



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO. 704 OF 2024

Between:

Mr Arafath Ali @ Arafath
Aged about 25 years
S/o Ahammad Bhava
R/at H.No. 85, Siddeshwara,
Belebail, Thirthahalli,
Shivamogga District – 577432

...Appellant

(By Sri S.Balakrishnan, Advocate)

And:

National Investigation Agency
Bengaluru
Rep by Spl.PP
High Court Building
Bengaluru - 560 001.

...Respondent

(By Sri C.Sachin, Advocate for
Sri Prasanna Kumar P., Spl.PP)

This Crl.A is filed u/s 21(4) of NIA Act praying to set aside the order dated 02.02.2024 passed in Spl.C.No.706/2023 by the XLIX Additional City Civil and Sessions Judge (Special Judge for Trial of NIA Cases) CCH-50, Bengaluru and etc.,





Date on which the appeal was reserved for judgment	25.07.2024
Date on which the judgment was pronounced	25.09.2024

This appeal, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

Accused No.10 in Spl. C.C. 706/2023 on the file of XLIX Additional City Civil and Sessions Judge (Special Court for Trial of NIA Cases), (CCH-50), Bengaluru, referred to as 'NIA Court' for short, has preferred this appeal challenging the order dated 02.02.2024 of rejecting his application for bail.

2. In connection with stabbing a youth by name Prem Singh at Shivamogga City, an FIR was registered at Doddapete police station on 15.08.2022. During investigation of the said case, the role of a person by



name Shariq s/o Abdul Majeed, resident of Thirthahalli, surfaced. Two other persons namely Maaz and Yaseen were said to be the associates of Shariq. The investigating agency secured the presence of Maaz and Yaseen and their interrogation revealed conspiracy to commit terrorist activities to disturb unity, security and sovereignty of India. Coming to know of this illegal activity the investigating officer in FIR No. 334/2022 gave a report in writing to Shivamogga Rural Police Station where FIR No. 325/2022 was registered on 19.09.2022 for the offences under sections 18, 38 and 39 of Unlawful Activities (Prevention) Act, section 2 of Prevention of Insults to National Honors Act, 1971 against accused Nos. 1 to 3. Later on the offences under sections 4 and 5 of the Explosive Substances Act were also invoked. Considering the gravity of the offence, the Government of India passed an order on 14.11.2022 directing investigation to be undertaken by the National Investigation Agency ('NIA') which having taken over investigation invoked the offences under sections 120B, 121 and 121A read with section 34



of IPC along with the offences for which already FIR was registered. During investigation the role of the appellant, i.e., accused No.10 also surfaced. After completion of investigation the NIA filed final report against accused 2 and 3 on 16.03.2023. Thereafter supplementary report was filed against accused Nos. 1 and 4 to 9 on 30.06.2023. By that time accused No.10 was not arrested because he was in abroad. He was arrested on 14.09.2023 and permission for further investigation was obtained. Second supplementary charge sheet was filed against the appellant-accused No.10 for the offences under sections 120B, 121A, 153A and 204 of IPC and sections 13, 17, 18, 18B, 20, 38, 39 and 40 of UA(P)A. The appellant applied for bail before the Special Court which by its order dated 02.02.2024 dismissed his application and hence this appeal.

3. This is an appeal under section 21(4) of NIA Act, so what is required to be examined is whether the NIA Court has committed any error in rejecting the application



for bail. Following the judgment of the Supreme Court in ***National Investigation Agency vs Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]***, the NIA Court examined the materials before it and held that there were materials indicating active participation of accused No.10 and since those materials would appear to be prima facie true, in view of bar contained in section 43D (5), bail could not be granted. To fortify its conclusions, the NIA Court has referred to the statement of LW-54 who has stated about the role of accused No.10 in radicalizing the youth of his locality, and the supplementary charge sheet which incriminated accused Nos.2 and 10 and an online handler colonel for making attempts to radicalize the youth to achieving their goal of establishment of caliphate in India.

4. Sri S.Balakrishnan, learned counsel for the appellant, assails the reasonings given by the NIA Court as totally unfounded. He has argued that accused No.10 was not in picture at all in the charge sheet filed on 16.03.2023 and also in the supplementary charge sheet dated



30.06.2023. The appellant was arrested on 14.09.2023, and as the NIA was unable to complete investigation against the appellant within 90 days extension of time was sought and further investigation was undertaken. There was no recovery from the appellant and even his voluntary statement was not recorded. There is nothing on record indicating the manner of participation of the appellant in the alleged conspiracy. The investigation does not reveal that the appellant is a member of any banned organization. No witness has given statement against the appellant. The prosecution heavily relies on statements of accomplices, which are inadmissible. The allegations of receiving and graffiti are against other accused. Sri Balakrishnan has referred to some decided cases which will be referred to later.

5. On the other hand Sri C.Sachin, learned counsel, arguing on behalf of Sri P.Prasanna Kumar, learned counsel for respondent, argues that, the name of appellant figures in two charge sheets dated 16.03.2023 and



30.03.2023. It is not as though the role of appellant was projected after further investigation was undertaken against him. It is true that appellant was abroad, but it does not mean that he was not involved during that time. Section 1 (4) of UA(P)A states that an offence committed outside India can also be prosecuted. Meeting the argument of Sri Balakrishnan, Sri Sachin argues that it is not always necessary to record voluntary statement of an accused and it is also not necessary that recovery should have been made from him. They are not the requirements, but recoveries were made at the instance of co-accused which fact would indicate involvement of appellant. Taking through the materials, Sri Sachin tries to point out that there were communications between the appellant and other accused, and a number of bank transactions. Therefore his argument is that there are sufficient materials which meet the requirement of prima facie true, and thereby section 43D(5) of UA(P)A debars the appellant from claiming bail. He too has placed reliance on some decided cases.



6. Considering the rival contentions it may be stated thus :

Sri Balakrishnan has mainly relied on the judgment of the Supreme Court in ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs State of Uttar Pradesh (Criminal Appeal No. 2790/2024)*** where, having made reference to two other judgments of the Supreme Court in ***Union of India vs K.A.Najeeb [(2021) SCC Online SC 50]*** and ***NIA vs Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]***, an opinion has been expressed that ***Zahoor Ahmad Shah Watali*** has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused who is suffering long incarceration with no end in sight of the criminal trial. The reason for referring to ***Sheikh Javed Iqbal*** is to emphasize that, as has been held in ***Najeeb***, there are no fetters for a Constitutional Court to grant bail notwithstanding rigor in section 43D(5) of UA(P)A.



7. But Sri Sachin has referred to another judgment of the Supreme Court in ***Union of India vs Barakathullah [Criminal Appeal Nos. 2715-2719/2024]***, where it has been held that the ratio in ***Zahoor Ahmad Shah Watali*** is being consistently followed (para 12 of the judgment). In ***Barakathullah***, there is a reference to judgment in ***Najeeb*** to hold that Article 21 of the Constitution of India applied therein to the given set of facts. In fact in ***Vernon vs State of Maharashtra and Another [(2023) 10 SCALE 312]***, a decision cited by Sri S.Balakrishnan with reference to ***K.A.Najeeb***, following is the observation :

"41. We shall now turn to the other offence under the 1967 Act, which is under Section 13 thereof, and the 1860 Code offences. The yardstick for justifying the appellants' plea for bail is lighter in this context. The appellants are almost five years in detention. In the cases of K.A. Najeeb (supra) and Angela Harish Sontakke (supra), delay of trial was considered to be a relevant factor while examining the plea



for bail of the accused. In the case of K.A. Najeeb (supra), in particular, this same provision, that is Section 43D (5) was involved.

42. In these two proceedings, the appellants have not crossed, as undertrials, a substantial term of the sentence that may have been ultimately imposed against them if the prosecution could establish the charges against them. But the fundamental proposition of law laid down in K.A. Najeeb (supra), that a bail-restricting clause cannot denude the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie low-probative value or quality.”

8. In fact the coordinate Bench of this court in ***Mazin Abdul Rahman @ Mazin vs National Investigation Agency (Criminal Appeal 2248/2023)***, it was made clear that the Hon’ble Supreme Court, having noticed that there was no chance of sooner completion of



trial, opined that there would occasion infringement of Article 21 of the Constitution if bail was denied applying the rigor of section 43D (5) of UA(P)A.

9. As regards applicability of Article 21 of the Constitution of India, the Hon'ble Supreme Court has made it clear in many decisions that a balance has to be struck between individual liberty and the societal interest. It may not be inappropriate to state that Article 21 concerns with liberty of an individual. What Article 21 states is that personal liberty of a person cannot be curtailed without due process of law. Its meaning has been expanded, and no doubt a greater amount of sanctity is attached to it. But whenever national interest is involved or a challenge is posed to unity, sovereignty and integrity of the nation, individual liberty recedes to background. Individual or personal interest must yield to national interest. Individual is not greater than the Nation where he has taken birth. An accused can enforce liberty under Article 21 if he is arrested without due process of



law. If criminal action is found to be in accordance with due procedure established by law, an application for bail has to be decided by applying law relating to bail, not by applying Article 21.

10. Now, if it is examined whether there are materials against the appellant, the obtaining picture is this : Protected witness B implicates the appellant stating that he was sought to be influenced by the appellant and another to establish caliphate in India, which was basic ideology of Islamic State (ISIS). This protected witness has given a lengthy account of all the activities of the appellant. The said witness has also given statement before the Magistrate under section 164 of Cr.P.C. In addition, statements of LW-256, LW-257, LW-258, LW-259, LW-260, LW-261, LW-262, LW-263 and LW-264, give vivid picture of participation of the appellant in various ways. It is not always necessary to obtain confession statement of an accused to implicate him. It is also not necessary that there must be recovery from an accused



under section 27 of the Indian Evidence Act. These are not sine qua non. Whether to record a confession statement or not depends on circumstances of each case. In **Zahoor Ahmad Shah Watali**, the expression 'prima facie true' is explained in the following way :

"23. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the



Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.....”

It has been further held,

”24. A priori, the exercise to be undertaken by the Court at this stage of giving reasons for grant or nongrant 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. 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.”

11. If the materials against appellant are put to analysis, it can be said that accusations against him will remain till they are contradicted or disproved by other evidence. This satisfaction can be drawn by gleaning over



the prosecution materials. Therefore bar contained in section 43D(5) of UA(P)A becomes applicable.

12. In **Vernon (supra)** bail was granted, but decision to grant bail was taken on factual background and therefore the appellant cannot take its benefit. The judgment of Kerala High Court in **Ashraf and Others vs Union of India [(2024 SCC Online Ker 3234)]**, another judgment cited by Sri Balakrishnan, decision to grant bail was taken on facts therein. Conversely the observation of the Hon'ble Supreme Court in **Barakathullah** are aptly applicable here and hence para 16 of the judgment is extracted here.

"16. As transpiring from the material on record, the PFI was registered under the Societies Registration Act, having an organizational set up as contained in its constitution. All the respondents-accused were the members or office bearers of the said organization at the relevant time. As alleged in the charge sheet, though the PFI was projecting itself as an organization fighting for the rights



of minorities, Dalits and marginalized communities, it was pursuing a covert agenda to radicalize particular section of the society and to work towards undermining the concept of democracy and integrity of India. The investigation disclosed that the activities and undeclared objectives of PFI had strong communal and anti-national agenda to establish an Islamic rule in India by radicalization of Muslims and communalization of issues. After recruitment as members of PFI, they were motivated towards violent terrorist activities by providing training through beginners course and advanced training courses. During the training courses, physical education classes were conducted in which members were taught to attack, assault, maim and murder with bare hands. The training was also given as to how to use weapons like knives and swords and how to hurl bombs. It appears that within few days of the arrest of the respondents on 22.09.2022, the PFI was declared as an "unlawful association" and was banned by the Government of India under the UAPA. We need not elaborate on the allegations made by the protected/listed witnesses stating the role and



involvement of each of the respondents, who were either members or the office bearers of the PFI. Suffice it to say that, there is sufficient material in the form of statements of witnesses and other incriminating evidence in the form of digital devices, books, photographs etc. collected during the course of investigation and relied upon by the appellant as recorded in the charge sheet, to form an opinion that there are reasonable grounds for believing that the accusations against the respondents-accused are prima facie true.”

13. Therefore the conclusion is that the NIA court has not erred in refusing bail to the appellant. In this view appeal is devoid of merits and it is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(J.M.KHAZI)
JUDGE**

CKL