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2J

(BEFORE ABHAY S. OKA AND AUGUSTINE GEORGE MASIH, JJ.)

ATHAR PARWEZ .. Appellant;

*Versus*

UNION OF INDIA .. Respondent.

Criminal Appeal No. 5387 of 2024†, decided on December 17, 2024

A. **Criminal Procedure Code, 1973 — Ss. 439 and 437 — Grant of bail to an undertrial by constitutional courts — Relevant considerations — Long incarceration of accused and no likelihood of completion of trial in near future — Entitlement to bail on ground of (in a matter involving strict statutory provisions with regard to grant of bail)**

**— Held, long incarceration of accused and no likelihood of completion of trial in near future violates the fundamental right of accused contained in Art. 21 of the Constitution, and therefore, it can be a ground for grant of bail — Constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute concerned with regard to grant of bail**

— Constitution of India — Art. 21 — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5) — Nagarik Suraksha Sanhita, 2023, Ss. 483 and 480

*Held* :

Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the constitutional courts to grant bail on violation of Article 21 of the Constitution which guarantees trial to be concluded within a reasonable time. Gross delay in conclusion of the trial would justify such invocation leading to a conclusion of violation of Part III of the Constitution, which may be taken as a ground to release an undertrial on bail. (Para 19)

At the initial stage, the legislative policy needs to be appreciated and followed by the courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute, and these statutory provisions cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions. (Paras 21 and 22)

*Union of India* v. *K.A. Najeeb*, (2021) 3 SCC 713; *Thwaha Fasal* v. *Union of India*, (2022) 14 SCC 766; *Javed Gulam Nabi Shaikh* v. *State of Maharashtra*, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222, *followed*

† Arising out of SLP (Crl.) No. 9209 of 2024. Arising from the impugned Final Judgment and Order in *Athar Parwez* v. *Union of India* [Patna High Court, Criminal Appeal (DB) No. 516 of 2023, dt. 28-11-2023] sub nom *Jalaluddin Khan* v. *Union of India* [Patna High Court, Criminal Appeal (DB) No. 514 of 2023, dt. 28-11-2023], 2023 SCC OnLine Pat 5337 **[Reversed]**

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B. **Criminal Procedure Code, 1973 — Ss. 439 and 437 — Bail — Grant of — Offence under Unlawful Activities (Prevention) Act, 1967 ("UAPA") — Allegations that appellant was an active member of PFI, an organisation committed to bringing about Islamic rule in India**

**— He organised and participated in meetings/training programs of PFI in premises taken on rent by him from co-accused *J*; objectionable documents and materials relating to PFI recovered from his premises indicated that appellant and other members of PFI aimed at to disrupt the sovereignty of India and cause disaffection against the country**

— Nothing in charge-sheet and statements of protected witnesses to prima facie attract charges under the UAPA — Alleged recovery from premises of appellant, doubtful — Long incarceration of appellant (more than 2 yrs and 4 months) and no likelihood of completion of trial in near future leading to violation of appellant's fundamental right to speedy trial under Art. 21 of the Constitution — Evidence against appellant and co-accused *J* was almost the same — *J* already granted bail on similar grounds

— In these facts and circumstances, held, appellant was entitled to bail — Order passed accordingly — Unlawful Activities (Prevention) Act, 1967 — Ss. 13, 17, 18, 18-A, 18-B and 20 — Penal Code, 1860 — Ss. 121, 121-A, 122, 153-A and 153-B — Nagarik Suraksha Sanhita, 2023, Ss. 483 and 480

The appellant herein had approached the Supreme Court, seeking bail during the pendency of trial after dismissal of his bail application by the High Court.

Allowing the bail application of the appellant, the Supreme Court

*Held* :

The allegations against the appellant primarily are that he is an active member of PFI, which according to the prosecution is an organisation committed to bringing about Islamic rule in India. For the said purpose, disharmony and internal conflicts are sought to be brought about within the society so that there is discontentment and the peace and calm within the society gets disturbed. (Para 23)

Resort to violence and violent means has also been alleged to be preached and practiced by the said organisation in which the appellant had been taking an active role.

In the light of the facts and circumstances of the case, the impugned judgment is set aside. The appeal is accordingly allowed with a direction that the appellant be enlarged on bail on the appropriate terms and conditions to be fixed by the Special Court. (Paras 24 to 39)

*NIA* v. *Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383, *followed*

*Jalaluddin Khan* v. *Union of India*, (2024) 10 SCC 574 : (2025) 1 SCC (Cri) 241, *relied on*

*Athar Parwez* v. *Union of India*, Criminal Appeal (DB) No. 516 of 2023 sub nom *Jalaluddin Khan* v. *Union of India*, 2023 SCC OnLine Pat 5337, *reversed*

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Advocates who appeared in this case :

Dr Aditya Sondhi, Senior Advocate [Divyesh Pratap Singh, Adil Sharfuddin, Shashank Singh (Advocate-on-Record), Anubhav Kumar, Maeen Mavaram and Ms Prapti Shrivastava, Advocates], for the Appellant;

Ms Aishwarya Bhati, Additional Solicitor General [Ms Shivika Mehra, Ms Bani Dikshit, Ms Seema Bengani, Parantap Singh, Ms Rajeshwari Shankar, Ms Pooja Kumari and Arvind Kr. Sharma (Advocate-on-Record), Advocates], for the Respondent.

***Chronological list of cases cited*** ***on page(s)***

1. (2024) 10 SCC 574 : (2025) 1 SCC (Cri) 241, *Jalaluddin Khan* v. *Union of India* 61*a*, 65*a*, 65*g-h*, 67*g*
2. (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222, *Javed Gulam Nabi Shaikh* v. *State of Maharashtra* 64*b*, 67*f*
3. 2023 SCC OnLine Pat 5337, Criminal Appeal (DB) No. 516 of 2023, *Athar Parwez* v. *Union of India* sub nom *Jalaluddin Khan* v. *Union of India* **(reversed)** 59*d-e*, 65*a-b*, 68*b-c*
4. (2022) 14 SCC 766, *Thwaha Fasal* v. *Union of India* 64*a-b*, 67*f*
5. (2021) 3 SCC 713, *Union of India* v. *K.A. Najeeb* 63*e-f*, 67*e-f*
6. (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383, *NIA* v. *Zahoor Ahmad Shah Watali* 63*a*, 63*b-c*

The Judgment of the Court was delivered by

**AUGUSTINE GEORGE MASIH, J.**— Leave granted. The appellant herein has approached this Court seeking bail during the pendency of trial after dismissal of his bail application by the High Court of Patna vide impugned order dated 28-11-2023 in *Athar Parwez* v. *Union of India*[1]. The appellant is booked as Accused 1 in FIR No. 827 of 2022, which was registered at Police Station Phulwari Sharif, Patna under Sections 120, 120-B, 121, 121-A, 153-A, 153-B, & 34 of the Penal Code, 1860 (hereinafter referred to as "IPC").

**2.** The appellant along with a co-accused Jalaluddin Khan alias Md. Jalaluddin was arrested on 12-7-2022. Allegations against the appellant are that he is an active member of the Popular Front of India (hereinafter referred to as "PFI"), and he along with his associates were planning to cause disturbance during the proposed visit of Prime Minister of India to Patna, this led to the raid being conducted on 11-7-2022 at first floor Ahmad Palace, Phulwari Sharif, Patna which was taken on rent by the appellant from co-accused Md. Jalaluddin.

**3.** During the raid certain recoveries were carried out, prominent amongst them was a document titled "India 2047 towards rule of Islam in India, internal document not for circulation". Assertions have been made in the complaint on the basis of the documents seized that the appellant along with the other members of PFI aimed at disrupting the sovereignty of India and cause disaffection against the country.

1 Criminal Appeal (DB) No. 516 of 2023 sub nom *Jalaluddin Khan* v. *Union of India*, 2023 SCC OnLine Pat 5337

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**4.** Keeping in view the seriousness of the allegations and the offences involved, the Government of India vide Official order dated 22-7-2022 directed the National Investigating Agency (hereinafter referred to as "the NIA") to take up the investigation. Accordingly, the NIA re-registered a case as R.C-31/2022/NIA/DLI dated 22-7-2022 under Sections 120, 120-B, 121, 121-A, 153-A, and Section 13 of the of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "the UAPA 1967") and took up the investigation. After investigation, charge-sheet against the appellant was filed on 7-1-2023 under Sections 121, 121-A, 122, 153-A & 153-B IPC and Sections 13, 17, 18, 18-A, 18-B & 20 of UAPA, 1967. However, charges till date have not been framed.

**5.** The learned Senior Counsel for the appellant has asserted that the seizure of documents as has been alleged from the rented accommodation of the appellant is highly suspicious and doubtful rather it is concocted and manufactured. As per the seizure memo/list, the recovery has been made from the second floor of Ahmad Palace which according to the prosecution itself was never in possession of the appellant rather it is the first floor which was on rent with the appellant. Even the rent deed on which reliance has been placed mentions explicitly about the first floor.

**6.** It is contended that going by the allegations against the appellant, no offence under the UAPA, 1967 or even the predicate offence is made out. He submits that primary allegations are with regard to the alleged recovery seven-page document titled "India 2047 towards rule of Islam in India, internal document, not for circulation" which contained various recitals relatable to an Islamic rule which is to be established in India. It is contended that there are no independent witnesses to the alleged recovery seizure memo/list. As also the said document does not in any manner talk about any terrorist activities or overt act to be carried out which would create disharmony or religious hatred.

**7.** The learned Senior Counsel for the appellant further submits that PFI has been banned vide a Gazette Notification dated 28-9-2022 issued by the Government of India for a period of five years. On the date when the raid was conducted i.e. 11-7-2022 and on the date of the appellant's arrest i.e. 12-7-2022, PFI was legally constituted organisation. Till date, this organisation has not been declared a terrorist organisation. He asserted that the charge-sheet as has been filed by the prosecution would not indicate any active role played by the appellant except that he had participated in some demonstrations and protests against the policies of the State or rather in the backdrop of remarks made by one Nupur Sharma against Prophet Mohammad.

**8.** Another allegation is with regard to having organised a meeting on 6-7-2022 and 7-7-2022 in the rented first floor premises of Ahmad Palace. The statements of the witnesses also according to the allegations do not indicate that the appellant had actively participated in any discussions or had instigated any of the persons present there to commit any of the offence which would fall within the purview of the offences mentioned in the charge-sheet.

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**9.** The learned Senior Counsel has further asserted that the co-accused of the appellant (Jalaluddin Khan) whose application was also considered for grant of bail by the High Court along with that of the appellant, had been granted bail by this Court in *Jalaluddin Khan* v. *Union of India*[2]. His role is similar to that of the appellant except that he was said to be the person who was the owner of the building and had rented the accommodation to the appellant. As regards his participation in the meeting on 6-7-2022 and 7-7-2022 is concerned, he is in a same position with the co-accused already granted bail by this Court. Mere participation in the meeting would not be enough. The other co-accused against whom similar allegations of being a member of PFI and participating in protests where alleged communal slogans were raised have been enlarged on bail by the High Court. Even the testimony of the protected witnesses does not implicate the appellant in the alleged crime as per the charge-sheet.

**10.** The learned Senior Counsel has also drawn attention of this Court to the statement made by prosecution witness Saiyed Abu Monawwar to submit that as per this witness, there are commercial establishments such as shops and pathology labs on the ground floor of the building where the raid was conducted. CCTV cameras would not have been permitted to be installed in the said premises or on the first floor also had some objectionable activities being carried out by PFI. This also reflects that it does not stand to logic. It is not therefore logical and does not make sense where such objectionable activities were to be carried out as has been alleged the same would be in such an area as has been described by the prosecution.

**11.** Another submission which has been put forth is that there are 354 witnesses cited by the prosecution and the appellant is in custody since 12-7-2022 for more than two years and four months with the trial not likely to conclude in the near future. The appellant deserves to be released on bail as this would amount to violation of Article 21 of the Constitution of India.

**12.** On the other hand, the learned Additional Solicitor General for the respondent has asserted that during the raid conducted by the Bihar Police, not only the incriminating material/documents were recovered from the premises in question, but other electronic items have also been recovered which clearly establishes that the appellant was an active member of PFI and had not only participated in the protests but has actively organised the same. She contends that training and meeting was conducted in the rented premises of the appellant in furtherance and establishment of the Islamic rule in India. In these meetings, the participants who were from different States joined and directions were given in the said meeting to kill and attack those who make derogatory statements about Prophet Mohammad and Islam.

**13.** It is further submitted that the appellant had been working to create a secret group of ex-Student Islamic Movement of India (hereinafter referred to as "SIMI") members, which is the banned organisation, in order to take revenge against the persons who made or make derogatory statements against Islam.

2 (2024) 10 SCC 574 : (2025) 1 SCC (Cri) 241

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The appellant and other co-accused had participated in protest and videos were recovered where communal sloganeering was recorded and circulated which not only was intended to create disturbance but religious disharmony and discord within the society. The CDR records established that the appellant was in touch with other co-accused and had conspired to expand the unlawful ideology of PFI. About the participation of the appellant and the other co-accused named in the first information report, she states that CCTV footage of 6th and 7th July installed at the Ahmad Palace depicts the same which establishes the involvement of the appellant in conspiracy for carrying out unlawful activities with an intention to disturb the security, integrity and sovereignty of the country and promote feeling of enmity and hatred between different groups. The courts below and especially the Special Judge, NIA Patna has taken cognizance of the charge-sheet on 28-4-2023.

**14.** The learned Additional Solicitor General, however could not dispute the stage of the trial as no charges have been framed. Emphasis has been laid by the learned Additional Solicitor General upon the statements of the protected witnesses, with special emphasis upon that of Z, Y & X. Reliance has also been placed upon the statement of witness Murtuj Ali. Reference has also been made to the charge-sheet para 15.2 with regard to the protest march and sloganeering on 9-6-2022 in the area of Police Station, Pirbahor, Patna. Para 15.5 relating to electronic evidence where the hard disk/DVR of the CCTV installed in Ahmad Palace were recovered showing the presence of the appellant in meeting held on 6-7-2022 and 7-7-2022. Para 17.2 again refers to the details with regard to the training conducted in the rented premises as also the appellant's connection with the SIMI. Paras 17.3 and 17.4 are with regard to the document titled "India 2047 towards rule of Islam in India, internal document, not for circulation", the contents thereof have been mentioned therein. Para 17.13 highlights the call data records of the mobile numbers used by the accused persons revealing their location and connection with each other in the meeting dated 6-7-2022 and 7-7-2022. Paras 17.15 and 17.16 — statement of protected witness 'Z'. Para 17.33 relates to the collection of funds for zakat and donations by the appellant and others on directions of the senior members of PFI. Para 17.34 relates to the statement of the protected witness 'Y' with reference to these allegations in the charge-sheet.

**15.** The learned Additional Solicitor General has thus asserted that there are serious allegations against the appellant and therefore the orders as has been passed by the courts below are fully justified and the prayer made in the present appeal deserves to be rejected.

**16.** We have considered the submissions made by the counsel for the parties and with their able assistance have gone through the charge-sheet. Before we proceed in the matter, the principles which have to be kept in mind while considering the prayer for grant of bail under Section 43-D(5) of the UAPA, 1967 have to be looked into.

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**17.** This Court had an occasion to deal with the case of an accused charged under Chapters IV and VI of the UAPA, 1967, who sought bail during the pendency of the trial in *NIA* v. *Zahoor Ahmad Shah Watali*[3]. In that case, this Court had gone to the extent of stating that the statutory bar on grant of bail could not be an impediment if the court on appreciation of totality of evidence is satisfied that the accusations are prima facie not true. The court is required to consider and examine not only the FIR but the case diary and charge-sheet and to examine them on broad probabilities regarding involvement of the accused in the crime to determine whether the accusations are prima facie true as compared to holding the accused not guilty, which would entitle the provisions of Section 43-D(5) of UAPA 1967, being not an impediment in grant of bail.

**18.** The Court in *NIA* v. *Zahoor Ahmad Shah Watali*[3] further concluded that if on perusal of the case diary and charge-sheet, an opinion is formed that there are no reasonable grounds for believing that the accusations against such person are prima facie true, the accused can be released on bail. It may be added here that while forming an opinion as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise the said documents have to be accepted as it is. 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.

**19.** Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the constitutional courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time. Gross delay in conclusion of the trial would justify such invocation leading to a conclusion of violation of Part III the Constitution of India, which may be taken as a ground to release an undertrial on bail.

**20.** A reference in this regard may be made to the judgment of this Court in *Union of India* v. *K.A. Najeeb*[4]. It requires mention that in that case this Court considered the factum that there were 276 witnesses left to be examined which would lead to a prolong trial resulting in no possibility of the trial coming to an end at an early date resulting in suffering of incarceration for a significant period of time by an accused, making it an obligation on the Court on such consideration to enlarge such an accused on bail. It may be mentioned here that the Court was cautious enough to mention that the restrictions under the statute as in this case, Section 43-D(5) of UAPA 1967 as well as the powers exercisable under the constitutional jurisdiction by the Court need to be harmonised.

**21.** At the initial stage, the legislative policy needs to be appreciated and followed by the courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right

3 (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383
4 (2021) 3 SCC 713

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of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions.

**22.** Reference can also be made to the judgments of this Court in *Thwaha Fasal* v. *Union of India*[5] as also *Javed Gulam Nabi Shaikh* v. *State of Maharashtra*[6] where again, the Court was dealing with the provisions of the UAPA, 1967 and had reiterated the abovesaid principles. Giving precedence to the protection of fundamental rights and emphasising upon their primacy over the statutory provisions in case of delayed trial. In the above judgments, this Court had even gone to the extent of asserting that the seriousness of the crime for which the accused is facing the trial would not be material as an accused is presumed to be innocent until proven guilty.

**23.** With these basic principles in mind, we now proceed to consider the position with regard to the present appeal. The allegations against the appellant as has been stated above primarily are that he is an active member of PFI, which according to the prosecution is an organisation committed to bringing about Islamic rule in India. For the said purpose, disharmony and internal conflicts are sought to be brought about within the society so that there is discontentment and the peace and calm within the society gets disturbed.

**24.** Resort to violence and violent means has also been alleged to be preached and practiced by the said organisation in which the appellant had been taking an active role. He is the person who participated in the protest held on 9-6-2022 against the remarks made by Nupur Sharma against Prophet Mohammad and Islam. In the said protest, not only was he a participant but an organiser and had been encouraging the protesters to use provocative slogans.

**25.** Apart from this, there are allegations that he had taken first floor of Ahmad Palace on rent where activities of PFI were being carried out. Specific reference has been made to the meeting/training program of PFI held on 29-5-2022, 6-7-2022 and 7-7-2022.

**26.** In these meetings, not only was there participation on the part of the appellant but 30-40 other members of PFI. The allegation against the appellant is that he had organised the said meetings, used his own premises and had also stored and kept documents and material relatable to PFI which were objectionable. In the said meetings, discussions to fulfil the agenda of India 2047 rule of Islam in India was planned and steps to be taken for giving it effect were being worked upon. The members present were called upon to target and neutralise persons who make remarks against Prophet Mohammad and Islam.

**27.** Reliance has been placed with regard to the statements of the protected witnesses especially X, Y and Z to substantiate the said allegations as also the recovered documents from the premises. The factual aspect with regard to the number of witnesses, the period of incarceration and that there are 40

5 (2022) 14 SCC 766
6 (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222

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accused in the case has not been disputed. Reference at this stage is to be made to the judgment of this Court in *Jalaluddin Khan* v. *Union of India*[2] which related to the co-accused of the appellant whose appeal for grant of bail under the UAPA, 1967 along with that of the present appellant was rejected by a common impugned judgment[1] of the High Court. The only distinction between the case of the present appellant and Md. Jalaluddin was that he was the owner of the premises whereas the appellant is a tenant thereof. Participation of the appellant, as well as co-accused Md. Jalaluddin along with the other accused in the meeting of 6-7-2022 and 7-7-2022 had not been disputed. The evidence against the appellant as also the co-accused Md. Jalaluddin is almost the same.

**28.** The most prominent evidence is the testimony of the protected witness 'Z' who was alleged to be inducted into PFI for providing physical training to its members. In his statement, there is no mention of the appellant taking part in or leading any of those meetings/trainings where physical training was imparted teaching attack and defensive techniques using sticks, knives or other weapons. As regards the meeting held on 29-5-2022 at Ahmad Palace what has been stated by him is merely that the appellant along with 40-45 persons participated in the meeting which was presided over by one Riyaz Firnagipet. In this meeting, issues like expansion of organisation, strengthening of Muslims on political, educational and administrative fronts were discussed. Nothing incriminating is alleged to have been mentioned which would attract charges under the UAPA, 1967 especially the ones which have been alleged to have been committed by the appellant.

**29.** Reference has also been made with regard to the meeting held on 6-7-2022 and 7-7-2022 at Ahmad Palace. In the said meeting, no active role is attributed to the appellant except for he being present and that the premises where this meeting was held was in his possession being a tenant. Again, there is nothing incriminating against the appellant in the statement given by witness 'Z' with regard to the present meeting. The witness has merely stated that the meeting was convened in view of the derogatory statements made by one Nupur Sharma against Prophet Mohammad.

**30.** This Court in the case dealing with the bail application of Md. Jalaluddin, the co-accused of the appellant and the owner of the premises had an occasion to deal with the paragraphs of the charge-sheet where reference to the meetings held on 29-5-2022 and 6-7-2022 and 7-7-2022 were made. The said paragraphs had been reproduced hereinunder. On consideration of the allegations made therein, when seen in the context of the statement of the protected witness 'Z' as has been supplied to the Court for perusal it was stated in paras 15 to 17 of the said judgment[2] (relevant part) reads as follows: (*Jalaluddin Khan case*[2], SCC pp. 581-82, paras 15-17)

2 (2024) 10 SCC 574 : (2025) 1 SCC (Cri) 241

1 *Athar Parwez* v. *Union of India*, Criminal Appeal (DB) No. 516 of 2023 sub nom *Jalaluddin Khan* v. *Union of India*, 2023 SCC OnLine Pat 5337

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"*15*. … Para 17.16 alleges that protected witness Z stated that in the meeting, subjects such as the expansion of the organisation, basic and advanced training of PFI members and future PFI plans were discussed, and a direction was given to trained PFI cadre to eliminate one Nupur Sharma. In the statement of protected witness Z, all that is not found.

*16*. In fact, protected witness Z stated that during the meeting, emphasis was given on strengthening the status of Muslims, imparting them basic and advanced training and strengthening the status of education, politics and administration of Muslims and Muslim empowerment. Going by the witness's version, we find that there was no discussion about the activities of PFI in the meeting held on 29-5-2022. We are not reproducing the statement of the protected witness Z as it has been kept in a sealed cover. Suffice it to say that what is reproduced in Para 17.16 is not correct.

*17*. The material portion of witness Z's actual statement has been completely distorted in Para 17.16 of the charge-sheet. Several things which protected witness Z did not state have been incorporated in Para 17.16. Unfortunately, Para 17.16 attributes certain statements to protected witness Z, which he did not make. NIA owes an explanation for that. The investigating machinery has to be fair. But, in this case, Para 17.16 indicates to the contrary."

**31.** The Court had further gone to the extent of saying and rightly so that in the charge-sheet there is no allegation that the appellant was a member of a terrorist gang or organisation. It is worth mentioning here that PFI of which the appellant was a member has not been declared a terrorist organisation within the meaning of Section 2(*m*) of the UAPA, 1967. It was also found that PFI is not mentioned as a terrorist organisation in the First Schedule of UAPA, 1967. The charge-sheet and the statement of witness 'Z' when seen as it is, it would not be possible to record prima facie finding that commission of offence under the UAPA, 1967 would be attracted as there are no reasonable grounds for believing that the accusations are prima facie correct.

**32.** Now, moving on to the statement of the protected witness 'Y'. The testimony of the protected witness 'Y' when perused indicates that the appellant is alleged to be a person of staunch religious nature who used to participate in religious processions and demonstrations against the policies of the Government. He had been motivating the people of his locality to join the activities of PFI. The meetings held at Ahmad Palace has been acknowledged by him to be so held where lot of outsiders had come. He is, however, completely silent with regard to the nature of the activities or the meetings held therein.

**33.** As regards protected witness 'X', although he had identified the appellant to be involved in the protest/demonstration held on 9-6-2022 against the remarks made by Nupur Sharma against Prophet Mohammad where provocative slogans were raised. The allegation against the appellant is that he had been encouraging others to do so. Beyond that, there is nothing which is alleged against the appellant which would bring the act or omission of the

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appellant within the ambit of the alleged offences committed by him under the UAPA, 1967.

**34.** Allegations against the appellant with regard to having collected zakat from the people for helping PFI or recruiting members of PFI. Suffice it to say at this stage, that on the day such activities were carried out by the appellant, PFI was not a banned organisation. None of the witnesses or the protected witnesses stated that the money so collected in the form of zakat was ever misappropriated by the appellant or was in any manner used for illegal activities. The statement of the protected witnesses has not mentioned anything specific that would be attributed to the appellant which could prima facie attract charges under the UAPA, 1967.

**35.** It is thus apparent that the first test as has been laid down by the various judgments of this Court referred to above, stands satisfied relating to Section 43-D(5) of the UAPA, 1967. Another aspect which cannot be ignored is that the material which has been allegedly recovered from the appellant especially the documents which according to the prosecution contained the incriminating contents as per the seizure memo were from the second floor. As is apparent from the rent deed, on which the prosecution itself has placed reliance, only the first floor was rented out of Ahmad Palace to the appellant, and he was in exclusive possession thereof. This also raises some doubt with regard to the recovery of the material.

**36.** The appellant was arrested on 12-7-2022. He has undergone custody for more than two years and four months. Charge-sheet was filed on 7-1-2023 but till date charges have not been framed which is an admitted position. There are 40 accused and 354 witnesses cited by the prosecution to be examined. There can be no doubt that the trial is not likely to complete soon, and as has been laid down by various judgments of this Court as has been referred to above, the appellant cannot be allowed to languish in jail indefinitely and that too without a trial. If such an approach is allowed Article 21 of the Constitution of India would stand violated.

**37.** The ratio as laid down by this Court in *Union of India* v. *K.A. Najeeb*[4] as also the other judgments in *Javed Gulam Nabi Shaikh* v. *State of Maharashtra*[6] and *Thwaha Fasal* v. *Union of India*[5] would be applicable to this case and would squarely apply entitling the appellant for grant of bail.

**38.** The co-accused of the appellant, Md. Jalaluddin has on similar grounds been granted the same benefit. In the said case, this Court in paras 32 and 33 has held as follows: (*Jalaluddin Khan case*[2], SCC p. 587, paras 32-33)

> "*32*. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge-sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated.

4 (2021) 3 SCC 713
6 (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222
5 (2022) 14 SCC 766
2 *Jalaluddin Khan* v. *Union of India*, (2024) 10 SCC 574 : (2025) 1 SCC (Cri) 241

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*When a case is made out for a grant of bail, the courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But the duty of the courts is to consider the case for grant of bail in accordance with the law.*

*33. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied.* The rule also means that once a case is made out for the grant of bail, the court cannot decline to grant bail. If the courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution." (emphasis supplied)

**39.** In the light of the above, the impugned judgment[1] is set aside. The appeal is accordingly allowed with a direction that the appellant be enlarged on bail on the appropriate terms and conditions to be fixed by the Special Court.

**40.** The appellant for this purpose shall be produced before the Special Court within a maximum period of 7 days from today. The Special Court shall enlarge the appellant on bail until the conclusion of the trial on appropriate terms and conditions after hearing the counsel for the respondent.

**41.** It is clarified here that the observations made hereinabove are tentative in nature, with reference to the prayer made in the present appeal confining it to the case of the appellant. It shall have no bearing on the trial or on the case of the co-accused.

**42.** Pending applications if any stand disposed of.

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1 *Athar Parwez* v. *Union of India*, Criminal Appeal (DB) No. 516 of 2023 sub nom *Jalaluddin Khan* v. *Union of India*, 2023 SCC OnLine Pat 5337