

Union Of India vs Barakathullah on 22 May, 2024

Author: Bela M. Trivedi

Bench: Pankaj Mithal, Bela M. Trivedi

2024 INSC 452

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2715 - 2719 OF 2024
(@ SLP (CrI.) Nos. 14036-14040 of 2023)

UNION OF INDIA
rep. by the Inspector of Police
National Investigation Agency
Chennai Branch

...APPELLANT(S)

VERSUS

BARAKATHULLAH ETC.

...RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. Leave granted.

2. The Central Government in Ministry of Home Affairs, CTCR Division having received a credible information that the office bearers, members and cadres of Popular Front of India (PFI), an extremist Islamic organization have been spreading its extremist ideology across Tamil Nadu, by establishing State Headquarters at Purasaiwakkam, Chennai and also offices in various districts of Tamil Nadu and that through their frontal Organizations like Campus Front of India, National Women's Front, Social Democratic Party of India etc., they conspire for committing terrorist acts, raise funds for committing terrorist activities and recruit members for furthering their extremist ideology, and that the frontal organizations and PFI were involved in the recruitment of members to various prescribed terrorist organizations, passed an order on 16th September 2022, in exercise of the powers conferred under sub-section (5) of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act'), directing the National Investigation Agency to take up investigation of the said case. In view of the said order, an FIR being RC-42/2022/NIA/DLI came to be registered on 19.09.2022 against the present respondents and other members and office bearers of PFI for the offences under Section 120(b), 153(A), 153(AA) of

IPC and Section 13,17,18,18(B), 38 and 39 of the Unlawful Activities (Prevention) Act, 1957 (hereinafter referred to as the “UAPA”).

3. During the course of investigation, the respondents-accused herein came to be arrested on 22.09.2022 for the alleged offences. They filed their respective bail applications before the Special Court under the NIA Act (Sessions Court for Exclusive Trial of Bomb Blast Cases). The Special Court after considering the case diary, the documents and material produced before it, and after having been satisfied about the prima facie case made out against the respondents-accused as also considering the provisions of Section 43D of the UAPA in the light of the position of law settled by this Court in various decisions, dismissed the said bail applications filed by the respondents.

4. Being aggrieved by the said orders, the respondents filed Criminal Appeals being CRLA Nos. 98, 114 and 116 of 2023 before the High Court of Judicature at Madras. It appears that some of the respondents- accused had also filed Cr.L.M.P Nos. 11595 and 8094/2023 seeking interim bail pending the said appeals. During the pendency of the said Appeals, the chargesheet came to be filed by the appellant-NIA against all the respondents alongwith other accused on 17.03.2023 for the offences under Sections 120B, 121A, 122, 153A, 505(1)(b), (c), (2) of IPC and Sections 13,18, 18A, 18B of UAPA. The High Court after taking into consideration the submissions made by the learned Counsels for the parties and materials placed on record including the Chargesheet, allowed the said Appeals by the common impugned order dated 19.10.2023, releasing the respondents on bail subject to the conditions mentioned therein. Being aggrieved by the said order, the present set of appeals have been filed by the Union of India through NIA, Chennai Branch.

5. At the outset, the learned counsels for the respondents raising preliminary objection had submitted that the appellant having failed to mention about the SLP (Crl.) No.9384/2023 which was preferred by the appellant against the co-accused for cancellation of the bail arising out of the same FIR, the present appeal was liable to be dismissed under Order XXII, Rule 2(3) of the Supreme Court Rules, 2013. The said submission cannot be accepted. Rule 2(2) of Order XXII mandates inter alia that no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition for special leave to appeal against the impugned judgment or order earlier, and if so with what result. Rule 2(3) thereof states that the Court shall, if it finds that the petitioner has not disclosed the fact of filing a similar petition earlier and its dismissal by the Court, dismiss the second petition if it is pending. It may be noted that earlier no special leave to appeal has been filed against the impugned judgment and order dated 19.10.2023 passed by the High Court and hence question of filing Second Petition does not arise. Though, the SLP (Crl.) No. 9384/2023 was filed earlier by the appellant seeking cancellation of bail granted to the co-accused in respect of the same FIR, the same has already been referred to in the impugned order by the High Court. This set of appeals cannot be treated as Second Petition as sought to be canvassed by the learned counsels for the respondents.

6. So far as the merits of the Appeals are concerned, the learned advocate Mr. Rajat Nair for the appellant has vehemently submitted that the High Court had miserably failed to comprehend the correct import of Section 18 read with the definition of terrorist act contemplated under Section 15 of the UAPA for releasing the respondents on bail who have been charged with very serious offences.

According to him, the High Court had fallen into patent and manifest error in not appreciating the overt acts and commission of alleged offences by the respondents, as stated by the listed witnesses/protected witnesses. Mr. Nair placing heavy reliance on the statements of the protected witnesses/listed witnesses had taken the court to the said statements to show the role and involvement of each of the respondents in the commission of the alleged offences under the IPC and UAPA. According to him, though some of the witnesses whose statements were recorded under Section 161/164 Cr.P.C. and relied upon by the appellant, were the members of the PFI when it was not banned by the Government of India, they had not participated in the alleged unlawful activities, and hence their statements till they are rebutted or contradicted could be relied upon. He further submitted that the High Court has committed grave error in trivializing the serious allegations made against the respondents by holding that except the witnesses having stated about respondents organizing weapon training for using knives and swords and to train members to throw beer bottles filled with water on targets, there is no material to suggest commission of any offence which falls under Section 15 of UAPA, whereas all these alleged acts were part of the preparation of committing terrorist acts, particularly when the respondents were imparting training as to how to hurl bombs by using water filled beer bottles and how to use weapons like knives and swords to strike terror in the mind of people. Mr. Nair has also placed heavy reliance on the latest decision of this Court in case of Gurwinder Singh vs. State of Punjab and Another¹ which has relied upon the earlier decision in National Investigation Agency vs. Zahoor Ahmad Shah Watali² to submit that the special provision of Section 43(D) of UAPA applies right from the stage of registration of FIR for the offences under Chapter IV (2024) SCC OnLine SC 109 (2019) 5 SCC 1 and VI of the UAPA until the conclusion of the trial thereof, and that 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 offences or otherwise. Terming the impugned order as perverse, he submitted that the High Court had failed to appreciate that the oral statements of the witnesses and the recoveries made during the course of investigation clearly made out a prima facie case against the respondents regarding their involvement of the alleged offences.

7. The learned Senior Counsels, Mrs. Rebecca John appearing for respondent nos. 2, 3 and 4 (accused no. 1, 3 and 4), Mr. Devansh A. Mohta appearing for respondent No.1 (accused No.7), Mrs. Mukta Gupta appearing for respondent no. 5, 7 and 8 (accused No. 5, 8, 9) and Mr. S. Balakrishnan appearing for R-6 (accused no.6) had emphatically submitted that the reliance of the appellant on the statements made by the protected/listed witnesses was highly improper as the said witnesses themselves had participated in the alleged commission of offences. According to them, the vague allegations made by the said witnesses, could not be relied upon, more particularly when there was no material brought on record to show any preparatory work done by the respondents to prima facie make out the case against the respondents. They also relied upon the observations made by the High Court in the impugned order to submit that the High Court had in detail considered the evidence collected by the appellant during the course of the investigation and having not found substance in the same has released the respondents on bail which order should not be interfered with. Relying upon various decisions of this Court, they submitted that the impugned order having been passed by the High Court exercising its discretion, could neither be said to be illegal nor unjust.

8. It is trite to say that the consideration applicable for cancellation of bail and consideration for challenging the order on the grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like tampering of evidence either during the investigation or during the trial, threatening of witness, accused likely to abscond and the trial getting delayed on that account etc. whereas in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration would be whether there was improper or arbitrary exercise of discretion in the grant of bail or the findings recorded were perverse. The instant appeals have been filed by the appellant challenging the impugned order passed by the High Court granting bail to the respondents- accused on the ground that not only the High Court has arbitrarily exercised the discretion in favour of the respondents, but also has recorded perverse findings while exercising such discretion.

9. Before we appreciate the rival contentions raised by the learned counsel for the parties, it would be apt to refer to some of the provisions of the UAPA particularly with regard to the offences alleged against the respondents. As per the chargesheet, the offences alleged against the respondents are under Section 120B, 153A, 153AA of IPC and Section 13, 17, 18, 18A, 18B, 38 and 39 of UAPA. So far as the offences under the UAPA are concerned, Section 13 pertains to the punishment for unlawful activities, Section 15 defines what is “terrorist act” and Section 16 prescribes punishment for the commission of the terrorist act. Section 17 pertains to the punishment for raising funds for terrorist act, Section 18 pertains to the punishment for conspiracy, etc. Section 18A pertains to the punishment for organizing terrorist camps and Section 18B pertains to the punishment for recruiting of person or persons for terrorist act. All these offences fall under Chapter IV of the Act. However, Section 38 which pertains to the offence relating to membership of a terrorist organization and Section 39 which pertains to the offence relating to support given to terrorist organization, fall under Chapter VI of the said Act. Section 43D which was inserted by Act 35 of 2008, pertains to the modified application of certain provisions of the Code of Criminal Procedure. Sub-section (5) of Section 43D being relevant for the purpose of these appeals, the same is reproduced hereunder:

“43D. Modified application of certain provisions of the Code (1) to (4)..... (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:

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....”

10. Since all offences alleged against the respondents are covered under Chapter IV and VI of the UAPA, the rigors and restrictions of sub-section (5) of Section 43D would apply to the facts of this case. It may be noted that this Court in case of National Investigation Agency vs. Zahoor Ahmad Shah Watali (supra), had an

occasion to deal with the sub-

section (5) of Section 43D and in similar fact situation, after comparing the similar provisions under the Special enactments such as TADA, MCOCA, NDPS as also the earlier decisions of this court, had held as under:

“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 accused concerned 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 the 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.....”

11. It was further observed: -

“24. A priori, 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. 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.

25. From the analysis of the impugned judgment [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] , it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie

true or otherwise.

That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.”

26.

27. For that, 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. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.”

12. The ratio of the said judgment has been consistently followed by this Court in many cases, and recently in Gurwinder Singh vs. State of Punjab and Another (supra), in which this court has culled out following guidelines from Watali's Case:

“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:

- 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.”

13. In the light of the above, let us consider whether from the perusal of the chargesheet and other material/documents produced against the respondents, there are reasonable grounds for believing that accusations against the respondents are prima facie true, as contemplated in the proviso to sub-section (5) of Section 43D of UAPA. It is quite well settled position of law that the chargesheet need not contain detailed analysis of the evidence*. It is for the concerned court considering the application for bail to assess the material/evidence presented by the investigating authority along with the report under Section 173 Cr.P.C. in its entirety, to form its opinion as to whether there are reasonable grounds for believing the accusation against the accused is prima facie true or not.

* K. Veeraswami vs. Union of India and Others; (1991) 3 SCC 655

14. So far as the instant appeals are concerned, the chargesheet contains a narration of the organisational structure of PFI, the objective of the PFI, the activities of PFI and the identification of the physical education instructors and masters as identified by the protected witnesses / listed witnesses. For better appreciation, the relevant part of the chargesheet is reproduced as under:

“17.10 The investigation disclosed that many Muslim youth were recruited as PFI Cadres (Categorized as "Protected witnesses) - B" (LW-8) were sent to Periyapattinam, Ramanathapuram to attend beginners camp where he attended Tharbiya classes in which PFI functionaries/preachers sermonized that Muslims who were ruling India have been relegated as second grade citizens. The Indian Muslims were systematically and increasingly getting marginalized in their home land, the privileges earlier enjoyed by Muslims in terms of property rights, etc. were withdrawn and Government jobs were denied, trade facilities were restricted and the rights of Sharia were being denied. They preached that the Muslims were being attacked by Hindu right-wing leaders. During the camp, PE classes were conducted in the morning and evening in which they were taught to attack, assault, maim and murder with bare hands. During the camps, PFI leaders namely Adv. Kalith Mohammed and Barakatullah used to supervise the activities of weapons training in the camp.

17.11 The investigation disclosed that the accused persons, A-1 along with A-2, A-3, A-5 and A-6 had approached one witness categorized as "Protected witnesses -C & D" to expand the Mohalla committees through Masjids and recruit Muslim youth in to PFI organisation and impart weapons training to attack targeted persons and establish Islamic rule in India. A-1 told Protected Witness-C that Muslims should be united in order to attack the Hindu leaders and their organizations for which more young Muslims must join the PFI and they should equip themselves with weapons training provided by the PFI through Mohalla Committees. The PW-C also revealed that the objective of PFI is to establish Islamic Rule in India through an Islamic army. The Protected Witness-C also mentioned that A-4, A-8 later met Protected Witness-D to convince them about the Mohalla committees. Further, Protected Witness-C also stated that he had opposed the move of PFI usurping the office of a body named, confederation of mosques in Madurai, an apex governing body of Muslims in Madurai in June 2022. Protected Witnesses also stated that the accused persons knowingly and intentionally wanted to control the confederation of mosques in Madurai, the initiative to spread Mohalla committee activities of imparting weapons training could easily sail through. Since Protected Witnesses did not agree with the accused persons and opposed them, he was being followed by some unknown persons. 17.12 The investigation disclosed that the accused A-4 insisted on imparting weapons training to Muslim youth through mosques and indoctrinating them in order to establish Islamic rule by 2047.

Further, investigation disclosed that A-8 mentioned that such training was being imparted in PFI Arivagam, Theni and at various parts of Ramanathapuram district so that the youth are in readiness to commit terrorist acts and unlawful activities and to disrupt the sovereignty and integrity of India and to establish Islamic rule as per Shariah law. The investigation also disclosed that NEC members including Adv. Md. Yusuf, AS Ismail and Md. Ali Jinnah had also come to request for imparting weapons training to Muslim youth through mosques.

17.13 The investigation disclosed that during the months of November / December-2021, the accused persons A-1, A-2, A-3, A-5, A-6 recruited more Muslim youth through the mosques into PFI organisation and provided weapon training through Mohalla Committee to commit terrorist acts. The investigation also disclosed a three-pronged strategy of PFI organisation called "Trishul" to destroy all those who are against Islam, who attempt to destroy Islam and those who do not accept PFI organisation even if they are Muslims.

17.14 The investigation disclosed that A-1 had explained in PFI guidance classes on the importance of weapon training through Mohalla Committee to target enemies of PFI who are against Islamic rule in India. The investigation also disclosed that Subject 1, Subject 2 and Subject 3 are code words for training with knives, iron rods and swords. During the beginners camp, many Muslim youth who were recruited as PFI cadres were given unarmed physical training with bare hands and how to attack and neutralize targets. An introduction to weapons training was also imparted. The training of weapons is given during beginners camp, basic and secondary Physical training. Those who performed well were selected for attack teams.

17.15 The investigation disclosed that during the year 2012 and 2020, criminal cases were registered when the PFI cadres had conducted weapon training by A-4, A-7 and other PFI leaders/cadres in Ramanathapuram to the PFI cadres including recruits from various other states.

17.16 The investigation disclosed that the accused Ahamed Idhris @ AM Idris @ MA Idris (A-1) is the state level speaker of PFI and in charge of the Media team of PFI. He as a state level speaker used to deliver instigating speeches in the meetings organised by PFI. The accused had given speeches which were intended to instill perceived threat among Muslim community thereby making gullible Muslim youth to commit offences against the State and to commit offences against a particular community. To realize their larger conspiracy to make India an Islamic country by the year 2047 by striking terror on a section of people, thereby threatening the unity, integrity, security and sovereignty of India, he incited the cadres in the meetings organised by PF1. In the year 2022, PF1 organized a campaign called "Makkal Sangamam" for which Public meetings and exhibitions were organised all over Tamil Nadu, where the accused had given speeches at meetings held at K. Pudur, Madurai District Koothanallur, Tiruvarur District, and Ilayangudi, Sivanganga District. Further, as a media team in charge, he used to organize meetings of the team members. The primary duty of the media team is to collect alarming news, reports containing rumour, and spreading them among public and in the Masjids to create feelings of enmity on grounds of religion and to disrupt the public tranquility. With the same intent, he wrote articles for "Puthiya Vidiyal" such as Suthanthira Porattathil Parpaniya Throgam, Denial of justice (with regard to Babri Masjid Verdict). Further, while he organized camps such as Beginners Camp, Basic Camp and Secondary camps in which training to handle lethal weapons, attacking on the vulnerable parts of body to kill the enemy was imparted to PFI cadres as a preparation to wage a war against the Government of India to achieve their goal of establishing Islamic State in India by the year 2047. 17.17 17.18 The investigation disclosed that the accused Mohammed Abutbahir (A-3) is the district president of PFI Madurai district, he organised terrorist camps in the name of PE to Muslim youth as a preparation to wage a war against the Government of India to achieve their goal of establishing Islamic State in India by the year 2047. He is one of the organizers of PFI's campaign called "Makkal Sangamam" for

which Public meetings and exhibitions were organized by him and other accused persons. In the meetings, he arranged the display of swords, guns, organized demonstration of lethal weapons to attract Muslim youth to join PFI and to get trained in the terrorist camps conducted by PFI in the name of PE classes and Mohalla Committee, and also to create fear among a section of people on the basis of religion. He is one of the PFI's core team members who created social disharmony on the basis of religion by spreading fake news on the Tiruparankundram hills or Sikkanthar Malai communal rift. He plotted to split and divide members belonging to a confederation of Muslim mosques in Madurai as the office bearers of the Jamath were not co-operative for the unlawful activities of PFI such as Sikkanthar Malai communal issue and for the Mohalla Committee. In this process, he conspired with another PFI cadre to murder a Muslim political leader (Protected witness) whose name is suspected to be in the red category of the list created by PFI. The accused also insisted that Muslim community members join PFI's Mohalla committee in a public protest meeting organized by PFI.

17.19 The investigation disclosed that the accused Adv. Kalith Mohamed (A-4) is the State vice president of PFI Tamil Nadu. The accused used to give speeches which were intended to cause fear among Muslim community people and thereby making gullible Muslim youth to commit offenses against the State and to commit offences against a particular community. To achieve their larger conspiracy of making India as Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India, he gave speeches in the classes organized by PFI to its cadres. The accused was working for PFI to recruit and organize weapons training camps in the name of PE classes which were held to achieve their larger conspiracy to make India an Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India. Further, he actively engaged in the preparation to wage war against the government of India to establish the Islamic State in the year 2047.

17.20 The investigation disclosed that accused Syed Ishaaq (A-

5) is the District Secretary, PFI Madurai District. He used to organize weapons training to PFI cadres in the guise of PE classes, Beginners camps, etc., where the PFI cadres were taught how to attack the vulnerable parts of the body and kill people, training with lethal weapons such as knives, swords, iron rods, etc. to achieve their goal to establish an Islamic State in India by the year 2047. He is one of the PFI's core team members which created social disharmony on the basis of religion by spreading fake news about Tiruparankundram hills or Sikkanthar Malai communal rift. Further he motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belonged to Muslim community for opposing PFI.

17.21 The investigation disclosed that accused S Khaja Mohideen (A-6) is the State level speaker of PFI and in-charge for Mass Mobilization. Further, it is revealed that he used to deliver speeches in the PFI camps and in the PFI meetings on the materials / articles of ISIS which were published in the Voice of Hind and Voice of Khorasan magazine. Further, he used to preach about the Ghazwa-e-Hind ie., Battle against India to motivate Muslim community people to prepare for

waging war against the Government of India and to establish an Islamic state by the year 2047. He was involved in furthering and supporting proscribed terrorist organizations. Further he motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community and oppose PFI. As in- charge for Mass Mobilization, he used to make Muslim youth to join PFI and educate them about the ancient Muslim rule over India and the present situation of Muslim in India and make them ready for the Ghazwa-e-Hind, which is corroborated by the digital devices (MO-13) to (MO-17) seized from the accused and in the scrutiny report (D- 166) of the forensic report (D-155) received from NFSU.

17.22 The investigation disclosed that accused S Barkathulla, (A-

7) associated himself with Manitha Neethi Pasarai (MNP), predecessor to PFI. He was the District president of PFI in the year 2014 and he organized PF1 marches / parades to create insecurity among a section of people on the basis of religion. He motivated Muslim community youth to attend weapon training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community who oppose PFI. He had personally supervised and conducted weapons training camps where PFI cadres were given training to attack their intended targets.

17.23 The investigation disclosed that accused Yasar Arafat, (A-

8) is the Zonal Secretary of PFI Madurai Zone which consists of six districts. Earlier, he was the district president of PFI, Theni district. He coordinated weapons training in the districts that come under his zone in the name of PE classes where the participants were taught to attack with knives, swords and petrol bombs. Further, he created an attack team in Theni district from the participants who attended the weapons training camp. He used to select PFI cadres who perform well in the weapons training classes as instructors who in turn would conduct secret training sessions in PFI offices and Arivagam, Theni. The training classes were conducted to achieve their goal to prepare for waging war against the Government of India and to establish an Islamic state by the year 2047. To terrorize the Hindu community, he organized recce of the Hindu leaders' business establishments. Further, documents seized from his residence during the search conducted on 22-09-2022, contain incriminating materials like primary action plan of units, mohalla committees, where explanation was given in gruesome detail on how to attack, where to attack, etc. 17.24 The investigation disclosed that the accused Fayas Ahmed @ Fayas, (A-9) is the district president of PFI Cuddalore District. To achieve their larger conspiracy in making India an Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India, he gave speeches in the classes conducted by PFI to their cadres. He motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community and oppose PFI. During Ganesh Chaturthi, he attempted to instigate PFI cadres to create riots between Hindu & Muslim with intent to promote enmity between two groups. 18.1 That, the investigation conducted by NIA revealed that A- 1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-13 and others have been parties to the criminal conspiracy in the matter of

strengthening PFI, recruiting of persons to PFI, imparting weapon training to its (PFI) members, commission of unlawful acts, preparatory acts for commission of terrorist acts with the object of establishing Islamic rule in India by 2047. Investigation disclosed that Popular Front of India and its office bearers including the arrested accused persons, A-1 to A-9 and A-13 conspired to wage a war against Government of India by threatening the unity, integrity, security and sovereignty of India in order to establish Islamic State in India. To inspire and incite the cadres of PFI, Islamic wars namely battles of Al Badr and battle of Uhud were compared with the war that the PFI and its cadres were to wage against India. The accused persons intentionally promoted enmity between different groups on grounds of religion, intentionally planting a perceived threat in the minds of impressionable Muslim youth that they were imperilled by Kaffirs/non-believers and the Government and the Indian constitution were scheming against Muslims thereby instigating and inducing gullible Muslim youth to commit offence against the people belonging other religions/faith and to commit offence against the State thereby creating enmity against people of other religions. Further, the accused persons intended and caused alarm to the general public/section of the public by publishing statements in writing thereby inducing to commit offences against the State/general public tranquility. They recruited new cadres and organized weapons training including throwing petrol bombs to the new recruits to strike terror against India and among a section of people in India. Further, the PFI and its office bearers including an accused person; A-6 had professed and invited support to the ideologies of Islamic State and Lashkar-e-Taiba, both proscribed organizations as per the First Schedule under UA (P) Act, 1967, in the classes conducted by the PFI to its cadres.”

15. As stated earlier, the chargesheet has been filed against the respondents-accused for the offences under Sections 120B, 121A, 12, 153A, 505(1) (b), (c), (2) of IPC and Sections 13,18, 18A, 18B of UAPA, except the Accused-6, S. Khaja Maideen, who has been additionally implicated under Section 38 and 39 of UAPA. It may be noted that out of the alleged offences under UAPA, the offences under Sections 18, 18A and 18B would fall under Chapter-IV, whereas the offences under Section 38 and 39 would fall under Chapter-VI of the Act. From the statements of witnesses and the incriminating documents collected during the course of investigation, as referred to in the charge-sheet, it is discernible that the PW-A, PW-C, PW-D, PW-E, and witnesses Syed Abutaheer and Mohammed Satik have stated about the activities of PFI like radicalizing youth for recruitment, Arms training (knife, sword and use of petrol bombs/inflammable substances) and preparatory act for commissioning of terrorist activities. Similarly, PW-F has stated about the PFI’s ideal of an Islamic State and about providing support to ISIS. The PW-A, PW-B, PW-C, PW-D, PW-H and PW-I have stated about the conspiracy hatched by the members of the PFI and particularly the role of A-8 Yasar Arafat for creating an Islamic State by the year 2047 through an armed struggle against the Government of India. From the relevant extracts of the statements of the protected witnesses and of the listed witnesses, the role of each of the respondents-accused has been sought to be made out, which can be tabulated as under:

Accused No.	Name	Relevant statements of protected and listed witnesses
A-1	A.M. Idris @ Ahamed Idris	The role and involvement of A-1 Ahamed Idris is sought to be culled out from the statements

		of LW-68, LW-69, LW-89/PW-C, LW-93/PW-D, LW-92/PW-F and PW-114/PW-G.
A-3	Mohammed Abuthahir	The role and involvement of A-3 Mohammed Abuthahir is sought to be culled out from the statements of LW-62, LW-89/PW-C, LW-93/PW-D, LW-92/PW-F and LW-114/PW-G.
A-4	Khalid Mohammed	The role and involvement of A-4 Khalid Mohammed is sought to be made out from the statements of LW-68, LW-69, LW-86/PW-B, LW-89/PW-C, LW-93/PW-D and LW-92/PW-F.
A-5	Syed Ishaq	The role ad involvement of A-5 Syed Ishaq is sought to be made out from the statements of LW-89/PW-C, LW-93/PW-D, LW-108/PW-E, LW-92/PW-F and LW-114/PW-G.
A-6	S. Khaja Maideen	The role ad involvement of A-6 S. Khaja Maideen is sought to be made out from the statements of LW-89/PW-C, LW-93/PW-D and LW-92/PW-F.
A-7	Barakathullah	The role and involvement of A-7 Barakathullah is sought to be made out from the statements of LW-86/PW-B and LW-122/PW-H.
A-8	Yasar Arafat	The role ad involvement of A-8 Yasar Arafat is sought to be made out from the statements of LW-67, LW-68, LW-69, LW-126/PW-A, LW-89/PW-C, LW-93/PW-D and LW-108/PW-E.
A-9	Fayaz Ahmed	The role ad involvement of A-9 Fayaz Ahmed is sought to be made out from the statements of LW-81, LW-82, LW-83 and LW-88

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 chargesheet, 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 chargesheet, to form an opinion that there are reasonable grounds for believing that the accusations against the respondents-accused are prima facie true.

17. As stated in Watali’s case, the material/evidence collated by the Investigating Agency in reference to the accusation against each of the accused concerned in the chargesheet would prevail until rebutted, contradicted and overcome or disproved by other evidence. The material collated and statements of witnesses recorded also show prima facie complicity of the respondents-accused in the commission of the alleged offences, which material/evidence is good and sufficient on its face to establish the facts constituting the alleged offences, till such material/evidence is rebutted or contradicted. The Court at the stage of considering the bail applications of the respondents-accused is merely required to record a finding on the basis of broad probabilities regarding the involvement of the respondents in the commission of the alleged offences.

18. In our opinion, the High Court has committed gross error in not considering the material/evidence in its right and proper perspective and in recording a perverse finding to the effect that there was no material to suggest the commission of any offence, which falls under Section 15 of UAPA, and that the prosecution had not produced any material about the involvement of any of the respondents-accused in any terrorist act or as a member of a terrorist gang or organization or training terrorism. Such perverse findings of the High Court deserve to be strongly deprecated more particularly when the appellant has not alleged the offence under Section 15 of UAPA either in the FIR or in the chargesheet against the respondents. The alleged offences are under Section 18, 18A, 18B etc. For the purpose of considering the offence under Section 18, the commission of terrorist act as contemplated in Section 15 of UAPA is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist

act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the actual commission of terrorist act as defined in Section 15 need not be shown. The High Court having miserably failed to comprehend the correct import of Section 18 read with the definition of terrorist act as contemplated in Section 15 of UAPA, in our opinion the High Court has fallen into a patent and manifest error.

19. Though it was sought to be submitted by learned counsel appearing for the respondents that the material / evidence collected by the Investigating Agency and statements of witnesses relied upon by the prosecuting agency is not reliable, the said submission cannot be accepted. As held by this Court in Watali's case, the question of discarding the material or document at the stage of considering the bail application of an accused, on the ground of being not reliable or inadmissible in evidence, is not permissible. The Court must look at the contents of the documents and take such documents into account as it is and satisfy itself on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offences for recording whether a prima facie case is made out against the accused.

20. No doubt, in Union of India vs. K.A. Najeeb³, relied upon by the learned counsels for the respondents, it has been observed that a Constitutional court is not strictly bound by the prohibitory provisions of grant of bail in 1967 Act, and can exercise its constitutional jurisdiction to release the accused on bail who has been incarcerated for a long period of time relying upon Article 21 of the Constitution of India, the said observations may not be applicable to the facts of the present case. In the said case, this Court did not interfere with the order passed by the High Court granting bail to the accused in the said case, on the ground that the said accused had already spent 5 years and 5 months in custody, and the trial was likely to take long time. So far as the respondents in the instant appeals are concerned, they are in custody hardly for one and half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents except accused no.1, 4 and 6 who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences (2021) 3 SCC 713 and considering their criminal antecedents, in our opinion High Court should not have taken a lenient view, more particularly when there was sufficient material to show their prima facie involvement in the alleged offences under the UAPA.

21. Similarly, the decision in Vernon vs. State of Maharashtra and Another⁴, relied upon by the learned counsels for the respondents also would be of hardly any help in as much in the said case this Court after considering allegations made against the accused and long incarceration of five years, did not think it proper to continue further detention of the appellants-accused in the said case. In Shoma Kanti Sen vs. State of Maharashtra and Another⁵, relied upon by the learned counsels for the respondents, this Court had deemed it proper to release the accused involved in the offences under the UAPA on bail, having considered the facts of the case and observing that Section 43(d)(5) of UAPA was not applicable.

22. In the instant case, we are satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations

against the 2023 SCC OnLine SC 885 (2024) 4 SCALE 709 respondents are prima facie true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents as mentioned in the charge-sheet, the period of custody undergone by the respondents being hardly one and half years, the severity of punishment prescribed for the alleged offences and prima facie material collected during the course of investigation, the impugned order passed by the High Court cannot be sustained. We are conscious of the legal position that we should be slow in interfering with the order when the bail has been granted by the High Court, however it is equally well settled that if such order of granting bail is found to be illegal and perverse, it must be set aside.

23. This Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state. It cannot be denied that National security is always of paramount importance and any act in aid to any terrorist act – violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India.

24. In that view of the matter, the impugned order passed by the High Court is set aside. The respondents shall forthwith surrender themselves before the appellant-NIA. Since, the chargesheet has already been submitted before the Special Court, it is directed that the Special Court shall proceed with the trial as expeditiously as possible and in accordance with law, without being influenced by any of the observations made by this Court in this order.

25. The appeals are allowed accordingly.

.....J. [BELA M. TRIVEDI] J.

[PANKAJ MITHAL] NEW DELHI;

MAY 22nd, 2024.