



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 78 OF 2024

Shaikh Sadique Isaq Qureshi ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Mihir Desai, Sr. Advocate a/w. Hasnain Kazi, Shraddha Vavhal
and Soham Jadhav i/b. Saipan Shaikh for Appellant.

Mr. J. P. Yagnik, APP for State/Respondent.

Mr. Kishor Parab, ACP (I.O.) and Mr. Kalsekar (A.S.I.) ATS.

CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.

RESERVED ON : 20 MARCH 2025
PRONOUNCED ON : 28 MARCH 2025

ORDER: (*Per Sarang V. Kotwal, J.*)

1. The Appellant is the original accused No.2 in NIA Special Case No.206 of 2023 before the learned Additional Sessions Judge and Special Judge under NIA, Greater Mumbai. He had preferred an application for bail vide Exhibit-22 before the learned Judge. It was rejected vide the order dated 21.12.2023 and hence, the Appellant has preferred the present Appeal; essentially for his

release on bail in connection with the said trial. The trial arises out of the investigation into C.R.No.19 of 2022 registered with Anti Terrorism Squad (hereinafter referred to as 'ATS'), Kalachowky police station, Mumbai, and the Appellant is facing charges under Sections 120-B, 121-A and 153-A of the Indian Penal Code (for short 'I.P.C.') r/w. Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA'). The Appellant was arrested on 22.09.2022 and since then he is in custody. The charges are not yet framed.

2. The prosecution case as is reflected in Column 16 of the charge-sheet, is as follows:

The first informant API Rohit Rasam, ATS, Kalachowky, Mumbai, received a secret information that the members of the organization known as Popular Front of India (hereinafter referred to as 'PFI') were conspiring together to revolt against the Government of India. The charge-sheet mentions the information related to their members Mazhar Khan, Momin Moinuddin Gulam Hussain @ Moin Mistry, Mohammad Iqbal Ibrahim Khan,

Mohammad Asif Adhikari and the present Appellant. They had arranged different programs in February 2022 at Dharavi, Kurla, Chembur, Trombay etc. It is further mentioned that the object of their activities was to bring the majority of the population of this nation under control, to establish the rule of their own religion and to substitute the Constitution of India with their own personal law. The Appellant and Mohammad Asif Adhikari had knowledge of law. They educated other associates regarding the lacunae in the law. Mazhar Khan was identifying vulnerable youth and used to recruit them with PFI. Moin Mistry was well versed in computer and mobile phone technology. He used to educate the members as to how the digital data and equipments should be concealed from the investigating agencies. Mohammad Iqbal used to give physical education. Based on this information, C.R.No.19 of 2022 was registered at ATS Kalachowky police station, Mumbai. The charge-sheet thereafter mentions the material against each of these members-accused. The charge-sheet contains statements, panchanamas and other material collected during investigation. The Column 16 of the charge-sheet itself refers to the gist of the

statements of various witnesses supporting the accusations. Subsequently, Sections 201 and 116 of the I.P.C. were added. There is a reference to C.R.No.20 of 2022, C.R.No.21 of 2022, C.R.No.22 of 2022 and C.R.No.23 of 2022 registered at the same police station against different accused. There were allegations that, all those accused in these different offences were in touch with each other. To achieve their objective, contribution was collected from the members of their community.

3. On 16.01.2023, the Additional Chief Secretary to the Home Department accorded sanction for prosecution against the Appellant and the other accused, for taking cognizance by the competent Court in respect of the said offences under UAPA. Separate sanction dated 18.01.2023 was accorded by the Government of Maharashtra for prosecution under the provision of Section 196(1) of the Cr.P.C.

4. We have heard Mr. Mihir Desai, learned Senior counsel for the Appellant and Mr. Yagnik, learned APP for the State.

5. While making submissions, both the learned counsel

referred to various statements of the witnesses. However, for the safety of those witnesses, their names were masked in these statements and it would not be proper to name those witnesses in this order, as well. Therefore, while referring to these statements we have mentioned the page numbers mentioned in this Appeal Memo and in the Affidavit filed by the Respondents.

6. Shri. Mihir Desai, learned senior counsel made the following submissions:

The PFI was banned on 27.09.2022 i.e. 5 days after the Appellant's arrest. Therefore, it cannot be said that he had committed any offence under UAPA. Since he was already in custody when the organization was banned, it cannot be said that he continued the activities of PFI after it was banned. Shri. Desai referred to the statements of the witnesses at page Nos.321, 327, 331, 336, 350 and 357. The provision of only Section 13(1)(b) of UAPA is applied in this case which falls under Chapter III of the UAPA and not under Chapters IV and VI of the UAPA, therefore, rigours of Section 43D(5) of the UAPA are not applicable. The

incriminating material referred to in the charge-sheet is not found from the Appellant. Even if it is assumed that the material found from the other accused is incriminating, the Appellant has no connection with such material. The acts attributed to the Appellant did not attract any ingredient of any of the sections applied in this case. The Appellant was a practicing advocate. At the highest, the allegations against him are that he was educating the members of PFI about their legal rights; which could not be termed as an offence. Hence, the activities alleged against him did not attract the provision of Section 121-A of the I.P.C. The maximum punishment prescribed for Section 13(1)(b) of the UAPA is 7 years. The Appellant is already in custody since 22.09.2022 i.e. for about two and a half years, out of the possible maximum sentence of 7 years. Till today, even the charges are not framed. There are more than 255 witnesses which are cited in the charge-sheet, therefore, the trial is not likely to start and conclude within a reasonable time frame. Shri. Desai, therefore, submitted that, based on all these submissions the Appellant be directed to be released on bail.

7. In support of his contention, Shri. Desai relied on a few

judgments which are as follows:

- i) Jalaluddin Khan Versus Union of India¹**
- ii) Athar Parwez Versus Union of India²**
- iii) Unais Umar Khaiyyam Patel Vs. The Anti Terrorism Squad & Anr.³**
- iv) Kayyum Abdul Shaikh @ Abdul Kayyum Badulla Sheikh VS. The State of Maharashtra⁴**
- v) Razi Ahmed Khan VS. The State of Maharashtra⁵**

8. Shri. Desai submitted that, Razi Khan, Kayyum Shaikh and Unais Patel, who were similarly charged in another offence, had sought bail by challenging the order of the NIA Court in Criminal Appeal No.883 of 2023, Criminal Appeal No.1151 of 2023 and Criminal Appeal No.206 of 2024 before this Court seeking bail. All these Appeals were dismissed by a Division Bench of this Court. The accused in those cases had approached the Hon'ble Supreme Court where their Criminal Appeals were allowed and all of them were granted bail. He submitted that, on the same consideration the Appellant also deserves to be released

1 2024 SCC OnLine SC 1945

2 Criminal Appeal No.5387 of 2024 decided by the Hon'ble Supreme Court on 17.12.2024.

3 Criminal Appeal No.4722 of 2024 decided by the Hon'ble Supreme Court on 22.11.2024.

4 Criminal Appeal No.788 of 2025 decided by the Hon'ble Supreme Court on 17.02.2025.

5 Criminal Appeal No.4940 of 2024 decided by the Hon'ble Supreme Court on 02.12.2024.

on bail.

9. Shri. Yagnik, learned APP submitted that the material recovered during the investigation includes a vital document in the nature of 'road map' showing the objective of PFI. There are various stages and objectives mentioned in that road-map. There are guidelines in that document as to how, and, in what manner those objectives could be achieved. He submitted that, all the accused including the present Appellant were working towards achieving that objective. The activities attributed to the Appellant are reflected in the statements of various witnesses. Those activities are a part of the plan which was to be executed. Shri. Yagnik referred to the contents recovered from the Appellant's laptop. He referred to the statements which are a part of the Appeal memo and to which the reference was made by Shri. Desai. Shri. Yagnik also referred to the other statements of the witnesses which are at Page Nos.401, 406, 410, 415, 436 of the Affidavit and the Additional Affidavit filed on behalf of the investigating agency. The document in the nature of 'road-map' shows wide conspiracy which is a serious threat to the security of the nation. The material

collected against the Appellant will have to be tested along with the material against the other accused to see the cumulative effect of the entire evidence collected during investigation.

10. In support of his contention, Shri. Yagnik relied on the following judgments:

- i) **Union of India rep. by the Inspector of Police National Investigation Agency Chennai Branch Versus Barakathullah etc.**⁶
- ii) **State of NCT of Delhi Versus Raj Kumar Alias Lovepreet Alias Lovely**⁷
- iii) **Redaul Hussain Khan Versus National Investigation Agency**⁸

11. We have considered these submissions. The submissions of Shri. Yagnik in respect of the road-map are undoubtedly serious. The document referred to by Shri. Yagnik was found in the internal shared storage of the mobile phone recovered from the Accused No.1 Mazhar Khan. It was titled as 'Draft-booklet-on-roadmap-for Regaining the glory of Islam in India-by 2047(1)'. The first page mentions the title as:

6 2024 SCC OnLine SC 1019.

7 (2024) 2 Supreme Court Cases 632.

8 (2010) 1 Supreme Court Cases 521.

“India 2047Towards Rule of Islam in India*Internal document; Not for circulation”*

The charge-sheet mentions that the said document described as to how the PFI was hatching conspiracy to achieve their objectives. The PFI was planning to reach out to every single household from their community. There were four stages for executing the conspiracy. In the first stage, all the Muslims were sought to be brought under the umbrella of the PFI and they were to be constantly reminded as to how injustice was caused to them in India. The aim was to get as many members as possible and to give them training for using weapons. In the second stage, sometimes violence was to be resorted to and the trained members were to be given special training for use of explosives. There were plans to divide the Hindu population on the basis of caste etc. The aim was to infiltrate the important departments like Police, Army and Judiciary. Another aim was to establish connection with the other Islamic countries. In the third stage, targeting a particular organization was the main aim and the other aim was to form a political party consisting of Scheduled

Caste, Scheduled Tribes, OBC and Muslims. At that stage, further aim was to show their strength and to store explosives. In the last and the fourth stage the aim was to take over power single handedly and to fill all the important posts in the Government, Judiciary, Police and Army by the committed members of PFI. At that stage, the aim was to finish those who oppose PFI.

Undoubtedly, the objectives and aim of this document are extremely dangerous. However, in the context of the present Appeal, it has to be seen, whether there is any material, to even suggest that the Appellant, in particular, was aware of this document, whether he was acting towards fulfillment of those objectives or whether he had committed any act suggesting that he had knowingly committed any acts which helped the PFI to achieve those objectives in any manner. In this case, in the entire record we did not find anything to show that the Appellant had acted in any manner in support of this document or even propagating ideas and objectives mentioned in that document. The charge-sheet mentions different social media platforms on which the Accused No.1 Mazhar Khan had uploaded and used different

instigating speeches, but again those materials are restricted to the accused No.1 Mazhar Khan.

12. As far as the Accused No.3 Mohammad Khan is concerned, his mobile phone displayed video clips showing training imparted to some members in respect of use of *lathis*, *judo karate etc.* Some of the videos showed how a petrol bomb can be made by filling petrol in a glass bottle. This again may refer to the objectives of the road-map of PFI. But again, in this connection there is no material against the present Appellant. In the data collected from the mobile phone of the Accused No.4 Moin Mistry, there is a reference to weapons, acid etc. which could be used for attacking. There are few images wherein the accused Asif was seen with fire arms. In some videos, accused Asif was seen giving inciting speeches. All these materials are serious and could be related to the road-map document of PFI. But the material collected against the Appellant referred to data recovered from his mobile phone and laptop. In one video, the training in *judo karate* and use of *lathis* was seen. In another video, it was mentioned that PFI was planning to use legal methods in a democratic way to get

justice. In another video, there was a speech of one Anis Ahemad, the Secretary of PFI mentioning that the laws were against them. These are the nature of videos recovered from him.

13. The witnesses' statements referred to by both the learned counsel are as follows. As mentioned earlier, those statements would be referred to by the page numbers in the Appeal Memo.

14. **The statement of witness at Page No.321:-** This witness had completed 40 days course in the study of Cricket rules with Mumbai Cricket Association. He had attended three courses conducted by PFI in the year 2017. He has stated that, he contacted the Appellant and told the Appellant that he wanted to work with PFI. He came to know about the Appellant's name through social media. The Appellant suggested that, he could take training of PFI at Pune and Kerala. Accordingly, he took the training. He has not elaborated what training he had taken and whether it was in furtherance of the objectives of the road-map. This statement is vague and except stating that the Appellant used to give speeches, there is nothing against the Appellant which could be termed as incriminating. The nature of speeches is also

not mentioned. His statement shows that, in the year 2018 he had distributed books to poor students, and he had taken part in the demonstration in the year 2020 on behalf of PFI. This statement is hardly incriminating against the Appellant.

15. **The statement of witness at Page No.327:-** This witness's statement is almost similar to the statement of witness at Page No.321. This witness had also contacted the Appellant on his own and after that, he became a member of PFI since 2017 upto 2021. Again, we do not find anything incriminating against the Appellant, in this statement.

16. **The statement of witness at Page No.331:-** This witness had also completed three courses of PFI. He had referred to a function organized by PFI in September 2021 which was attended by all the accused, mentioned herein above, and the present Appellant. In that function, PFI had distributed funds. In 2021, Asif Adhikari member of PFI had arranged a program for legal awareness. At that time, the Appellant had given a lecture. He had given information to those who had attended that function as to how they should respond to the inquiry conducted by the police

and what rights they had under the law.

This statement, at the highest, shows that the Appellant was telling the members who attended the lectures as to what were their rights and how they should respond to the police inquiry. This statement nowhere shows that the Appellant had suggested to mislead the police or to give false information. The reference was only to the rights which the citizens had, when the police inquired with them. Therefore, even this statement is hardly incriminating.

17. **The statement of witness at Page No.336:-** This witness has stated that, after 2017 he became a member of PFI. The Appellant used to give lectures saying that our democracy is dependent on Courts, Media and Administration.

Again we do not find anything wrong in the Appellant giving lectures on these topics. It is nowhere mentioned that, he was instigating the members to commit any offence or to wage war against India. This witness has further stated that in September 2021, PFI had arranged one program in which all the accused including the Appellant and Asif were present. This, at the

highest, would show that the Appellant attended many functions with the other accused, but beyond that, it does not show that the Appellant had conducted any activities in support of the road-map. In a function conducted in December 2021, the Appellant had given a lecture and had similarly informed as to how to answer the police if an inquiry was made with the members. He had mentioned what documents could be asked from the police and what were the rights they could exercise. This information is similar to the one mentioned by the earlier witness.

18. **The statement of witness at Page No.354:-** He has stated that the Appellant had attended certain meetings with the accused Mazhar and Asif. But what transpired in those meetings, which this witness had attended, was not mentioned.

19. **The statement of witness at Page No.357:-** He has stated that the Appellant had become the State President of Social Democratic Party of India (hereinafter referred to as 'SDPI') in the year 2014. The Appellant appointed this witness as the President of Bhiwandi City. The Appellant had told this witness to get members for SDPI. The Appellant was working for both; the PFI

and the SDPI.

20. **The statement of witness at Page No.367:-** He has also stated that the Appellant was giving lectures on legal awareness and that the Appellant had taken part in the demonstration conducted against mob lynching in the year 2018.

21. The statement of Appellant's wife was also recorded. She has stated about his family background. The Appellant was working in an I.T. company as an Engineer. In the year 2014 he became the State President of SDPI. Between 2015 to 2016 the Appellant worked hard to earn livelihood by giving private tuitions etc. In 2019, he got a job as a teacher in a school, but in 2020 he lost his job. After that the Appellant had to do some petty jobs to earn his livelihood. In between, he completed his course in B.A.LLB. and got a degree in law. Since about past two years before 2022, he was working as an Assistant with a Senior Advocate. Again this statement shows the family background and the education taken by the Appellant.

22. The statements referred to by Shri. Yagnik at page Nos.321 and 327 are of the same witnesses. In addition, he

referred to the statement at Page No.401. But this statement was in respect of the acts of Asif. This witness did not know the Appellant.

23. The witness at Page No.406 had joined the PFI. He himself had contacted the Appellant and on his suggestion this witness had taken training in Pune and Kerala. This witness became a member of the SDPI in the year 2022.

24. The witness at Page No.415 was the wife of Moinuddin Momin. The Appellant had told her about National Women's Front and had asked her to join PFI for their women's wing.

25. All these statements referred to herein above do not go beyond the allegations that the Appellant was giving speeches about legal awareness and making the members aware of their rights and how to respond when the police came for inquiry. This by itself cannot be termed as an anti-national activity. Though these statements also suggest that the Appellant was in touch and was regularly together with the other accused, that again does not by itself show that the Appellant was aware of the ultimate aim and objectives referred to in the road-map. It can only be an

indirect inference which could be drawn to that effect. The prosecution will have to establish that particular aspect during trial. That question is left open to be decided during trial. However, at this stage, leniency can be shown to the Appellant, for consideration of his prayer for bail. The material in the charge-sheet and the statements referred to herein above show serious allegations against the other accused including possession of road-map and other incriminating material of giving training of explosives etc. But these materials are found against the other accused and not against the present Appellant.

26. Learned APP Shri. Yagnik referred to the contents of the laptop and a mobile phone of the present Appellant. There is a reference to the three videos mentioned at Page Nos.253 to 256. The first video is about the training for using *lathis and karate*. There is no reference to any training in explosives. The other video was about the speech given by one Anis mentioning that they would use democratic and legal route to get justice. Again this cannot be termed as an incriminating piece of evidence. The third video is again a speech of the same Anis mentioning as to how the

laws were against the Muslims. Again the Appellant has nothing to do with that speech. There is one photograph of the Appellant giving speech. This photo is undisputed but not incriminating against the Appellant. There is one screenshot of a message but we do not find that screenshot attracted any provision of Section 121-A of the I.P.C. or the offence under UAPA.

27. Shri. Desai, as mentioned earlier, has relied on certain orders passed by the Hon'ble Supreme Court in granting bail to some of the accused who were similarly charged. He referred to the orders passed by the Hon'ble Supreme Court in the case of **Unais Patel (supra), Razi Khan (supra) and Kayyum Shaikh (supra)**. All these three accused had approached this Court in Criminal Appeal No.206 of 2024, Criminal Appeal No.883 of 2023 and Criminal Appeal No.1151 of 2023 respectively. All these appeals were decided by another Division Bench of this Court vide a common order dated 11.06.2024. The said order shows that, all these accused were arrested in connection with C.R.No.20 of 2021 registered with ATS Kalachowky police station, Mumbai. The Division Bench had dismissed their Appeals thereby rejecting their

prayers for bail. These three accused then had approached the Hon'ble Supreme Court. The accused Unais was granted bail on the basis of three factors as follows:

- i] The limited role ascribed to him.
- ii] He had undergone incarceration for a period of more than two years and two months and 190 witnesses were to be examined.
- iii] Stringent conditions for bail U/s.43D(5) of UAPA were not applicable.

28. In **Razi Khan's case (supra)** Hon'ble Supreme Court observed that, prima facie nothing incriminating was found in the conversation involving that accused, and bail was granted to him.

29. In the case of **Kayyum Shaikh (supra)** it was observed that stringent conditions U/s.43D(5) of the UAPA were not applicable. The other two accused i.e. Razi and Unais were granted bail. Kayyum was in custody for more than 2 years and 4 months and 190 witnesses were to be examined and the trial would not be completed in near future. Thus, the Hon'ble Supreme Court considered the merits of the matter and other factors and granted bail to all these three accused.

30. Similarly, in the case before us, as discussed earlier, we find that, on merits, at this stage, the Appellant has made out a case for grant of bail. In addition, the stringent conditions U/s.43D(5) of the UAPA are not applicable. Mainly on these grounds the Appellant deserves to be released on bail.

31. Shri. Yagnik submitted that the Appellant has four other offences pending against him. But those offences are from the year 2009 and are in the nature of offences U/s.3 and 7 of The Maharashtra Prevention of Defacement of Property Act, 1995. In one of those matters arising out of C.R.No.3169 of 2009 of Samarth police station, the Appellant is acquitted. Even in C.R.No.3445 of 2009 of Band Garden police station he was acquitted. Therefore, only two other offences i.e. C.R.No.3237 of 2009 of Wanawadi police station and C.R.No.127 of 2010 of Samarth police station are still pending. But these are the offences from the year 2009-2010. There is no live-link between these offences and the present offence, therefore, those antecedents will not come in the way of the Appellant for being released on bail in the present offence.

32. Shri. Yagnik relied on the Judgment of the Hon'ble Supreme Court in the case of **Barakathullah (supra)** wherein it was observed that, National security was of paramount importance and any act in aid to any terrorist act – violent or non violent was liable to be restricted. In the present case, no role is ascribed to the Appellant of committing any terrorist act.

33. In the case of **Raj Kumar (supra)** relied on by Shri. Yagnik, it was observed that, for consideration of bail, the nature of the offence which involved terrorist activities having not only pan India impact but also impact on other enemy States, needs to be taken into consideration and the matter should not be taken lightly. But in the present case, there is no such role shown at least against the present Appellant.

34. In the case of **Redaul Hussain Khan (supra)** the Hon'ble Supreme Court had observed that, merely because the Association was not declared as unlawful association, when the petitioner in that case was arrested, it could not be said that the organization may not have indulged in the terrorist act and the petitioner could

not have any knowledge of such activities.

In the present case, we have considered the entire material and there is nothing to show that the Appellant had the requisite knowledge. At the highest, the material against him shows that he was in touch with the other members of PFI who were aware of the road-map. But the statements of the witnesses referred to herein above nowhere suggest that the Appellant had carried on any activity which were in furtherance of the objectives of the road-map document.

35. As mentioned earlier, the prosecution has cited more than 250 witnesses in the charge-sheet and Shri. Yagnik has submitted that they intend to examine at least 60 witnesses out of them. Till today, even the charges are not framed. The Appellant is in custody for more than two and a half years. Therefore, the cumulative effect of this discussion is that the Appellant deserves to be released on bail. However, it is specifically made clear that all these observations are made in this Appeal only for consideration of the prayer for releasing the Appellant on bail. The prosecution

shall have full opportunity to establish their case against the Appellant during the trial. The Trial Court shall not be influenced by any observations, on merits, made in this order granting bail to the Appellant.

36. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The Appellant is directed to be released on bail in connection with NIA Special Case No.206 of 2023 before the Special Judge under NIA, arising out of C.R.No.19 of 2022 registered with Anti Terrorism Squad, Kalachowky police station, Mumbai, on his executing P. R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount; subject to following conditions:

- I) The Appellant shall deposit his Passport, if any, with the investigating agency, before the Appellant is released on bail.
- II) The Appellant shall report to the ATS

Kalachowky police station, Mumbai
on every alternate Saturday, between
4:00p.m. to 5:00p.m.

- III) The Appellant shall not tamper with
the evidence and shall not influence
or tamper any witness.
- IV) The Appellant shall remain present
on all the dates before the Trial Court
and shall co-operate in expeditious
disposal of the Trial.

iii) The Appeal is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)