

Imran Khan @ Imran vs National Investigating Agency on 20 November, 2024

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NC: 2024:KHC:47179-DB
CRL.A No.171/2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

CRIMINAL APPEAL No.171/2024 (21(NIA))

BETWEEN:

1. IMRAN KHAN @ IMRAN
S/O USMAN GHANI KHAN
AGED ABOUT 32 YEARS
R/AT NO C/9 51, 4TH MAIN
METRO LAYOUT, NAYANDAHALLI
BENGALURU-560 039

2. MOHAMMED MANSOOR ALI KHAN
S/O ABDUL HAMEED
AGED ABOUT 33 YEARS
R/AT NO 20/1, 3RD FLOOR MARKET ROAD
NEW GURAPPANAPALYA
BENGALURU-560 029

...APPELLANTS

(BY SRI SIRAJUDDIN AHMED, ADVOCATE)

Digitally
signed by K S
RENUKAMBA
Location:
High Court of
Karnataka

AND:

NATIONAL INVESTIGATING AGENCY
MINISTRY OF HOME AFFAIRS, GOI
BRANCH OFFICE HYDERABAD
REP. BY SPL PUBLIC PROSECUTOR
OFFICE AT HIGH COURT COMPLEX
OPP TO VIDHANA SOUDHA
BANGALORE-560 001

...RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) OF
NATIONAL INVESTIGATION AGENCY ACT, 2008 READ WITH
SECTION 439 OF CR.P.C. PRAYING TO GRANT BAIL IN CRIME
NO.10/2020 REGISTERED BY SUDDAGUNTEPALYA POLICE STATION
IN SPL.C.NO.320/2020 PENDING IN THE COURT OF XLIX

FOR TRIAL OF NIA CASES) (CCH-50) AT BANGALORE FOR THE OFFENCES PERTAINING TO ACCUSED NO.8 UNDER SECTION 120B OF IPC, SECTION 25(1B)(a) OF ARMS ACT AND SECTIONS 18, 20 AND 39 OF UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 AND OFFENCES PERTAINING TO ACCUSED NO.10 UNDER SECTION 120B OF IPC, SECTION 25(1B)(a) OF ARMS ACT AND SECTIONS 17, 18, 18A, 20 AND 39 OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) Challenging dismissal of their bail application, accused Nos.8 and 10 in Spl.C.No.320/2020 have preferred the above appeal under Section 21(4) of the National Investigation Agency Act, 2008 (for short 'NIA Act').

2. Appellants and 19 other accused are facing trial in Spl.C.No.320/2020 on the file of XLIX Additional City Civil & Sessions Judge, (Special Court for trial of NIA Cases), (CCH-50), Bengaluru (for short 'Trial Court') for the offences punishable under Section 120B of IPC, Sections 25(1B)(a) of Arms Act, 1959 (for short 'Arms Act') and Sections 17, 18, 18A, 20, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAP Act').

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3. The case of the prosecution in brief is as follows:

(i) That accused No.1 and his associates/other accused being inspired by the ideology of proscribed terrorist organization ISIS, hatched criminal conspiracy to strike terror threatening the unity, integrity, security and sovereignty of India. They propagated and planned to indulge in terrorism with ISIS handlers for waging violent jihad in India and establishing Islamic Khalipha. They conspired to commit terrorist activities especially in Karnataka and Tamil Nadu. For that purpose they collected arms, ammunition and explosives as preparation for terrorist activities.

(ii) In furtherance of the same, accused No.1 started Al-Hind Research Foundation cum Library at Lakkasandra, Bengaluru in the pretext of charitable works. But that was not the registered trust. Initially the group motivated themselves with the ideology of violent jihad by watching religious videos, speeches of Islamic preachers and audios/videos of some Hindu leaders.

(iii) Initially, the group members were the close relatives of accused No.1 Mehboob Pasha. In 2016, accused No.11 was the first outsider to join Al-Hind Group. They recruited accused Nos.20, 19, 12, 15, 17 and 18 for terrorist NC: 2024:KHC:47179-DB activities. They collected donations from individuals and groups for the purpose of purchasing weapons, explosives, training materials, jungle camp materials and vehicles for illegal activities of Al-Hind. They procured and distributed jihadi literature and books promoting enmity between religious groups. They also conducted martial arts classes at late nights in secret manner. They also conducted meetings to hatch criminal conspiracy in Tamil Nadu and Karnataka.

(iv) Accused No.12 amongst them was Information Technology expert and hardcore fundamentalist. Since accused No.1 was not familiar with the operation of digital devices, he had taken assistance of accused No.20 for secret chatting with unknown ISIS handler. Accused Nos.2 and 20 were involved in cases in Tamil Nadu and they were released on bail. They planned for establishing ISIS/Daish wilayah near forests in South India for waging violent jihad and conspired to target/ murder Hindu leaders from deep forest, so that they could easily retreat without notice of anyone.

(v) It was further alleged that as part of criminal conspiracy, they identified secured hideouts at distant locations in Kolar, Kodagu and other places in Karnataka, Jambusar in Gujarat, Ratnagiri in Maharashtra, Chittoor in NC: 2024:KHC:47179-DB Andhra Pradesh, Burdwan and Siliguri in West Bengal. After planning terrorist attacks they made strategies for furthering their violent jihadi activities. Accused No.2 procured arms, ammunition from Mumbai through accused No.22. Accused Nos.1, 15 and 6 collected the first consignment of weapons from accused No.22 consisting of 4 pistols and 100 rounds of ammunition. Accused Nos.1, 8, 9 and 10 visited Shivanasamudra area in Chamaraajanagar District and Gundlupete area to verify suitable area for their hideouts and training. The weapons and jungle training materials were initially stocked at Al-Hind Office in the custody of accused No.10 (appellant No.2). Out of them accused No.1 issued 1 pistol and 11 live rounds to accused Nos.4 and 7 for targeting Hindu leaders and Police Officers. In the same way, accused No.1 also issued 2 pistols and 60 live rounds to accused No.9, 1 pistol and 29 live rounds to accused No.8 for preparation of terrorist attack.

(vi) During investigation, jungle camp training materials, mobile phones and mobile sim cards which were procured with the help of forged ID proofs of some persons without their knowledge, were recovered. Large quantities of explosive materials such as firecrackers, sparklers were also NC: 2024:KHC:47179-DB seized which were used to extract explosive content for the preparation of

IED. In execution of such conspiracy, accused Nos.4 and 7 shot dead the police officer by name Wilson near check post in Tamil Nadu, using arms, ammunitions provided to them by accused No.1, when he tried to check the vehicle of the said accused.

4. The allegations against accused Nos.8 and 10 are that they are relatives of accused No.1 who is the mastermind of all activities. They all are members of Al-Hind organization. They actively participated in secret places to make strategies for furthering violent Jihad and ISIS activities. Electronic gadgets were seized from their possession. They used to attend Jihadi classes. They were regular participants of martial art classes at Al-Hind office at late night hours. They used to attend the classes for handling of pistol, bow and arrows conducted by accused No.6 in Al-Hind Office. Accused No.10 was in-charge of those classes. They also visited Shivanasamudra and Gundlupete along with accused Nos.1 and 9 to find out suitable locations for carrying out their activities. Accused No.8 along with accused No.9 had hired vehicle from CW86 in December 2019 for transporting accused Nos.2, 3 and 5 from Bangalore to Burdwan, West Bengal, on NC: 2024:KHC:47179-DB the pretext of taking the vehicle to Hyderabad. Firecrackers intended for extracting explosive content from them to make IED, etc., stored in the house were seized from the house of Accused No.8. At his instance, the places from which fire crackers and explosive materials were procured were discovered. Accused No.10 collected funds from individuals and groups for furthering the activities of Al-Hind Group and transferred the said amount to accused No.1. In support of that, statements of bank account of accused No.1 were collected. There were many financial transactions with accused Nos.10 and 16. Accused No.1 under the direction of accused No.2, collected pistols and ammunitions from accused No.22 with the help of accused No.15 and accused No.2 and stored them in Al-Hind office under the custody of accused No.10. Then they were distributed to other accused for terrorist activities.

5. Appellants filed application before the Trial Court seeking bail. The same was opposed by the prosecution. The Trial Court on hearing the parties, by the impugned order has rejected the application on the ground that there is prima-facie material to show that the appellants have committed the offences alleged against them and in such cases, bar under NC: 2024:KHC:47179-DB Section 43D of the UAP Act is attracted. So far as the ground of delay urged by the appellants in conducting the proceedings before the Trial Court, the Trial Court observed that the appellants and their co-accused persons themselves were responsible for delay as they did not engage the Counsel in the proceedings and they have rejected the legal aid Counsel offered by the Trial Court.

6. Sri Sirajuddin Ahamed, learned Counsel for the appellants reiterating the grounds of appeal submits that absolutely there is no material against the appellants to hold that they have committed the offences attracting UAP Act and Al-Hind organization is not a scheduled organization under the UAP Act. Conducting Martial Arts training itself is not a terrorist act. Moreover they alleged weapons were not lethal weapons. He further submits that the appellants are in judicial custody since more than four years and if ultimately they are acquitted, damage caused to their liberty cannot be compensated. The charges are not yet framed. Inclusion of the offences under UAP Act does not bar the constitutional courts to grant bail.

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7. In support of his submissions, he relies on the following judgments:

(i) Jalaluddin Khan v. Union of India¹

(ii) Saleem Khan & Ors. v. State of Karnataka²

(iii) Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh³

8. Sri P.Prasanna Kumar, learned Special Public Prosecutor for the State reiterating the grounds in the counter/statement of objections submits that there is sufficient material to show that the appellants are associated with terrorist organization. They are members of the terrorist gang. There are sufficient materials to show that accused No.1 is terrorist gang leader and facilitated terrorist acts of the terrorist organization. The degree of proof in consideration of bail application is lesser than the degree of proof required at the stage of hearing before charge or at the trial stage. If charge sheet materials show involvement of the accused in the case, at the bail stage the Court below cannot conduct mini trial. The Trial Court on considering all the aspects has exercised its discretion to reject the bail application holding that Section 43D of UAP Act is attracted. The judgments relied 2024 SCC Online SC 1945 CrI.A.No.130/2021 DD 21.04.2022 2024 INSC 534

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NC: 2024:KHC:47179-DB on by the appellants' Counsel are applicable only if there is no material to show involvement of the accused in terrorist activities, therefore those judgments cannot be justifiably applied to the facts of the present case.

9. In support of his submissions, he relies on the following judgments:

(i) Jalaluddin Khan v. Union of India⁴

(ii) National Investigating Agency v. Zahoor Ahmad
Shah Watali⁵

(iii) Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli)⁶

(iv) Union of India v. Barakathullah⁷

10. Considering the submissions of both side and on examining the materials on record, the question that arises for consideration is "whether the Trial Court was justified in rejecting the application of the appellants?"

Analysis

11. The allegations against the appellants and others is that being provoked by the ideology of ISIS a proscribed terrorist organization, the accused with an intention to strike terror in India and to convert India into an Islamic country, conspired to strike terror in India and for that purpose they 2024 SCC Online SC 1945 (2019) 5 SCC 1 (2021) 6 SCC 230 2024 SCC Online SC 1019

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NC: 2024:KHC:47179-DB procured arms, ammunitions, recruited the persons and other members of their organization to give martial arts training to their service teams in remote forest area etc. To strike terror, they procured materials for preparation of improvised explosive devices, transported organization's human resources and in that process they were intercepted by the Police Officer in Tamil Nadu and they committed his murder.

12. First contention is that there is no prima -facie material to hold that the appellants were involved in the acts alleged. How the material has to be examined at the stage of grant of bail was enunciated by Hon'ble Supreme Court in the judgments in cases of Zahoor Ahmad Shah Watali, Ramesh Bhavan Rathod and Barakathullah referred to supra. It was held that at that stage elaborate examination and dissertation of the evidence is not required to be done. The Court is expected to record the finding on the basis of the broad probabilities regarding involvement of the accused in the offence. The degree of satisfaction that the Court has arrived at, at the time of consideration of the bail application is lighter than that at the stage of discharge. The Court is expected to record the finding on the basis of the broad probabilities regarding involvement of the accused and not beyond

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NC: 2024:KHC:47179-DB reasonable doubt. Admissibility of the documents relied upon by the prosecution cannot be questioned at that stage. In addition to that the Court has to take into consideration the gravity of the alleged offence, antecedents of the accused and the chance of repetition of such offence. It is no doubt true that in Jalaluddin's case relied on by learned Counsel for the appellant it was held that Section 43D of UAP Act does not bar the constitutional forum to grant bail. But that comes with caveat that such bar does not apply, if there are no grounds to believe that the accused are involved in terrorist activities.

13. In the present case, admittedly, the appellants are close relatives of accused No.1. They do not even dispute that in the charge sheet against accused No.8, the offences punishable under Sections 120B of IPC, Section 25(1B)(a) of the Arms Act and Sections 18, 20, 39 of UAP Act are invoked. As against accused No.10, in addition to the above offences, Sections 17 and 18A of UAP Act are invoked.

14. Offences under Sections 17, 18, 18A and 20 of UAP Act are punishable with imprisonment of not less than 5 years and upto life. The offence under Section 39 of UAP Act carries imprisonment upto 10 years.

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15. So far as accused No.8 the allegations are that he attended conspiracy meetings with accused No.2 and others in Al-Hind Office, Yedapalayam, Salem, Mysore; Jihadi and martial art classes

which were conducted at late night hours; attended pistol training classes conducted by accused No.6; visited Shivanasamudra and Gundlupete along with accused Nos.1, 9, 10 for arranging hideout shelters and hired vehicle for transporting accused Nos.2, 3 and 5 to West Bengal, Burdwan. He was arrested by Chennai police with 1 pistol and 29 rounds of 7.65 mm ammunition and they seized the training articles purchased including firecrackers for extracting explosive content for IED.

16. Same allegations mentioned above for accused No.8 were leveled against accused No.10 also. In addition to such allegations, it was alleged that he was close associate of accused No.1; custodian of the articles purchased along with accused Nos.1 and 9; he collected funds from individuals and groups for the activities of Al-Hind Group and he was custodian of pistol and ammunitions brought from Mumbai by accused No.15 till December 2019.

17. Statement of CW.83 and the charge sheet records speak about accused Nos.8, 9 and 10 visiting the house of

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NC: 2024:KHC:47179-DB CW83 at Kodagu with request to provide shelter for some criminals. CW.119 speaks about accused Nos.8 and 9 hiring his Innova Car in the guise of taking some person to Hyderabad, GPS of the vehicle showing the movement of vehicle in West Bengal and returning the same in bad condition.

18. CWs.88 and CW.89 speak about seizure of 1 pistol and 29 rounds of ammunition and other materials from accused No.8. Charge sheet material contains search proceedings in the house of accused No.8 and seizure of fire works and also his arrest and seizure of pistol and ammunition.

19. So far as accused No.10 (appellant No.2) statement of CW.72 is to the effect that he is close relative of accused Nos.8 and 9 and was aware that they along with accused No.16 conducted martial art classes and he produced firecrackers and sparklers which were given to him by accused No.10. There are records to show that there are bank transactions between accused Nos.16 and 10 i.e. appellant No.2.

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20. CWs.78 and 80 speak about providing and arranging shelter for accused No.10 and other co-accused in Madrassa/masjid, Mulbagal and Kolar.

21. CWs.81 and 82 speak about conducting martial arts training in Al-Hind Office, Yedapalayam during late night hours where accused No.10 was the in-charge of the said classes. CW.83 speaks about visit of accused No.10 along with accused Nos.8 and 9 with request to harbour persons involved in criminal cases in Tamil Nadu.

22. The statement of CW.120 who is none else but the brother-in-law of accused No.10, speaks about accused No.10 bringing two carton boxes with request to keep them in his house, later accused Nos.10 & 11 collecting the same and keeping that in the house of accused No.11.

23. As per the charge sheet records, Jihadi equipments and other articles were recovered at the instance of accused No.10 from Al-Hind Office and firecrackers, sparklers and mobiles were seized.

24. At the stage of granting of bail, the Court has to examine the materials available in the charge sheet records. Unless there are some inherent inconsistencies in the charge

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NC: 2024:KHC:47179-DB sheet material itself, there is no scope for the Court to hold mini trial keeping itself in the position of an adversary.

25. At this stage, the aforesaid materials show, there is prima-facie material to show that accused Nos.8 and 10 motivated by accused No.1 and inspired by the ideology of proscribed terrorist organization ISIS, hatched criminal conspiracy to strike terror in India. Though Al-Hind organization is not scheduled organization under First Schedule of UAP Act which is covered under the definition of terrorist group as per Section 2(l) of the UAP Act, there is sufficient material to show that said organization was concerned with terrorist activities.

26. Reading of the judgment in Jalaluddin's case referred to supra shows that, in that case there was no allegation that the said accused was member of the terrorist gang. Therefore the said judgment cannot be justifiably applied to the facts of the present case.

27. If there are materials to show that the accused were members of an association or gang which was concerned with terrorist activities, even if they are not directly involved in explosion, blasts or such destructive activities, other

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NC: 2024:KHC:47179-DB preparatory acts like raising funds, entering into conspiracy, organizing terrorist training camps, harbouring, etc. attract the offences under Sections 17, 18, 18A, 20 of UAP Act. The said offences are punishable with imprisonment upto life. Thus, it cannot be said that the appellants have served more than half ($\frac{1}{2}$) of the prescribed sentence, therefore entitled to bail.

28. So far as delay in trial, learned Counsel for the appellant does not dispute that the proceedings before the trial Court was delayed because of reluctance of the appellant and co-accused to engage advocate. Admittedly they also rejected the Court's offer to provide free legal aid/counsel. They cannot seek incentive of bail for their own contribution in delay.

29. Learned Counsel for the appellant submits that on the same allegations, accused No.8 is in judicial custody in case registered in Tamil Nadu and on the same allegations, he is arrested in this

case. That amounts to double jeopardy.

30. The materials on record show that accused No.8 was arrested in Chennai in case of recovery of pistol and ammunitions at Chennai. In the present case, said fact is pleaded to show his antecedents. But he is charge sheeted in this case on the grounds that he conspired with other accused

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NC: 2024:KHC:47179-DB to promote jihadi activities in Karnataka by conducting martial art classes and to assist other accused in their activities of handling arms and ammunitions. Therefore there is no merit in the contention that the allegations made in the present case and the case at Chennai are one and the same and that amounts to double jeopardy.

31. Though learned Counsel for the appellants relied on several judgments, suffice it to say that those judgments are not applicable to the facts of the present case. The Trial Court considering the entire materials on record judiciously has rejected the bail application. We do not find any ground to interfere with the order of the Trial Court. Hence the following:

ORDER The appeal is dismissed.

Sd/-

(K.S.MUDAGAL) JUDGE Sd/-

(VIJAYKUMAR A. PATIL) JUDGE KSR