from the medical authorities, and would be provided medications, diet as per medical prescription of State expense.*

26. It is contended that despite the above directions, appellant was not even got admitted in AIIMS and his condition continues to deteriorate in custody. It is thus prayed that *dehors* the bar provided under Section 43D(5) of UAPA, appellant is entitled to be released on bail as he is in his seventies and is suffering from serious medical complications which require constant medical care, treatment and monitoring and, therefore, bail is being sought on humanitarian and medical grounds.

27. It is also contended that even otherwise, on merits also, appellant is entitled to be released on bail as NIA has miserably failed to put a case giving rise to reasonable grounds for believing that the allegations against him are *prima facie* true.

28. Such contentions can be summarized as under: -

> *(i) No material has been placed on record/ averred by the NIA to indicate when the Appellant was a member of SIMI. Merely stating so, without such investigation, despite extant law at the relevant point in time that mere membership of a banned/ unlawful organization without any overt act would not lead to any offence. Even otherwise the Appellant was not a member of SIMI when it was banned;*
>
> *(ii) There is no material that has been placed on record/ averred by the NIA to indicate how the Appellant was associated with the alleged document purportedly titled "India 2047" relied upon by the NIA. Such*

*document is forged, and the Appellant has no connection with the document in question, or its forgery.*

*(iii) Even assuming the allegations relating to the Appellant's purported involvement in "overthrowing the democratically elected government of India", the same cannot be a terrorist activity, as the same relates to "the unity, integrity, security, economic security, or sovereignty of India", and not to the unity, integrity, security, economic security or sovereignty of "the democratically elected government of India". In any event, the NIA is called upon to indicate which specific utterance made by the Appellant has led the NIA to make the allegations at Para 17.36.6.*

*(iv) The NIA is further called upon to indicate whether any investigation has been conducted into who authorized transfer of funds to the accounts of persons purportedly involved in terrorist activities, and whether the said transfers even took place pursuant to online transactions, and whether the IP addresses associated with such transactions arose from the Appellant. Even otherwise, it is stated without prejudice that the NIA also ought to provide to the Appellant bank account statements of such purported "persons involved in terrorist activities", who are not even accused in the present case, so that the Appellant can clarify the said position, if so called upon.*

*(v) Any allegation of the Appellant visiting the alleged "weapons training camp" is wholly meritless. No date/ time has been provided in respect of such purported visit, and no material has been provided to indicate why the place in question has been determined to be a "weapons training camp."*

*(vi) There is nothing to show that appellant was involved in the conspiracy to commit violent terrorist act and such conspiracy cannot be presumed merely on the basis of his being member of PFI. Statements recorded during the investigation do not disclose commission of any offence falling in Chapter IV and Chapter VI of UAPA and moreover statements are vague and unspecific and do not incriminate the appellant.*

*(vii) No criminality would be attracted against appellant as membership with such PFI was of the period before it had been declared to be an unlawful association. Averments made in the charge-sheet is*

*complete hogwash and there is no basis to hold that PFI had engaged in any criminal conspiracy to engage any Islamic role in India.*

*(viii) Appellant cannot be held vicariously liable for the activities of the alleged modules of PFI. There is nothing to show that appellant had participated in any funding of terrorist activities.*

*(ix) It has also been argued that bar contained under Section 43D (5) of UAPA is not applicable to Constitutional Courts i.e. High Courts and Supreme Court and in this regard, reliance has been placed upon definition of word "Court" as given in UAPA and also on the parliamentary debates and speech of the then Hon'ble Finance Minister when the Bill in respect of amendment in UAPA was introduced.*

*(x) Reliance has been placed upon Union of India v K A Najeeb, (2021) 3 SCC 713and it has also been argued that presence of restriction under Section 43D (5) per se does not oust the ability of a Constitutional Court to grant bail on the grounds of violation of Part-III of the Constitution of India and since there is no likelihood of trial being completed within the reasonable time and incarceration period has exceeded a substantial period of the prescribed sentence, this Court is fully empowered to grant bail.*

29. Ms. Nitya Ramakrishnan, learned Senior Advocate has relied on *Shoma Kanti Sen Vs. The State of Maharashtra & Anr.*[2], *Barakathullah Vs. Union of India*[3], *K.P. Verghese Vs. Income Tax Officer*[4], *Union of India Vs. K.A. Najeeb*[5], *M. Mohamed Abbas Vs. The State*[6], *Shaik Raheem alias Abdul Raheem Vs. The State of Telangana*[7], *KG Premshankar Vs. Inspector of Police*[8].

## Response of NIA

30. All such contentions have been refuted by NIA.

[2] 2024 SCC OnLine SC 498
[3] 2023 SCC OnLine Mad. 6337
[4] (1981) 4 SCC 173
[5] (2021) 3 SCC 713
[6] 2023: MHC:3449
[7] 2023 SCC OnLine TS 508
[8] (2002) 8 SCC 87

31. It is contended that PFI was declared 'unlawful organization' by the Central Government in the year 2022 but fact remains that the prosecution is not at all premised on such declaration *simpliciter* as the prosecution is for specific acts committed by them prior to such declaration. It is argued that there is specific material against said organization as well as the appellant herein. Appellant was core member of said organization as he was part of its NEC and there is enough of material on record indicating that PFI had been conspiring for establishing Islamic Caliphate in India by overthrowing a democratic and constitutional system of government by raising army of *jihadists.*

32. Attention of the Court has been drawn towards statements of various witnesses who, during investigation, clearly signaled the complicity of appellant. It is contended that the material collected during investigation clearly suggests that appellant was also instrumental in organizing terrorist camps and was supervising the manner in which training was being imparted about the use of weapons viz. knife, rod and sword etc.

33. A great emphasis has also been laid upon the fact that appellant was authorized signatory of several bank accounts of PFI and was responsible for transferring funds for carrying out terrorist activities. Reference in this regard has been made, in particular, to Ansad Badruddin, as already noted above.

34. According to NIA, appellant also used to give lectures in leadership eligibility course where he talked about raising an army of loyal and physically trained cadre to make India an Islamic Nation and to create Caliphate system by the year 2047 through an armed struggle against Government of India. He also visited the terrorist camps in Assam during 2014-2016 to review the progress of recruitment of weapon-training. He also gave volatile statement in one conference held by PFI on 17.09.2022 in which he claimed that RSS/BJP knew the language of violence only and that such persons should be handled in the same language. It is argued that statements of witnesses would go on to indicate that he had motivated various persons to join *jihad* and to work for PFI.

35. Reference has also been made to inflammatory speeches recovered from the premises of appellant.

36. It is also reiterated that he was youngest State President of SIMI and was instrumental in creation of PFI after SIMI was banned as unlawful association. It is also contended that PFI was admittedly the registered society and NEC was its supreme decision making body which was incharge and responsible for the conduct of its business. Appellant was also part of its NEC and, therefore, he cannot run away from the activities carried out by such organization particularly in view of Section 22B and 22C of UAPA.

37. It is contended that the bar provided under Section 43D(5) UAPA is equally applicable to the constitutional courts as in various judgments, the constitutional courts, while considering the bail, had formed such opinion. If such bar was not applicable, the Supreme Court and various High Courts would not have ventured into detail in context of forming opinion qua applicability of Section 43D(5) of UAPA.

38. It is though admitted by NIA that the constitutional courts have unfettered powers to release anyone on bail, *dehors* the bar provided under Section 43D(5) UAPA, where it comes across any violation or infraction of fundamental rights of the accused. However, in the present case, there is nothing which may even remotely indicate that there was any such violation.

39. It is also argued that the case is not based on wild and general allegations as there are specific acts for which the accused are being prosecuted and it really does not matter whether these were committed prior to PFI being declared unlawful organization or subsequent thereto. Such subsequent status of unlawful organization does not condone the earlier acts. If the argument of the appellant is accepted then no organization, which is involved in terror acts, would be liable for prosecution unless and until it was declared so. It is contended that once any such organization is declared unlawful association, certain additional offences might flow from such declaration but it cannot be said, by any

stretch of imagination, that such declaration was *sine qua non* for prosecution for the acts, committed already.

40. As regards plea for release on medical ground, it is argued that the impugned order does not suffer from any infirmity whatsoever and rather learned Trial Court has always been mindful of the age and medical condition of the appellant and passed several orders directing his treatment in AIIMS. Attention has also been drawn towards the latest medical report which this Court had sought from the jail authorities which also indicates that appellant is permitted to have the best of the treatment. Moreover, despite there being specific directions, it is the appellant, who demonstrated total 'non-cooperation' as he himself refused to take the requisite treatment and refused to get even admitted in the hospital. Thus, medical exigency has been, deliberately, designed whereas, actually speaking, the condition of appellant does not require any immediate medical attention.

41. Reliance has been placed upon *Gurwinder Singh Vs. State of Punjab & Ors.*[9], *NIA Vs. Zahoor Ahmad Shah Watali*[10], *Umar Khalid Vs. State of NCT of Delhi*[11], *Mohd. Amir Javed Vs. State*[12], *Afzal Khan Vs. State of Gujarat*[13], *Mohd. Hussain Molani Vs. State of Punjab & Ors.*[14], *Athar Pervez Vs. State*[15] and *Arup Bhuyan Vs. State of Assam*[16].

[9] 2024 SCC OnLine SC 109
[10] (2019) 2 SCC 1
[11] 2023 Cri LJ 980
[12] 2023 SCC OnLine Del 5777
[13] (2007) 9 SCC 387

## Analysis of Rival Contentions

42. We have given our thoughtful consideration to the rival contentions and carefully perused the entire material available on record.

43. We are also conscious of the fact that learned Trial Court is yet to ascertain the charges.

44. Undoubtedly, since as per the allegations made by the prosecution, there are various offences falling under Chapter-IV and Chapter-VI of UAPA for which appellant is being prosecuted, bar provided under Section 43D(5) UAPA would come into play for the purpose of consideration of bail. Section 43D of UAPA reads as under: -

> *"43D. Modified application of certain provisions of the Code*
> *……..*
>
> *(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*
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> *Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.*
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> *(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*

[14] MANU/DE/1915/2020
[15] 2016 SCC OnLine Del 6662
[16] MANU/SC/0294/2023

> *(7) Notwithstanding anything contained in Sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."*
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> *(emphasis supplied)*

45. Ms. Nitya Ramakrishnan, learned Senior Advocate appearing on behalf of the appellant has contended that word "Court" mentioned under proviso 43D(5) of UAPA means Special Court only. She has drawn our attention towards the definition of Court as given in UAPA and also to the Parliamentary Debates when the relevant Bill was introduced. Section 2(d) of UAPA gives following definition of Court: -

> *"(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008"*

46. Our attention has been drawn towards the discussion which took place on the Motion for consideration of *National Investigation Agency Bill, 2008* and *Unlawful Activities (Prevention) Amendment Bill 2008*. It is argued by Ms. Ramakrishnan, leaned Senior Counsel that these would indicate that the Hon'ble Minister had clarified to the 'House' that the bail could be refused only when there was a *prima facie* true case, supplementing that the Supreme Court and High Courts had ample powers and this (*bar under 43 D(5) of UAPA*) would not, in any way, bind the constitutional courts. It was also clarified during the discussion

of the aforesaid Bill that such restriction on bail would mainly apply to the Trial Court.

47. It is contended that such Parliamentary Debate and the Speech of Hon'ble Finance Minister, while introducing the Bill, clearly indicates the Legislative intention that the purpose of the law was to make *bail a norm and not an exception* and that bail could be refused by the special court only when it came to a conclusion that the allegations were *prima facie* true. Relying on *K.P. Verghese Vs. ITO* (supra), it is contended that Court can always refer to the speeches made by the mover of the Bill explaining the reason for the introduction, for true interpretation of the intention of the Legislature.

48. Undoubtedly, such debate contains observation that the Supreme Court and High Courts have ample powers and said proviso does not bind High Courts and Supreme Court and would '*mainly'* apply to Trial Court but it cannot be lost sight of the fact that Section 43D(5) UAPA merely prescribes applicability by provisions of Cr.P.C., with certain modifications. By virtue of Section 43D(5) UAPA, certain modifications were brought in with respect to applicability of Section 167 Cr.P.C., Section 268 Cr.P.C. and provisions related to bail viz. Section 437 to Section 439 of Cr.P.C.

49. As per Cr.P.C., the power of grant of bail for High Court is specified in Section 439 Cr.P.C. Said Section 439 Cr.P.C. provides special power regarding bail to High Court or Court of Sessions. Thus,

objective of the Legislative by introducing the aforesaid Bill was to create additional stringent provisions, by way of modifications, with respect to grant of bail. These have to be, therefore, assumed to be in relation to Section 439 Cr.P.C. only and since Section 439 Cr.P.C. applies to High Court as well, it cannot be said that Section 43D(5) UAPA would not be applicable to the High Court.

50. We may also refer to *Gurvinder Singh* (supra) wherein it has been clearly laid down in Para-16 that source of power to grant bail emanates from Section 439 Cr.P.C. and that Section 43D(5) of UAPA modifies the application of general bail provisions in respect of offences punishable under Chapter-IV and Chapter-VI of UAPA.

51. There is no doubt that Special Court cannot grant bail if it is of the opinion that there are reasonable grounds for believing that accusation against such person for commission of offence under Chapter-IV and Chapter-VI are prima facie true.

52. Any accused, feeling aggrieved by rejection of bail by Special Court, can file an appeal under Section 21 of NIA Act.

53. Such appeal would be both on facts and on law.

54. Whenever any such accused files appeal in the High Court, High Court would, naturally, be required to examine whether the impugned order was justified or not. In order to evaluate and assess the same, High Court has no option but to see whether the observations given by the

Special Court, while rejecting the bail, in context of such bar are justifiable or not. Thus, evidently, even High Court would be required to examine whether the bar stood attracted or not.

55. We may supplement here that even if High Court holds that such bar was not attracted, the appellant does not, automatically, become entitled to be released on bail. Bail application has to be adjudicated while taking into consideration various other aspects of the case and bail can still be denied keeping in mind the overall gravity of the matter and bad antecedents and past involvements of accused, if any.

56. Moreover, the intention of legislature was never to make the bail in UAPA matters '*a rule'*. On the contrary, it created restriction and sort of embargo. In *Gurwinder Singh* (supra), the impact of Section 43D(5) of UAPA was delineated and it was observed that the conventional idea in bail jurisprudence - bail is the rule and jail is the exception - does not find any place in UAPA. It further observed that exercise of general power to grant bail under UAPA is severely restrictive in scope. It went on to hold that in view of said statutory bar contained under Section 43D (5) of UAPA, if the offences fall under Chapter IV and/or Chapter VI of UAPA and there are reasonable grounds for believing that the accusation is prima facie true, bail must be rejected as a rule.

57. We have seen the manner in which word 'court' has been defined in UAPA. The use of the word "includes" indicates an intention to expand the scope. Therefore, such word must be interpreted as

containing not only such things which they may suggest according to their natural import, but also those things which the interpretation clause declares that they shall include. Moreover, the objective of the courts should be to lift the veil and to comprehend and assess the real intention and then to apply 'purposive interpretation', instead of purely a literal one while falling into mere jugglery of words.

58. We are also fully mindful of the fact that constitutional courts can always consider bail plea irrespective of said bar contained under Section 43D(5) UAPA if it comes across any instance of infraction of fundamental rights enshrined under Constitution of India. The principle in this regard has been very clearly enunciated in *Union of India Vs. K.A. Najeeb* (supra). Since constitutional courts have ample powers to grant bail in any such situation, it must have also weighed with the Hon'ble Minister during the discussion on the Motion for consideration of the aforesaid Bill, and, therefore, no real advantage can be dug out from the said discussion.

59. Therefore, we are inclined to hold that it is obligatory even for the constitutional courts to examine the applicability of such bar and it cannot be said that such bar is meant 'only' for trial court.

## Appreciation of allegations

60. We are mindful of the fact that presently we are only asked to consider bail plea and, therefore, in-depth evaluation has to be avoided as we cannot embark on any mini-trial.

61. Guidelines for deciding such kind of bail have been laid by Hon'ble Supreme Court in *Gurwinder Singh* (supra) which read as under:-

> ***"Test for Rejection of Bail : Guidelines as laid down by Supreme Court in Watali's Case***
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> ***34.*** *In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:*
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> • ***Meaning of 'Prima facie true'*** *[para 23] : On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.*
>
> • ***Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared*** *[para 23] : Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that*

*situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*

• ***Reasoning, necessary but no detailed evaluation of evidence*** *[para 24] : The exercise to be undertaken by the Court at this stage--of giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.*

• ***Record a finding on broad probabilities, not based on proof beyond doubt*** *[para 24]:"The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."*

• ***Duration of the limitation under Section 43D(5)*** *[para 26] : The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.*

• ***Material on record must be analysed as a 'whole'; no piecemeal analysis*** *[para 27] : The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.*

• ***Contents of documents to be presumed as true*** *[para 27] : The Court must look at the contents of the document and take such document into account as it is.*

• ***Admissibility of documents relied upon by Prosecution cannot be questioned*** *[para 27] : The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence……. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."*

62. Thus, let us examine and evaluate the allegations on the touchstone of the abovesaid parameters.

63. Appellant has been arrested for commission of offences under Section 120-B & 153-A IPC and for Sections 7, 18, 18B, 20, 22, 38 & 39 of UAPA. Offences under Section 17, 18, 18B, 20 & 22 fall under Chapter-IV whereas Section 38 & 39 fall under Chapter-VI of UAPA. These Sections read as under: -

> ***17. Punishment for raising funds for terrorist act****.—Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*
>
> *Explanation.—For the purpose of this section,—*
>
> *(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;*
>
> *(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and*
>
> *(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under Section 15 shall also be construed as an offence.]*
>
> ***18. Punishment for conspiracy, etc****.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to*

*the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*

***18-B. Punishment for recruiting of any person or persons for terrorist act**.—Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]*

***20. Punishment for being member of terrorist gang or organisation**.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.*

***22. Punishment for threatening witness**.—Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine*

***38. Offence relating to membership of a terrorist organisation**.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:*

*Provided that this sub-section shall not apply where the person charged is able to prove—*

*(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and*

*(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the First Schedule as a terrorist organisation.*

*(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with*

*imprisonment for a term not exceeding ten years, or with fine, or with both.*

***39. Offence relating to support given to a terrorist organisation**.—(1) A person commits the offence relating to support given for a terrorist organisation,—*

*(a) who, with intention to further the activity of a terrorist organisation,—*

*(i) invites support for the terrorist organisation, and*

*(ii) the support is not or is not restricted to provide money or other property within the meaning of Section 40; or*

*(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which, he knows, is—*

*(i) to support the terrorist organisation, or*

*(ii) to further the activity of the terrorist organisation, or*

*(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or*

*(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.*

*(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.*

64. We may also note that "terrorist act" as per Section 2(k) of UAPA has been assigned the same meaning as given under Section 15 which reads as under: -

***15. Terrorist act**. — (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—*

*(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—*

*(i) death of, or injuries to, any person or persons; or*

*(ii) loss of, or damage to, or destruction of, property; or*

*(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*

*(iii-a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or*

*(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*

*(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*

*(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or*

*commits a terrorist act.*

*Explanation.—For the purpose of this sub-section,—*

*(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;*

*(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates compromises with the key security features as specified in the Third Schedule.*

> *(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.*

65. Gravamen of the allegations against the appellant is that he was earlier associated with SIMI which was banned as an 'unlawful association'. Later, he became integral part of PFI and was enjoying key position as member of its National Executive Council. He was also authorized signatory with respect to bank accounts of PFI and as per the allegations, the amount from such bank was transferred to one terrorist Anshad Badruddin. There is also allegation that he advocated commission of terrorist act or any act preparatory to commission of a terrorist act, by indulging in giving inflammatory speeches, motivating others for *jihad* and managing and supervising weapon-training programme.

66. Admittedly, PFI is not a 'terrorist organization'. It is, admittedly, declared as 'unlawful association'.

67. Terrorist organizations are those which are enumerated in First Schedule of UAPA.

68. Though, PFI has been declared to be 'unlawful association' but at the same time, the activities of such unlawful association need to be cautiously fathomed and weighed up.

69. PFI was notified as unlawful association vide notification dated 27.09.2022 and immediately thereafter *Unlawful Activities (Prevention)*

*Tribunal* was constituted and the Hon'ble Tribunal also came to the conclusion that there was sufficient cause for declaring PFI and its associates as unlawful association. While reaching such conclusion, the Hon'ble Tribunal observed that PFI had taken up clandestine operations which were certainly detrimental to the sovereignty and integrity of the country. It also observed that activities of such unlawful association are conducted under cover and in a clandestine manner and, therefore, in order to unearth the truth, the Tribunal had to pierce through the veil of secrecy to reach the goal and in the process, some inferences were drawn from the acts done by such organization, over the time. After careful perusal of the entire evidence produced by the Union of India, the Hon'ble Tribunal concluded that such evidence was irrefutable in nature and carried enormous weight.

70. We have gone through the statements of various witnesses who were examined during the investigation.

71. There are 47 protected witnesses as well and statements of some such witnesses were also got recorded under Section 164 Cr.P.C.

72. Though we need not comprehensively and minutely evaluate the statements of these protected witnesses at this stage when the charges are yet not ascertained, fact, however, remains that these statements would lay bare the fact that the allegations attributed to the appellant are not in air.

73. We may, usefully, *inter alia*, refer to the statements of protected witnesses E, K, V, AL, AJ, T, X, Z, AA & AH.

74. *Protected witness E* has, in no uncertain terms, claimed that various National leaders of PFI including E. Abubacker used to motivate the participants in the classes for *jihad.* All these leaders were earlier associated with Students' Islamic Movement in India (SIMI) and all the above leaders, including appellant herein used to stay at Muthudevanpatti camp where he attended *Tharbiya* classes. During such classes, such National leaders used to deliver lecture on *jihad.* He also claimed that in the training camp, they used to teach them that the basic idea behind taking *Bayath* was that one should not be very affectionate for one's life and they all used to tell that life was to be dedicated to *jihad.* During course of imparting physical training, a candidate used to be transformed into fully motivated *jihadi.* They were taught about *Ghazwa-e-Hind* which means declaring a war on the Indian land and return of *Caliphate*. They used to be told that by the time 4th Caliphate comes to power, India would be ready to accept Islamic Rule which would be marked by bloodshed. These concepts used to be taught by these leaders, including appellant, in the camp. He also revealed that for preparing for *Ghazwa-e-Hind,* they were asked to equip themselves with weapon-training in the use of sharp-edged weapon like knife. He also learnt about one department of PFI known as *Kurshit Department* which was basically the Local Counter Intelligence Wing of PFI for executing attacks and killing

of Hindu leaders. They were told that a list of Hindu leaders, to be targeted, was always kept ready for executing attacks and murders as per the directions of NEC and SEC leaders.

75. *Protected witness K* also stated that during training, various leaders, including appellant herein, had shown them videos and pictures about the good works done by *Tanzim* (PFI organization) about RSS office, activities of RSS members and various riot incidents which took place in India with the purpose to emphasize that Muslims were being targeted by RSS and such instructors would repeatedly tell the participants that the fight was against RSS which is the biggest enemy of Islam in the country and that NEC wanted to raise an army of loyal and physical trained cadres to make India an Islamic Nation and recreate Caliphate by the year 2047 through an "armed struggle" against the Government of India colloquially known as *Ghazwa-e-Hind*. He also revealed about arms training and specifically named the appellant herein.

76. *Protected witness V* also stated that senior leaders of NEC, PFI had come to Assam between 2015 to 2018 to review the progress of recruitment and of weapon-training to all PFI cadres. In these classes, they were motivated by telling them that earlier the Muslims had ruled this country for 800 years and now the position of Muslims is very weak and that they have to fight to establish Islamic Rule by the year 2047. He also stated that E. Abubacker motivated and told that about the

absolute dedication to *jihad* for establishing Islamic Caliphate for which they must be well-trained in the use of weapon to attack their enemies.

77. *Protected witnesses AL & AJ* also talk about weapon-training.

78. *Protected witness T* disclosed about the funds-transfer by revealing that after approval of NEC members for funds transfer, E. Abubacker and Mohd. Ali Jinnah (A-8) were sending money to Anshad Badruddin for encouraging and facilitating him for making preparation for committing violent terrorist acts.

79. *Protected witness Z* also claimed as under: -

> *"I know Aboobackeer Sahib, Professor Koya Sahib, E M Abdul Rahiman Sahib, Mohammedali @ Kunjappo Sahib who are also ex-SIMI leaders and the leaders of PFI. I heard and attended various meetings conducted by them during 2010 to 2020. They still have SIMI ideology and incites the cadres to act against non-Muslims. They used to say that what we couldn't achieve through SIMI, will be achieved through PFI, our ultimate goal is Islamic Rule in India.*

80. *Protected witness AA* also revealed about the contents of powerful speech given by appellant on 17.09.2022.

81. Copies of speeches made by appellant are also reportedly part of the charge-sheet.

82. To us, it really does not matter that PFI was declared unlawful organization at a later point of time.

83. We are of the considered view that such declaration, in itself, is not *sine qua non* for prosecuting anyone under the stringent provisions of UAPA.

84. Once any such organization is declared as 'terrorist organization' or 'unlawful association', as the case may be, certain additional consequences may flow and emanate therefrom but merely because these organizations were not declared so at the relevant time would not mean that the acts of terrorism committed by them would stand disregarded and that the accused would be absolved of any prosecution. If such defence contention is accepted then it would lead to absolute absurdity and irrationality as in such a situation, any individual or association or organization could continue conspiring and doing terror activities, detrimental to the unity and sovereignty of the country, and then seek immunity from prosecution on the premise that it had not been declared so at the earlier point of time. This could never have been the intention of the legislature while bringing in UAPA.

85. Ms. Nitya Ramakrishnan, learned Senior Counsel has contended that number of cases had been filed in other States against the alleged PFI members and the accused persons in those cases have also been facing similar kind of allegations i.e. being active members of PFI; recruiting Muslim youths to act against the government, BJP/RSS and other Hindu organizations; imparting weapon-training etc. and yet they were enlarged on bail, while observing that such allegations were broad

and generic and that no overt act had been specified against them. Learned Senior Counsel has, in particular, relied on observations made in *Barakathullah Vs. Union of India* (supra) which are to the effect that *to bring an act within the meaning of preparatory, it must be proximate to the act which is intended to be committed out of such preparation and that any such remote act from which it cannot be concluded that it was for the preparation of terrorist act, could not be called as preparatory act within the meaning of Section 15 of UAPA*. It is argued that the situation in the case in hand is almost similar and NIA has miserably failed to demonstrate even a single proximity event which could be said to be connected or emanating from the alleged preparatory act of the appellant.

86. Mr. Rahul Tyagi, learned SPP for NIA has contended that observations made in such judgments cannot be robotically applied in the present case. It is argued that bail had been granted in those cases after examining the material collected therein and in the case in hand, there is enough of material to come to the conclusion that the appellant has committed offences enumerated under Chapter-IV and Chapter-VI of UAPA. It is also argued that mere fact that PFI has been eventually declared an unlawful association, instead of terrorist organization, would not mean that it was not capable of committing any terrorist act.

87. We have already taken note of the statements of various witnesses and at this initial juncture, we are unable to hold that such weapon-

training was merely for protecting the community in case there was any communal violence unleashed against them, as allegedly apprehended. In *Redaul Husain Khan Vs. National Investigation Agency* (2010) 1 SCC 521, it has been observed that merely because a particular organization had not been declared as an unlawful association at the time of the arrest of the accused, it could not be said that such organization could not have indulged in terrorist act or that accused could not have knowledge of its such activities. Moreover, in *Arup Bhuyan Vs. State of Assam* (supra), it has been categorically observed that in context of Section 10 of UAPA, mere membership of a banned organization would be sufficient incriminating material and there was no requirement for the prosecution to show the existence of any overt act in furtherance of such criminal activities. We may also note that while observing thus in *Arup Bhuyan Vs. State of Assam* (supra), the Hon'ble Supreme Court overruled the *State of Kerala Vs. Raneef:* (2011 (1) SCC 784) which had been relied upon by Madras High Court in *Barakathullah Vs. Union of India* (supra).

88. We have already noted that the goal was to establish Caliphate by the year 2047 and at times, it takes years to achieve any such distant objective. To say that there was no proximity between the alleged preparatory act and the ultimate objective, would not be, therefore, appropriate as such kind of activities are unrelenting, perpetual and unceasing. The organization had been holding terror camps, recruiting and radicalizing Muslim youths and imparting weapon-training for the

purposes of commission of terrorist act across the country and, therefore, it cannot be said that there was no proximity between the two or that the weapon-training was merely an act of defence, particularly when the statements of witnesses, clearly, speak to the contrary and indict the appellant. Such statements also go on to show that objective of such weapon-training was with the idea of overthrowing the democratically elected government to replace the Constitution of India with a Caliphate Shariya Law. The planning of targeted killing of Hindu leaders and attacking the security forces and establishing Caliphate by 2047 would clearly indicate that the target was to challenge the 'unity and sovereignty of India' and not merely to 'overthrow the government'. Thus, the objective and manner of achieving the same, both, seem culpable.

89. We are also not impressed with the argument of the appellant that he was merely acting in furtherance of ideology of the organization. If such ideology smacks of malafide and is replete with conspiracy related to terrorist acts, adhering to the same, certainly, would also be punitive.

90. Non-recovery of any weapon from the possession of the appellant has no significance in the context of the overall allegations against the appellant. Of course, weapon-training was with respect to the use of sharp weapons but that does not mean that the terrorist act cannot be committed while using those, particularly when the training was for masses.

91. Thus, in view of the material collected by the investigating agency and the statements of witnesses recorded during the investigation, it cannot be said that the allegations were merely to the extent of ideological propagation of the activities of PFI. It was certainly much more than that.

92. Be that as it may, on careful analysis of the evidence collected by the investigating agency and after comprehending the crux of the allegations, we find that there is *prima facie* commission of offences falling under Chapter-IV and Chapter-VI of UAPA and at this preliminary stage, we cannot disregard such material. At this initial juncture, we have to attach full significance to these allegations as well as to the statements of witnesses.

**Whether there is any infringement of fundamental rights or not**

93. On the strength of *Union of India v. K.A. Najeeb* (supra), it is prayed that despite the aforesaid statutory bar, Constitutional Courts can always grant bail so that the right of speedy trial and that of life and liberty do not stand defeated.

94. We have gone through *Union of India v. K.A. Najeeb* (supra) and noticed that the facts in the said case were different. In that case, concerned accused had earlier absconded and the trial proceeded against his other co-accused who were eventually sentenced to imprisonment for term, not exceeding eight years. The accused therein had already served under-trial incarceration for more than five years and there was no

likelihood of completion of trial in near future and it was in the aforesaid factual matrix that the Hon'ble Supreme Court granted bail while observing as under: -

> ***15.*** *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.*
>
> ***16.*** *As regards the judgment in NIA v. Zahoor Ahmad Shah Watali, cited by the learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had reappreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidence, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.*
>
> ***17.*** *It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but*

> *the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*

95. It was in the above factual matrix that *K.A. Najeeb* (supra) observed that despite the above statutory restriction contained in UAPA, the Constitutional Courts could consider grant of bail on the ground of violation of Part-III of the Constitution.

96. However, in the case in hand, the maximum sentence can be life and there is nothing which may indicate that prosecution is acting in a manner which is detrimental or prejudicial to his fundamental rights guaranteed under Part-III of the Constitution of India. There is no deliberate attempt on the part of prosecution to slow down the trial and, therefore, at this juncture, merely because of the incarceration period in question, the accused does not become entitled to bail.

97. In *Gurwinder Singh (supra),* the accused had spent 5 years behind the bars and the similar contention was rejected observing that mere delay in trial pertaining to grave offences could not be used as a ground to grant bail.

98. In the case in hand, incarceration is less than two years and case is at the verge of ascertainment of charges and it there is nothing to indicate infringement of any fundamental right. We, though, expect that all the

accused would render due assistance to the learned Trial Court so that the arguments on charge are advanced well-in-time and the trial commences.

**Plea of Release on Medical Ground**

99. We have already noted the medical condition of the appellant.

100. He is in his seventies and is suffering from Parkinson's disease and underwent surgery for treatment of his cancer. It is admitted that he is no longer suffering from any kind of malignancy. It is, however, contended that due to Parkinson's disease, his cognitive ability has been severely affected. He is also suffering from coronary artery disease, small vessel ischemic disease and is also a patient of hypertension and diabetes and, therefore, he is required round-the-clock monitoring and assistance to carry out his daily activities.

101. During the course of arguments of appeal, we had directed the Jail Superintendent to send report about his latest medical condition. As per the report received from Medical Officer Incharge, Central Jail Dispensary, he was, though, referred to AIIMS Hospital for admission, he did not choose to go there.

102. There is no doubt that appellant is suffering from various ailments but fact remains that learned Trial Court has already given due consideration to his medical condition and has already issued slew of directions. There is a direction that he be admitted in AIIMS for all his medical complications as and when he and his family members so desire.

So much so, it has also been directed that while being admitted in AIIMS, he be also provided assistance/helper, medication and diet as per the medical prescription, at State's expenses.

103. Thus, learned Trial Court, mindful of the medical condition of the appellant, has already given requisite directions so that he gets best of the treatment and in time as well.

104. Ms. Nitya Ramakrishnan, learned Senior Counsel for appellant contends that his continuous incarceration is aggravating his condition which may, eventually, result in 'irreversible medical complication'.

105. Undoubtedly, age is not on his side, particularly when we see the ailments he is suffering from.

106. We do understand that Parkinson's disease is a progressive disorder which gradually affects the nervous system but fact remains that adequate directions have already been given by the learned Trial Court in the impugned order and as per jail report, appellant, himself, is not interested in getting admitted in AIIMS, New Delhi. Needless to emphasize, AIIMS is one of the best and most sought-after medical facility in the country.

107. Be that as it may, in view of the aforesaid directions given by learned Trial Court, we do not find any compelling reason to release him on the basis of his medical condition either. Needless to supplement, in case his medical condition further deteriorates or gets worsened, Jail

Superintendent would immediately rush him to AIIMS, without seeking any formal direction from the Court. This be, however, brought to the notice of the learned Trial Court, who may seek report about his medical condition and would be at liberty to take appropriate call with respect to the fact whether in view of his fading medical condition, he is entitled to be released on bail on medical ground or not.

## Conclusion

108. The final outcome is inevitable.

109. The allegations and averments appearing in charge-sheet coupled with the statements made by the witnesses, including the protected witnesses, the tone and tenor of the speeches made by the appellant, the fact that appellant was earlier closely associated with SIMI and when it was banned, he switched to PFI; the manner in which he has been sanctioning amount from PFI bank account and the overall impact of the material so collected by the investigating agency; leave no element of uncertainty in our minds about the fact that the case of the prosecution, with respect to the commission of offences falling under Chapter-IV and Chapter-VI of UAPA, is prima facie true.

110. There is nothing before us which may suggest infringement of his fundamental rights.

111. As regards, his medical complications, learned Trial Court has already given the requisite directions, which we also feel to be very appropriate.

112. Resultantly, finding no substance in the present appeal, we hereby dismiss the same.

113. It is, however, clarified that nothing expressed hereinabove shall tantamount to final expression on the merits of the case. Learned Trial Court shall not feel prejudiced to the above observations which have, primarily, been given while considering a bail plea. We expect the learned Trial Court to adjudicate on charges without getting swayed by what has been stated above.

114. Appeal stands dismissed accordingly.

**(MANOJ JAIN)**
**JUDGE**

**(SURESH KUMAR KAIT)**
**JUDGE**

**May 28, 2024/***dr*