# Shaikh Umer Shaikh Habib vs The State Of Maharashtra And Another on 11 July, 2024

## Author: Vibha Kankanwadi

## Bench: Vibha Kankanwadi

2024:BHC-AUG:13903-DB

CRI-APEAL-149

1/12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 149 OF 2024

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| APPELLANT : (Orgl. Accused) | | Shaikh Umer S/o Shaikh Habib, Age : 32 yrs., Occu.: Private Service, R/o. Aref Colony, Near Zamzam Kirana Store, Gandhi Nagar, Jalna, Tal.& Dist. Jalna. |
| | | -Versus- |
| RESPONDENTS : | 1. | The State of Maharashtra, through Police Station Officer, ATS Police Station, Kala Chowki, Mumbai. (Copy to be served on the Public Prosecutor of High Court of Judicature of Bombay Bench at Aurangabad). |
| (Resp.No.2 original informant) | 2. | Rahul Bhaskarrao Rode, Age : 35 yrs., Occ.: Service, R/o. C/o. ATS Aurangabad Unit, Aurangabad. |

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Mr.V. D. Sapkal, Senior Advocate i/b Adv.Khizer Patel for the appell
Dr. Mrs. K. B. Patil-Bharaswadkar, APP for the respondents-State.

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CORAM: SMT. VIBHA KANKANWADI &
Y.G.KHOBRAGADE, JJ.

CLOSED ON : 21ST JUNE, 2024
PRONOUNCED ON : 11TH JULY, 2024

JUDGMENT (Per : Smt. Vibha Kankanwadi, J.)

Heard Mr.Sapkal, Senior Counsel instructed by Advocate Mr.Khizer Patel for the appellant and learned APP Mrs.Patil- Bharaswadkar for the respondents.

2. Admit. Heard finally with the consent of the learned Advocates for the parties.

3. Present appeal has been filed under section 21 of the National Investigation Agency Act (hereinafter referred to as "NIA Act") to challenge the rejection of regular bail application by learned Special Judge/Additional Sessions Judge, Aurangabad in Special Case No.58 of 2023, thereby refusing to grant bail to the appellant by order dated 05/10/2023. The appellant came to be arrested in connection with Crime No.21 of 2022, registered with Kala-Chowki Police Station, Mumbai by ATS Mumbai for the offence punishable under section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA'), sections 121(a), 122, 153-A, 120-B, 109, 116, 201 of the Indian Penal Code (for short 'IPC'), section 4 punishable under section 25 of the Indian Arms Act and section 135 of the Maharashtra Police Act.

4. After taking us through the charge-sheet, which is inclusive KHUNTE CRI-APEAL-149.24.odt of the FIR, statements of witnesses and the other documents, the learned Senior Counsel has submitted that the appellant came to be arrested on 10/10/2022. He was produced before Court on 11/10/2022 and sent for four days Police custody remand (PCR), i.e. till 15/10/2022. Thereafter, he has been kept in judicial custody. Nothing has been recovered or discovered at his instance during the said four days' police custody. The prosecution had come with a case that the present appellant is the President of Popular Front of India (hereinafter referred to as "PFI") for Jalna District and he had sent some Muslim youths to Aurangabad and other places for taking training, as they want to establish Islamic Rule in India by 2047. He was making appeal to the Muslim youths to join PFI and all those activities were taken up by waging war against the government as well as inculcating a grudge against the Hindu religion. The training that was organized was in the nature of giving training in Karate and other such activities. It is especially stated that he had sent the Muslim youths to attend the camp at Naregaon in the outskirts of City of Aurangabad and it is alleged that it was for establishing an army against the government. All those activities cannot be said to be amounting to waging war against the government, as it is then stated by those witnesses, who attended the camp, that the training was in the nature of Karate and other self defence mechanism. It is then also KHUNTE CRI-APEAL-149.24.odt stated that in the group of persons, the accused had raised slogans "Hamare nabi ki shaan mein gustakhi bandh karo bandh karo, BJP murdabad, RSS murdabad, nara-e-takbir allahu akbar, gustakh-e- rasool ki ek hi saza, sar dhad se judha, sar dhad se juda, Nupur Sharma ko Phansi do, Phansi do" This was in a protest program organized by Jalna Milli Council. All these activities and the evidence that has been gathered in the form of CDRs and

the statements of witnesses, even by the remark of the Special Judge would amount to offence under section 153-A or 153-B of the IPC, for which the imprisonment is less than 5 years. Even a question has been posed by the learned Judge that whether accused had really created a threat for the security of nation by indulging in any unlawful activity, is a question and further if information about the said meeting dated 10/06/2022 was received by the concerned Police officers, why immediately FIR was not registered. The FIR has been registered that too by ATS, Kala-Chowki, Mumbai on 22/09/2022. The delay has not been explained. The application for bail has been rejected on the ground of other evidence, i.e. the travel history of the accused and his connection with PFI, which is now a banned organization. He, therefore, submits that whatever evidence is collected against the appellant is not sufficient to even hold that there is a prima facie case against him. He relies on the decision in Thwaha Fasal v. Union of KHUNTE CRI-APEAL-149.24.odt India; AIR OnLine 2021 SC 963, wherein it has been observed by the Hon'ble Supreme Court that mere association with terrorist organization as member will not be sufficient to attract the offence under sections 38 and 39 of UAPA. Further, when there is no possibility of trial being concluded in a reasonable time, the accused is entitled to be enlarged on bail.

5. Per contra, the learned APP strongly opposed the appeal and supported the reasons given by the learned Special Judge under NIA Act. She has also taken us through the important pieces of evidence in the charge-sheet and submitted that if at all there is delay in lodging the FIR, it can be explained and further when there is such activity of waging war against the government, then the FIR cannot be expected hastily. Perusal of the FIR would show that though the Intelligence Agency were doing their duty, the workshops or meetings were organized by PFI in such a way that no third person was allowed, however, various office bearers of PFI were camping for waging war or toppling the government by instigating the Muslim youths. They were trying to create hatred in the mind of the Muslims on the point that the present Government had taken steps in respect of CAA, NRC, ban on Hijab, ban on triple talak, which was considered as the acts against Islam/Islamic Religion. The camp was organized under the name and KHUNTE CRI-APEAL-149.24.odt styled as 'Save the Republic'. The appellant is not denying that he was the President of PFI for Jalna District. In that capacity, he has extended all the help by sending youths from Jalna District to the camp at Naregaon. This act can be prima facie seen from the statements of witnesses taken under section 161 of the Code of Criminal Procedure. Later on, PFI as well as Rehab India Foundation came to be banned by the Central Government, by adopting due procedure. It is not only that the appellant was the member of PFI, but he was actively supporting those activities, which amount to waging war against the government and therefore, the bail application has been rightly rejected. These activities of the appellant, prima facie amount to terrorist activities and if he is released on bail, he would continue to do the same.

6. The learned APP relies on the decision in Union of India (UOI) rep. by the Inspector of Police, National Investigation Agency, Chennai Branch v. Barakathullah and ors; MANU/SC/0475/2024, wherein under similar allegations Hon'ble Supreme Court cancelled the bail, which was granted by the High Court to the respondent/ accused and similar activities were considered as threat to the national security. It has been observed in para - 23 as under :-

> "23. This Court has often interpreted the counter KHUNTE CRI-APEAL-149.24.odt 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."

7. The learned APP further relies on the decision in Razi Ahmad Khan v. State of Maharashtra, and other connected matters, decided by the Division Bench of this Court at Principal Seat, reported in MANU/MH/3466/2024, wherein also the activities were considered as amounting to threat to the national security. It was then observed by taking into consideration the affidavit of the Investigating Officer that basically the PFI is a cadre based organization and each cadre is entrusted with special duty and responsibility. Therefore, taking into consideration the appellant therein were given specific specialized duties. It was held that they were helping or conspiring the others.

8. At the outset, we would like to say that upon the query by the Court that when the offence was registered at ATS Kala-Chowki, Mumbai, investigation was done by ATS Aurangabad, the charge-sheet KHUNTE CRI-APEAL-149.24.odt was filed at Aurangabad and the investigation was never handed over to National Investigating Agency, then how the appeal is maintainable under section 21 of the NIA Act. An opportunity was given to both sides to make submissions. It was on the point that when the matter was earlier heard, it was noted that below the impugned order, the learned Judge has given his designation as "Additional Sessions Judge, Aurangabad", but then now after giving opportunity to both sides, the learned APP is pointing out a Notification by State Government dated 13/07/2023. By exercising powers under sub-section (1) of Section 22 read with sub-sections (1) and (3) of Section 11 of the NIA Act, 2008, the Government of Maharashtra with the concurrence of the Hon'ble the Chief Justice of Bombay High Court appointed Judges as the Judge for Special Courts to try and deal with the cases filed under NIA Act, 2008. We could find the name of Shri S. M. Khochey, District Judge-3 and Additional Sessions Judge, District Aurangabad as the Special Judge, Aurangabad to try those cases. When the learned Special Judge had the knowledge about the said Notification and he was dealing with the bail application in Special Case No.58 of 2023, he ought to have taken much precaution to give appropriate designation so that the Higher Courts do not get confused as regards powers are concerned. Further, it has been then pointed out by the learned Senior Counsel that in Mohammad Ayoub Dar v. State of J & K; KHUNTE CRI-APEAL-149.24.odt MANU/JK/1361/2022, the Hon'ble Single Judge of Jammu & Kashmir High Court had considered the said point, so also the Full Bench of the Madras High Court in Jaffar Sathiq v. State; 2021 SCC OnLine Mad 2593 had considered the said point and also relied on the Three Judge Bench of the Hon'ble Supreme Court in Bikramjit Singh v. The State of Punjab; (2020) 10 SCC 616, wherein the point has been covered that though the investigation was not handed over to National Investigaton Agency, but the offence under which the FIR was registered is a scheduled offence under the NIA Act, then those cases are to be tried exclusively by the Special Courts set out under that Act. The learned APP also relies on Bikramjit Singh (supra), wherein it has been

specifically observed that ".....This scheme has been completely done away with by the NIA Act, 2008 as all scheduled offences i.e. all offences under the UAPA whether investigated by the National Investigation Agency or by the Investigating Agencies of the State Government are to be tried exclusively by Special Courts set up under the Act." Therefore, the query that was posed by this Court has been now answered. Only the confusion was created due to the non- mentioning of the designation by the learned Special Judge.

9. Now turning towards the point involved in the appeal is concerned, no doubt section 153-A or 153-B of the IPC is punishable KHUNTE CRI-APEAL-149.24.odt with less than five years. Even section 151-A of the IPC prescribes punishment for imprisonment of life or imprisonment of either description for a term not exceeding ten years. But still taking into consideration the seriousness in the offence, and the facts, i.e. the material that is collected, it would guide us to whether the appellant is entitled to be released on bail or not. Though it is said that 'bail is rule and jail is exception', but for that purpose, every case cannot be viewed with the same yardstick. It has been brought on record that the appellant is the member of PFI and especially, he is the President for Jalna District. The statements of witnesses would show that he had taken active part in organizing and sending persons/Muslim youths from Jalna District to Naregaon Camp, wherein certain activities were taught. If those activities are considered in general, then they may not give a picture that a particular organization is trying to topple the government, but then collectively with the motto to establish Islamic Rule in India by 2047, if such activities are undertaken and it is with intention to create hatred with other religions, then definitely it would amount to threat to the national security. In fact, such activities would disturb the social fabric. The social fabric neatly mingled can only build a stronger nation. Here, the statements of witnesses would show that those persons were asked by the appellant to take part in the camp and accordingly they KHUNTE CRI-APEAL-149.24.odt had attended the camp. A further question may arise as to why those persons had not been made accused when they participated in the camp, but then the intention of all those persons is required to be considered. We are considering their statements only on a prima facie footing, but certainly at this stage those statements on their face give some active role to the appellant.

10. Another important point, which is against the appellant is that he had received amount from time to time from PFI and Rehab India Foundation. Those two organizations came to be banned by the Central Government thereafter. The appellant wants to say that he had taken that amount in COVID-19 situation for helping people. Of course, it is for the prosecution to prove that the said amount, which was received by the appellant, has been utilized in the terrorist activities and it is for the appellant to prove that it was for the cause he wants to contend. Almost, in similar facts in Union of India v. Barakathullah (supra), the Hon'ble Supreme Court has taken note of the prosecution story that the accused persons used to organize and give speeches in PFI camp, certain material used to be distributed and it was posed that the battle is against India to motivate Muslim community people to prepare for waging war against the Government of India and to establish Islamic State by the year 2047. In that case, KHUNTE CRI-APEAL-149.24.odt the accused persons came to be arrested on 22/09/2022. Here, the arrest of appellant is on 10/10/2022. Few days thereafter, the PFI was declared as an "Unlawful Association" and was banned by the Central Government under the UAPA. Here, in addition to the said fact, the accused/appellant has received amount from Rehab India Foundation also, which is also a banned organization. It came to be

banned by the Notification dated 27/09/2022. Further the account in which amount has been received is in the name of the appellant and not in the account named as President of PFI for Jalna District. In other words, that amount has been received by the appellant in his personal account and therefore, the prima facie connection can be seen between the banned organizations (though they were banned later) and the appellant. Certainly, the above said para-23 in Barakathullah (supra) is required to be considered. We, therefore, hold that there is no illegality or error committed by the learned Special Judge in rejecting the bail application of the appellant. The appeal, therefore, stands dismissed.

11. Pending application(s), if any, stands disposed of.

(Y. G. KHOBRAGADE, J) (SMT.VIBHA KANKANWADI, J) KHUNTE