



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 50 OF 2023

1. Shaikh Irfan Shaikh Salim,
 2. Sayed Faisal Sayed Khalil,
 3. Abdul Hadi Abdul Rauf
- ...Petitioners

versus

The State of Maharashtra

...Respondent

...
Advocate for Petitioners : Mr. Biyabani Anifadil Z.
APP for Respondent : Mr. A.R. Kale

.....

**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 9th OCTOBER, 2023.**

PER COURT :-

1. This petition has been filed taking exception of invocation of Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter for the sake of brevity referred to as "the UAPA"). According to the learned advocate for the petitioners, the Popular Front of India (PFI) was banned w.e.f. 27.09.2022. Close reading of the F.I.R. would indicate that the petitioners herein are alleged to have indulged in unlawful activities within the meaning of definition given in Section 2(o) of the UAPA, in the capacity as members of the said banned organization. The learned advocate also referred to Chapter VI of the UAPA and particularly Section 35 thereof. He then adverted our attention to Schedule I and IV wherein names of certain

organizations and individuals have been incorporated as terrorist organizations and/or terrorists. He would further submit that if the provisions of UAPA have been invoked then Section 120-B of I.P.C. ought not to have been invoked. According to him, only with to ensure that the petitioners would not secure bail in view of stringent provisions of UAPA, the F.I.R. in question and consequential charge have been filed. He also relied upon the judgment of the Apex Court in the case of **Prakash Kumar, Prakash Bhutto vs. State of Gujarat, SCC 2005 (2) 409**. He ultimately urged for quashment of invocation of Section 13(1) (b) of the UAPA.

2. Learned A.P.P. would on the other hand takes us through section 2(o) of UAPA. He then read out the F.I.R. According to him, Section 13(1)(b) pertains to activities indulges in by individuals and not as members of banned organization. He then reads out Section 13(1) (b) and Section 13(2) of UAPA. According to him, an individual can also be prosecuted under UAPA. He also takes us through the material collected by the investigating agency to ultimately urge rejection of the petition.

3. Considered the submissions advanced. Perused the F.I.R. and the authority relied upon. Learned advocate for the petitioners do not advert to the material which has been relied upon by the prosecution as against each of the petitioners so as to invoke Section 13(1)(b) of the UAPA. According to him, since the organization was

banned post alleged activities of the petitioners, the said section could not have been invoked. According to him, those activities took place a year before the F.I.R. in question was lodged. We are not convinced by the submissions advanced by learned advocate for the petitioners. Section 2(o) of UAPA is reproduced as under:-

“(2)(o) “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise).

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;”

4. Section 13(1) (b) of the UAPA is reproduced as under:-

“13. Punishment for unlawful activities.- (1) Whoever-

(a)

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

5. Close reading of the aforesaid provisions would indicate

that the individuals can even be prosecuted for the commission of unlawful activities or abetment thereof. It is true that the Apex Court in the case of **Prakash Kumar, Prakash Bhutto vs. State of Gujarat (supra)** in para 42 has observed as under:-

"42. Having said so, we also notice the note of caution of this Court in *Kartar Singh (supra)* in paragraph 352 (SCC p.707) as under:-

"352. It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the qui vive, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intentment." (emphasis supplied)."

The aforesaid observation was based on the facts and

circumstances of the said case.

6. After having gone through the definition of unlawful activity and the offence punishable under Section 13(1)(b) of the very Act and when the learned advocate for the petitioners has conveniently avoided to refer individual activities in relation to which there is material to indicate their involvement in the alleged activities, we are of the view that the State cannot be said to have erred in invoking Section 13(1)(b) of the UAPA.

7. In view of above, the petition is sans merit and therefore, deserves to be dismissed. The petition thus fails and dismissed accordingly.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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