

Jalaluddin Khan

v.

Union of India

(Criminal Appeal No. 3173 of 2024)

13 August 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Factors to be taken into consideration, under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, while deciding Bail Applications for offences falling under Chapters IV and VI of the Act.

Headnotes[†]

Bail is the Rule and jail is an exception – Principle – Statutes with Stringent condition – Applicability of:

Held: The Court while deciding an application of bail falling under the provisions of Section 43D (5) is not required to conduct a mini-trial – Only a prima facie case has to be established – The Court has to examine the material forming a part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are prima facie true – While doing so, the court must take the charge sheet as it is – 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 – “Bail is the rule and jail is an exception” is a settled law – Even in cases of statutes where there are stringent conditions for the grant of bail, the same rule holds good with only a 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 the Constitution of India. [Para 15, 21]

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Case Law Cited

Shoma Kanti Sen v. State of Maharashtra and Another [2024] 4 SCR 270 : (2024) 6 SCC 591 : 2024 INSC 269; *Gurwinder Singh v. State of Punjab and Another* [2024] 2 SCR 134 : (2024) 5 SCC 403 : 2024 INSC 92; *National Investigation Agency v. Zahoor Ahmad Shah Watali* [2019] 5 SCR 1060 : (2019) 5 SCC 1 : 2019 INSC 456 – referred to.

Thwaha Fasal v. Union of India [2021] 8 SCR 797 : (2022) 14 SCC 766 : 2021 INSC 688 – relied upon.

List of Acts

Unlawful Activities (Prevention) Act, 1967.

List of Keywords

Bail is the Rule and Jail is the exception; Prima facie; Mini-trial.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3173 of 2024

From the Judgment and Order dated 28.11.2023 of the High Court of Judicature at Patna in CRADB No. 514 of 2023

Appearances for Parties

Ms. Mukta Gupta, Sr. Adv., Shaikh Saipan Dastgir, Rizwan Ahmad, Ms. Nitya Gupta, Paras Nath Sing, Himanshu Gupta, Advs. for the Appellant.

Ms. Aishwarya Bhati, A.S.G., Mrigank Pathak, Rajat Nair, Ms. Shagun Thakur, Ms. Chitrangda Rastvara, Ms. Neelakshi Bhadauria, Arvind Kumar Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant is being prosecuted for the offences punishable under Sections 121, 121A and 122 of the Indian Penal Code (for short, ‘the IPC’) and Sections 13, 18, 18A and 20 of the Unlawful Activities

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(Prevention) Act, 1967 (for short, 'the UAPA'). A charge sheet was filed on 7th January 2023. He is shown as accused no.2 in the charge sheet. The appellant applied for bail before the Special Court under the UAPA, which was rejected. Hence, the appellant and some co-accused applied for bail before the High Court. By the impugned judgment, the prayer for bail made by the appellant was rejected, while bail was granted to a co-accused.

SUBMISSIONS

2. The submission of Ms Mukta Gupta, learned senior counsel, is that there is absolutely no material to link the appellant with the offences under the UAPA. She pointed out that, at highest, the allegation is that the appellant's wife was the owner of a building known as Ahmad Palace and that the appellant had clandestinely shown that premises on the first floor of the said building were given on rent to one Athar Parwez – Accused no. 1. The allegation is that, the first floor premises are being used for objectional activities of an organisation called Popular Front of India (PFI). She submitted that taking the charge sheet as it is, no connection has been established between the activities of PFI and the appellant. Even *prima facie* material for connecting the appellant with PFI is not available. She submitted that various people occupy other premises in the building. The building has a pathology laboratory, a clinic, and shops. She pointed out that, therefore, CCTV cameras were fixed on the property. She submitted that if the activities of PFI were really being carried out in the building with the connivance of the appellant, he would not fix CCTV cameras inside the property. She would submit that the appellant's case satisfies the tests laid down by Section 43D (5) of the UAPA, as there are no reasonable grounds for believing that the accusations against the appellant are *prima facie* true. Learned senior counsel relied upon a decision of this Court in the case of ***Shoma Kanti Sen v. State of Maharashtra and another***.¹
3. Ms Aishwarya Bhati, learned Additional Solicitor General of India, invited our attention to statements of the protected witnesses V, Y, and Z, tendered on record, in a sealed cover. She pointed out that CCTV footage seized by the Investigating Agency of the building Ahmad Palace shows that on 6th and 7th July 2022, the appellant

1 [2024] 4 SCR 270 : (2024) 6 SCC 591

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and accused no. 1 were seen shifting certain items from the first floor of the building. When the police conducted a raid on 11th July 2022, those items were not found, and therefore, the appellant tampered with the evidence. Relying upon paragraph 17.16 of the charge sheet, she submitted that protected witness Z disclosed that on 29th May 2022, the appellant attended a meeting-cum-training on the first floor of the building Ahmad Palace along with several other accused who were associated with PFI. During this meeting, the subjects relating to the expansion of the organisation, basic and advanced training of PFI members, Muslim empowerment, and future plans for PFI were discussed. She pointed out that the protected witness Z stated that after considering the remarks made by one Nupur Sharma on the Prophet Mohammed, directions were issued to the trained PFI members to attack and kill the selected targets who were involved in making derogatory remarks against the religion. Learned ASG pointed out that paragraph 17.26 of the charge sheet shows that on 12th May 2022, a sum of Rs. 25,000/- was transferred to the account of the appellant's son, from an account of an absconding accused. She submitted that the rent agreement was bogus and was made to mislead the police, and the appellant had knowingly allowed the first floor premises to be used for PFI's activities. She would submit that there was enough material in the documents produced along with the charge sheet, which shows that a strong *prima facie* case is made about the appellant's involvement in the offences punishable under Sections 13, 18, 18A and 20 of the UAPA. She pointed out that accused no.1, in whose name the tenancy of the first floor was shown, had been an active member of a banned terrorist organisation-the Student Islamic Movement of India (SIMI).

CONSIDERATION OF SUBMISSIONS

4. The appellant was arrested on 12th July 2022. The Trial has not made any progress. The building Ahmad Palace stands in the name of the appellant's wife. The appellant is a retired police constable. The allegation is that on 11th July 2022, in the evening, the police carried out a raid on the first floor premises of Ahmad Palace. At that time, there was a recovery and seizure of incriminating articles and documents relating to PFI. Paragraph 17.1 of the charge sheet reads thus:

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“17.1 Bihar Police had received information about a plan to disturb the proposed visit of Hon’ble Prime Minister to Bihar by some suspected persons who had assembled in Phulwarisharif area. On 11.07.2022 at about 1930 hrs, on secret information, a raid was carried out by the Police Officers of PS Phulwarisharif, Patna at the rented house/premises of Athar Parvej (A-1) and recovered 05 sets of document “India 2047 Towards Rule of Islamic India, Internal Document: Not for circulation”, Pamphlets “Popular front of India 20 February, 2021”- 25 copies in Hindi and 30 copies in Urdu, 49 cloth Flags, 02 magazines “Mulk ke liye Popular front ke saath” and one copy of rent agreement on non Judicial Stamp by Farhat Bano w/o Md Jalaluddin Khan (A-2) with tenant Athar Parvej (A-1) son of Abdul Qayum Ansari. The recovered articles and a Samsung mobile phone having SIM card of accused Mohammed Jalaluddin (A-2) were seized in the instant case. They were related to anti-India activities.”

5. Following are the other paragraphs in the charge sheet relied upon by the respondent:

“17.16 Protected witness-“Z” further stated that on 29th May 2022, a meeting cum training was organized in Ahmad Palace, Phulwarisharif Parna, a rented accommodation arranged by Athar Parvej (A-1) and others in this criminal conspiracy. This meeting was chaired by Riyaz Firangipet (A-20) of Karnataka and approximate 40-45 persons including Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Riyaz Mourif (A-4), Mehboob-Ur-Rehman (A-11), Ehsan Parvez (A-7), Ansarul Huque (A-21), Riyaz Ahmed (A-17), Perwez Alam (A-26), Tausif Alam (A-6), Athar Parvej (A-1), Md. Jalaluddin (A-2) and others, who are associated with PFI, attended this meeting. During this meeting, the points related to expansion of organisation, basic and advance training of PFI members, Muslim empowerment and future plan of PFI were discussed. Protected Witness-Z also stated that after the remark of Nupur Sharma on Prophet Mohammad, directions were given to the trained PFI cadres to attack and kill selected targets who were involved in making derogatory remarks against Islam.”

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“15.5 During the investigation, Hard Disk/DVR of the CCTV installed in Ahmad Palace was seized by the investigating officer of police station Phulwarisharif, Patna. The mirror images of CCTV footages have been received from CDAC, Thiruvananthapuram, Kerala. The CCTV footage confirmed the presence of FIR named accused persons including Athar Parvej (A-1) in the Ahmad Palace, Phulwarisharif, Patna on 6th and 7th July, 2022. The CCTV footage also confirmed that the Police of PS Phulwarisharif carried out raid at the first floor of Ahmad Palace Phulwarisharif on 11.07.2022 at around 7 PM in presence of Athar Parvej (A-1) and Md. Jalaluddin (A-2). It also established that Md Jalaluddin (A-2) tampered the evidence by shifting of items from the first floor of Ahmad Palace, Phulwarisharif, Patna before raid of Police dated 11.07.2022.”

“17.2 Investigation brought out that during preliminary questioning by Police of PS Phulwarisharif, Patna, Md. Jalaluddin (A-2), owner of the house, revealed that the first floor of his house was taken on rent by Athar Parvej (A-1) for imparting training. On 6th and 7th July 2022, the training was conducted here, in which participants from other states were also present.

.....”

“17.26 During the investigation, the account statement of SBI account No. 33767976372 was sought from the State Bank of India, Branch Walmi, Patna and analysed. On analysis it revealed that on 12.05.2022, Rs. 25000/- were transferred into the account of Aamir Jalal s/o Md. Jalaluddin (A-2) from the Punjab National Bank, Bharwara, Distt-Muzaffarpur account no. 0772010316309 of Saqeeb Ahmad, s/o Md. Nayaj Ahmad Ankhuli Bhandhpur Katra, Muzaffarpur, Bihar. On analysis of the call data records of mobile number 9262711612 of said Saqeeb Ahmad, it was found that this mob no. was connected with accused Sanaullah (A-3) on the relevant dates which corroborated that the said amount was transferred on the direction of Sanaullah (A-5).”

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6. Regarding giving the first floor of the building on rent, the prosecution's case is that though the land and the building stand in the name of the appellant's wife, she is merely a name lender. The appellant purchased the property on 19th April 2005 for the consideration of Rs. 1,25,000/- . In the counter, the respondent has relied upon the appellant's disclosure /confessional statement. Whether such a statement is admissible in evidence or not is another thing. In the statement of the appellant relied upon by the respondent, it is stated that accused no.1, Athar Parvez, met his elder son – Aamir Jalal Khan, in April 2022 and discussed renting the first floor of the building to him. The appellant's elder son – Aamir Jalal Khan, quoted rent of Rs 25,000/- per month. After that, there were negotiations, and finally, the rent was fixed at Rs. 16,000 per month. Accused no.1 gave Aamir Jalal Khan an advance of Rs. 5,000/- . Thereafter, a sum of Rs. 25,000/- was transferred by accused no.1 to the account of Aamir Jalal Khan and the remaining amount of Rs. 2,000/- was paid at the time of execution of the lease. In the appellant's statement, it is stated that this amount of Rs. 32,000/- was paid as advance rent for two months. In the statement, the appellant stated that accused no.1 gave him information about the PFI organisation. The appellant stated that people from Bihar and other States used to visit the premises taken on rent by accused no.1. He stated that as he suspected that there would be a police raid, he removed items kept on the first floor premises, like gas cylinders, etc. Even the statement of accused no.1 relied upon in the counter gives the same facts. Thus, the material on record, including the so-called discovery statement of the appellant and co-accused, shows that the premises on the first floor of the building Ahmad Palace were let out to accused no.1, who agreed to pay rent of Rs. 16,000/- per month and gave an advance of Rs. 32,000/- towards rent for two months. We may note here that, assuming that the appellant knew that co-accused Athar Parvez was associated with PFI, it is not listed as a terrorist organisation within the meaning of Section 2(m) of UAPA. Moreover, the charge sheet does not contain any material to show any connection of the appellant with PFI before letting out first floor premises to accused no.1.
7. About the sum of Rs. 25,000/- received by the appellant's son in his account, there is an explanation in the so-called discovery statement of the appellant relied upon by the respondent. Therefore, what is brought on record is that after the appellant's son negotiated with

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accused no.1, the premises on the first floor were let out to accused no.1 at the monthly rent of Rs. 16,000/- per month, and the amount received by appellant's son in his account was towards the part payment of the advance of rent for two months.

8. Now, we come to the other circumstances against the appellant. In paragraph 15.5 of the charge sheet, it is alleged that the appellant shifted certain items from the first floor before the raid was conducted on 11th July 2022. In the discovery statement of the appellant relied upon by the respondent in its counter, the appellant stated that he had kept items like gas cylinders, etc., in the first floor premises, which he removed.
9. In the raid on the first floor premises on 11th July 2022, certain documents were recovered as stated in paragraph 17.1 of the charge sheet. No recovery has been shown from the appellant. The charge sheet describes in detail the contents of the document styled "India 2047 Towards Rule of Islamic India". It is alleged in the charge sheet that the scrutiny of the said documents revealed that the said documents were about establishing Islamic rule in India. It is pertinent to note that there is no mention in the charge sheet about the nature of the articles allegedly shifted earlier by the appellant from the first floor premises. If the appellant intended to shift incriminating material circulated by PFI, he would have shifted the material mentioned in paragraph 17.1 of the charge sheet. A statement by Syed Abu Monawwar discloses that there were commercial premises, such as shops, pathology labs, etc., on the ground floor of the said building. If the appellant intended to allow the conduct of the objectionable activities of PFI by giving first floor premises on rent, he would not have installed CCTV cameras.
10. Now, we turn to the circumstance relied upon by learned ASG, which is in paragraph 17.16. Paragraph 17.16 purports to reproduce what protected witness Z stated. We again reproduce the said paragraph, which reads thus:

"17.16 Protected witness-'Z' further stated that on 29th May 2022, a meeting cum training was organized in Ahmad Palace, Phulwarisharif Parna, a rented accommodation arranged by Athar Parvej (A-1) and others in this criminal conspiracy. This meeting was chaired by Riyaz Firangipet (A-20) of Karnataka and approximate 40-45 persons

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including Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Riyaz Mourif (A-4), Mehboob-Ur-Rehman (A-11), Ehsan Parvez (A-7), Ansarul Huque (A-21), Riyaz Ahmed (A-17), Perwez Alam (A-26), Tausif Alam (A-6), Athar Parvej (A-1), Md. Jalaluddin (A-2) and others, who are associated with PFI, attended this meeting. During this meeting, the points related to expansion of organisation, basic and advance training of PFI members, Muslim empowerment and future plan of PFI were discussed. Protected Witness-Z also stated that after the remark of Nupur Sharma on Prophet Mohammad, directions were given to the trained PFI cadres to attack and kill selected targets who were involved in making derogatory remarks against Islam.”

Thus, paragraph 17.16 purports to reproduce the statement of protected witness Z. In terms of our earlier order, the translated version of the statement of protected witness Z, recorded before the Additional Chief Judicial Magistrate, Patna, has been produced in a sealed envelope. We find that the statement substantially differs from what is narrated in paragraph 17.16 of the charge sheet.

11. The perusal of the statement shows that protected witness Z did not expressly state that the appellant participated in the meeting held on 29th May 2022. He has set out the names of several persons who attended the meeting. The appellant's name is not included in the names set out. In fact, the statement of protected witness Z indicates that after the meeting, the appellant was introduced as the owner of the building. Paragraph 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. 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 29th May 2022. According to the witness, the direction to kill Nupur Sharma was issued in June 2022 and not in the meeting of 29th May 2022. We are not reproducing the statement

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of the protected witness Z as it has been kept in a sealed cover. Suffice it to say that what is reproduced in paragraph 17.16 is not correct. The material portion of witness Z's actual statement has been completely distorted in paragraph 17.16 of the charge sheet. Several things which protected witness Z did not state have been incorporated in paragraph 17.16. Unfortunately, paragraph 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, paragraph 17.16 indicates to the contrary.

12. Now, we come to the provision relating to bail under the UAPA, which is sub-Section 5 of Section 43D of the UAPA, which reads thus:

“43-D. Modified application of certain provisions of the Code.—

.....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

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.

.....”

13. Learned ASG relied upon a decision of this Court in the case of *Gurwinder Singh v. State of Punjab and Another*.² This Court extensively considered its earlier decision in the case of *National Investigation Agency v. Zahoor Ahmad Shah Watali*,³ which deals with interpretation of Section 43D(5). Paragraph 32 of the said decision reads thus:

² [2024] 2 SCR 134 : (2024) 5 SCC 403

³ [2019] 5 SCR 1060 : (2019) 5 SCC 1

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“32. In this regard, we need to look no further than *Watali case* [*NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] 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 paras 23 to 24 and 26 to 27, the following 8-point propositions emerge and they are summarised as follows:

32.1. Meaning of “*prima facie true*” :

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.

32.2. Degree of satisfaction at pre charge-sheet, post charge-sheet and post-charges – compared :

“26. ... 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 of 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.”

32.3. Reasoning, necessary but no detailed evaluation of evidence :

“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

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the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.”

32.4. Record a finding on broad probabilities, not based on proof beyond doubt :

“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.”

32.5. Duration of the limitation under Section 43-D(5) :

“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.”

32.6. Material on record must be analysed as a “whole”; no piecemeal analysis

“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.”

32.7. Contents of documents to be presumed as true :

“27. ... The Court must look at the contents of the document and take such document into account as it is.”

32.8. Admissibility of documents relied upon by prosecution cannot be questioned :

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.”

(emphasis added)

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- 14.** There is one more decision of this Court in the case of *Thwaha Fasal v. Union of India*,⁴ which again deals with the scope of Section 43D(5) of UAPA. After considering the decision in the case of *Zahoor Ahmad Shah Watali*,³ in fact, in paragraph 24, the case has been extensively reproduced. Thereafter, in paragraph 26, this Court held thus:

“**26.** Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. **If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail.** Thus, the scope of inquiry is to decide whether *prima facie* material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is *prima facie* true must be reasonable grounds. However, the court while examining the issue of *prima facie* case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is *prima facie* true. While doing so, the court has to take the material in the charge-sheet as it is.”

(emphasis added)

- 15.** As held in the case of *Thwaha Fasal*,⁴ the Court has to examine the material forming part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are *prima facie* true. While doing so, the court must take the charge sheet as it is.

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16. Now, we come to the offences alleged against the appellant. Offences punishable under Sections 13, 18, 18A, and 20 of the UAPA have been alleged against the appellant. Section 13 reads thus:

“13. Punishment for unlawful activities.—

(1) Whoever—

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

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.”

The term unlawful activity has been defined in Section 2(o), which reads thus:

“2 Definitions.—.....

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

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

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- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
 - (iii) which causes or is intended to cause disaffection against India;
-

”

Sections 18 and 18A of UAPA read thus:

“18. Punishment for conspiracy, etc.—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, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18A. Punishment for organising of terrorist camps.—Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

There is nothing in the charge sheet which shows that the appellant has taken part in or has committed unlawful activities as defined in the UAPA. There is no specific material to show that the appellant advocated, abetted, or incited commission of any unlawful activities. A terrorist act is defined in Section 15(1). Assuming that the co-accused were indulging in terrorist acts or were making any act preparatory to the commission of terrorist acts, there is absolutely no material on record to show that there was any conspiracy to commit any terrorist act to which the appellant was a party. There is no material produced on record to show that the appellant advocated, abetted, advised, or incited the commission of terrorist acts or any preparatory activity.

17. We must note here that the appellant's son conducted the negotiations for giving the first floor on rent. Taking the charge sheet as correct, it is not possible to record a *prima facie* finding that the appellant knowingly facilitated the commission or preparation of terrorist acts

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by letting out the first floor premises. Again, there is no allegation in the charge sheet against the appellant that he organised any camps to impart training in terrorism.

18. Now, we come to Section 20 of UAPA, which reads thus:

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

Terrorist gang has been defined in Section 2(L), which reads thus:

“2 Definitions.—.....

(L) “terrorist gang” means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

.....”

There is not even an allegation in the charge sheet that the appellant was a member of any terrorist gang. As regards the second part of being a member of a terrorist organisation, as per Section 2(m), a terrorist organisation means an organisation listed in the first schedule or an organisation operating under the same name as the organisation was listed. The charge sheet does not mention the name of the terrorist organisation within the meaning of Section 2(m) of which the appellant was a member. We find that the PFI is not a terrorist organisation, as is evident from the first schedule.

19. Therefore, on plain reading of the charge sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission of offences punishable under the UAPA is *prima facie* true. We have taken the charge sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a *prima facie* finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under the UAPA was *prima facie* true. No antecedents of the appellant have been brought on record.

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20. The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.
21. 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. 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. "Bail is the rule and jail is an exception" is a settled law. 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.
22. Hence, the impugned orders are set aside. The appeal is allowed. The appellant is directed to be enlarged on bail on the terms and conditions as may be fixed by the Special Court. For that purpose, the appellant shall be produced before the Special Court within a maximum 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. The Special Court shall hear the counsel for the respondent before fixing the terms and conditions.
23. We make it clear that the tentative findings recorded in this judgment are only for considering the prayer for bail. The reasons are confined to the case of the appellant. The same will have no bearing on the trial and cases of the co-accused.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Vidhi Thaker, Hon. Associate Editor
(Verified by: Mr. Kanu Agrawal, Adv.)