



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 15<sup>th</sup> DAY OF JUNE, 2023**

**PRESENT**

**THE HON'BLE MRS JUSTICE K.S.MUDAGAL**

**AND**

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

**CRIMINAL APPEAL NO.1527/2022 (NIA)**

**BETWEEN:**

ZABIULLA @ ZABIBULLA  
S/O A ISMAIL  
AGED ABOUT 25 YEARS  
R/AT NO.175/2  
ASHWATHKATTA ROAD  
OPP: GANESH TEMPLE  
OLD GURAPPANA PALYA  
BTM LAYOUT  
SUGGUNAPALYA  
BANGALORE -560 029

...APPELLANT

(BY SRI.BALAKRISHNAN, ADVOCATE)

**AND:**

STATE OF KARNATAKA  
MICO LAYOUT POLICE STATION  
REP. BY SPECIAL PUBLIC PROSECUTOR (NIA)  
HIGH COURT BUILDING  
BENGALURU -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, PRAYING TO SET

ASIDE THE ORDER OF XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, SPECIAL COURT FOR TRAIL OF NIA CASES (CCH-50) BENGALURU DATED 08.07.2022 IN CRL.MISC.NO.6090/2022 AND ETC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 29.05.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

Challenging the order of dismissal of his bail petition, accused No.16 in Spl.C.C.No.320/2020 on the file of 69<sup>th</sup> Addl. City Civil and Sessions Judge (Spl. Court for trial of NIA cases), Bengaluru has preferred this appeal.

2. The brief facts of the case are as follows:

On 10.01.2020, Shri Niranjana Kumar C, Inspector, CCB, Economic Offences Wing, Bengaluru City submitted a written complaint at Suddaguntepalya Police Station, Bengaluru to the effect that, Mehaboob Pasha (A-1), resident of Gurappanapalya, Bengaluru, Karnataka in association with Khaja Moideen (A-2), who was accused in several cases registered in Tamil Nadu related to terrorism, murder etc. formed a terror group with young Muslims in South India. They selected their base at Bengaluru. They conducted several criminal conspiracy meetings

at the house of accused Mehboob Pasha (A-1) and Zabiulla (A-16) and at the Al-Hind Office in Bengaluru and other places in Karnataka and Tamil Nadu since April, 2019. They propagated the ideology of the proscribed terrorist organization ISIS. **They conspired to collect Arms and Explosives for murdering Hindu leaders and police officers thereby creating communal riots.** They **recruited** vulnerable Muslim youths **with intention to carry out terrorist attacks in South India especially in Karnataka and Tamil Nadu.**

3. Based on the said written complaint, Crime No.10/2020 dated 10.01.2020 under sections 153A, 121A, 120B, 122, 123, 124A and 125 of Indian Penal Code, 1860 and section 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 ('the UAP Act' for short) was registered at Suddaguntepalya Police Station, Bengaluru, Karnataka against Mehaboob Pasha (A-1) and 16 others.

4. Subsequently, considering the gravity of the offences and interstate and international ramifications of the same, the Ministry of Home Affairs, New Delhi, in exercise of the powers

conferred under section 6(4) read with Section 8 of National Investigation Agency Act 2008, issued its order vide No.11011/11/2020/NIA dated 22<sup>nd</sup> January, 2020, directing the National Investigation Agency to take up the investigation of the case. Accordingly, National Investigation Agency (NIA) re-registered the said case in RC-04/2020/NIA/DLI, u/s 153A, 121A, 120B, 122, 123, 124A and 125 of IPC and section 13, 18 and 20 of UA (P) Act at NIA, New Delhi on 23.01.2020.

5. After investigation NIA filed charge sheet against accused Nos.1 to 21 for the offences punishable under Sections 17, 18, 18A, 18B, 19, 20, 38 and 39 of UAP Act, Section 25(1B) of the Arms Act and Section 120B of IPC specifiable to each individual accused. In the charge sheet the permission was sought to conduct further investigation. Permission was sought to conduct further investigation against accused Nos.22 and 23 the other suspected accused.

6. The charge sheet allegations against the appellant are that he has committed the offences under Sections 17, 18, 18A, 20 and 39 of UAP Act and Section 120B of IPC. It was

alleged that he conspired with the other accused to indulge in terrorist acts to achieve the aim of the ISIS a terrorist organization and for that purpose he propagated the ideologies of ISIS, mobilized the funds, transferred them to accused No.1, secured required articles to conduct the terrorist training camps, organized them and he too took training in martial arts including handling of the pistol, arrows and bows.

7. The appellant's earlier applications for bail were rejected by the trial Court on the ground that there is prima facie material to show his involvement in the offences alleged against him, therefore, Section 43D(5) of the UAP Act bars granting him bail. Admittedly, the appellant did not challenge that order by filing any appeal.

8. The appellant and accused No.19 Syed Fasiur Rehman again filed bail petition in CrI.Misc. No.6090/2022 before the trial Court. The trial Court on hearing both side by the impugned order rejected the said application on the ground that the earlier application was rejected on merits and no changed circumstances were made out. The impugned order

shows that the appellant contended that after the earlier order, accused No.11 was granted bail by this Court, therefore parity applies and that was the changed circumstance. The trial Court rejected the said contention also holding that the *overtacts* attributed to the petitioners and accused No.11 were not one and the same.

9. The respondent has filed its counter to the appeal.

10. Heard both side.

***Submissions of Sri S.Balan, learned counsel for the appellant:***

11. To attract the charges under Sections 17, 18, 18A, 209 and 39 of UAP Act, either the appellant should have committed a terrorist act or should have been member of terrorist organization as contemplated under Section 2(k) & (m) read with Section 15 of the UAP Act. Al-Hind organization to which the appellant allegedly belonged to was not an organization enlisted in First Schedule of the UAP Act, therefore UAP Act does not apply. Probably for that reason the Investigating Officer has not charge sheeted the appellant for the offence punishable under Section 16 of UAP Act. If the UAP

Act is not applicable, the question of considering *prima facie* case does not arise. More over there was no *prima facie* material against the appellant to show that he was involved in the offences alleged against him. Accused No.11 against whom the similar allegations were made was granted bail by this Court in Crl.A.No.130/2021. Therefore on the ground of parity also the appellant is entitled to grant of bail. The trial Court committed error in rejecting the appellant's bail application overlooking the order of this Court in Crl.A.No.130/2021 and the non application of the provisions of the UAP Act and by applying Section 43D(5) of the UAP Act.

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

1. Saleem Khan and Ors. Vs. State of Karnataka<sup>1</sup>
2. Iqbal Ahmed Kabir Ahmed Vs. The State of Maharashtra<sup>2</sup>
3. State of Kerala Vs. Raneef<sup>3</sup>
4. A.Ramachandran Vs. Central Bureau of Investigation & Ors.<sup>4</sup>

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<sup>1</sup> Crl.A.No.130/2021 D.D.21.04.2022

<sup>2</sup> 2021 SCC online Bom.1805

<sup>3</sup> (2011) 1 SCC 784

<sup>4</sup> 2015 SCC online Ker.17832

5. Devendar Gupta & Ors. Vs. National Investigation Agency<sup>5</sup>
6. Arup Bhuyan Vs. State of Assam<sup>6</sup>
7. Faizan Khan Vs. State NCT of Delhi<sup>7</sup>
8. Vikram Vinay Bhawe Vs. State of Maharashtra & Anr. <sup>8</sup>
9. Asif Iqbal Tanha Vs. State of NCT Delhi<sup>9</sup>
10. Thwaha Fasal Vs. Union of India<sup>10</sup>
11. C.K.Ramachandran Vs. State of Central Bureau of Investigation & Anr. <sup>11</sup>

**Submissions of Sri Prasanna Kumar.K., learned Standing Counsel the respondent:**

13. Even though Al-Hind was not proscribed organization, it had the links with ISIS a proscribed organization and is aiding and supporting the activities of ISIS. Al-Hind though not enlisted terrorist organization, but is a terrorist gang. Section 15 of UAP Act does not speak of commission of acts of terrorism only by the terrorist organization, but it refers to any individual committing such acts. Sections 17, 18, 18A of UAP Act are independent of Section 39 of UAP Act. Therefore, the

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<sup>5</sup> 2014 SCC Online AP 192

<sup>6</sup> 2023 SCC Online SC 338

<sup>7</sup> 2020 SCC Online Del. 1365

<sup>8</sup> 2021 SCC Online Bom 680

<sup>9</sup> 2021 SCC Online Del 3253

<sup>10</sup> 2021 SCC Online SC 1000

<sup>11</sup> 2020 SCC Online Ker. 9394



interpretation that to attract the UAP Act, one should be the member of terrorist organization is wholly misconceived. Further the allegations against the appellant and accused No.11 were not one and the same. The judgment in Crl.A.No.130/2021 has been challenged before the Hon'ble Supreme Court and the same is still pending in Spl.Leave to appeal (Crl). No.11482/2022. Therefore the appellant cannot claim the parity. So far as the merits of the case, the trial Court had rejected the appellant's earlier application on merits. He did not challenge that order. Therefore, it is not open to him to urge the ground of *prima facie* material or bar of Section 43D(5) of the Act. The judgments relied on by learned Counsel for the appellant are not applicable.

14. On careful consideration of the submission of both side and the material on record, the question that arises for consideration is;

“Whether the impugned order of rejection of bail application of the appellant suffers any illegality or perversity ?”

**ANALYSIS**

15. The allegations against the appellant in the charge sheet is that since 2015 he is associated with Al Hind group founded by accused No.1 which is propagating the ideologies and aiding the activities of ISIS a proscribed terrorist organization. It is further alleged that he conspired with them, raised funds and transferred the same to accused No.1 for such illegal activities, attended jihadi and martial arts classes for handling arms. Thereby committed the offences under Sections 17, 18, 18A 20 and 39 of UAP Act read with section 120B IPC.

16. The sum and substance of the arguments of the appellant's counsel is that to invoke the provisions of the UAP Act more particularly section 43D(5) of the Act a person should have committed the Terrorist act contemplated under Section 15 of the UAP Act or he should have been the member of Terrorist organization. It is contended that neither Al Hind with which the appellant is associated is a terrorist organization nor he has committed a terrorist act as contemplated under Section 15 of the UAP Act.

17. Therefore the Court has to examine whether to invoke Sections 17, 18 and 18A of the UAP Act the accused shall be necessarily a member of terrorist organization. For that purpose it is necessary to examine those provisions which read as follows:.

**“Section 17.** Punishment for raising funds for **terrorist act.**—**Whoever**, in India or in a foreign country, directly or indirectly, raises or **provides funds** or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, **knowing that such funds are likely to be used**, in full or in part by **such person or persons** or by a terrorist organisation or by a **terrorist gang** or by an **individual terrorist to commit a terrorist act**, notwithstanding whether such funds were actually used or not for commission of such 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.

**Section 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 organizing of terrorist camps.—***Whoever organizes* or causes to be organized *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.

18. None of the above provisions say that the person committing the aforesaid offences must be the member of a terrorist organization or a gang. As per the aforesaid provisions, it is sufficient if a person raises or provides funds, participates in conspiracy, organizes the terrorist camps to aid the **terrorist acts** directly or indirectly. Any act preparatory to the commission of terrorist act is also punishable. Therefore, it is necessary to examine the term **terrorist act** which is defined in Section 2(k) as the act contemplated under Section 15 of the UAP Act. Section 15 reads as follows:

" **Section 15.** Terrorist act.—(1) **Whoever** does any act with intent to threaten or **likely to threaten the unity, integrity, security** [economic security,] or sovereignty of India or **with intent to** strike terror **or likely to** strike

terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or **firearms** or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) **death of, or injuries to, any person or persons;** or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any

public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or (an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.

Explanation.—For the purpose of this sub-section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The ***terrorist act includes an act*** which constitutes an offence within the scope of, and as defined in any ***of the treaties specified in the Second Schedule.***”

19. In the above Section the term “***Whoever***” refers to any person committing ***any act*** mentioned therein with an

intention to threaten or likely to threaten the unity, integrity security and sovereignty of India or doing such act not only to strike the terror but which is **likely** to strike the terror amounts to terrorist act. Such person need not be a member of any terrorist organization or a terrorist gang.

20. It is no doubt true that as per Section 2(m) terrorist organization is necessarily an organization enlisted in the schedule and Al Hind was not so enlisted. However, **terrorist gang** defined in Section 2(l) does not contemplate such enlistment. Section 2(l) reads as follows:

“2(l) “**terrorist gang**” means **any association**, other than terrorist organization, **whether systematic or otherwise**, which is **concerned with** or involved in terrorist act.”

21. The above provision shows that an informal body of individuals is also covered under the definition. That need not be necessarily involved in terrorist act as defined in Section 15. It is enough even if such gang is **concerned** with the terrorist act. Merriam-Webster Dictionary defines the word ‘concerned’

as "**interested**, anxious, worried, **interestingly engaged**, **culpably involved**."

22. The Hon'ble Supreme Court in para 4 of the judgment in **Radha Kishan Bhatia vs. The Union of India and others**<sup>12</sup> interpreting the word 'concerned' in Section 167(8) of the Sea Customs Act, 1978 held as follows:

" 4. .... It is immaterial what meaning be attributed to the word 'concerned'. It can have the meaning 'interest' as urged for the respondent. It may have the meanings 'involved' or 'engaged' or 'mixed up'. The requirements of the expression 'concerned in any such offence' in the penalty part of S.167(8) are that the person to be penalised must be **interested** or **involved** or **engaged** or mixed up in the commission of the offence referred to in the first part of S.167 (8). The interest or the involvement or the engagement or the mixing up of the appellant in the commission of the offence must be at a stage prior to the completion of the offence of illegal importation of gold into the country....."

(Emphasis supplied)

23. The above discussion goes to show that any member of the terrorist gang or any individual who is concerned with a

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<sup>12</sup> AIR 1965 SC 1072



terrorist act and done anything in aid of such act, even if he is not the actual perpetrator of the terrorist act defined under Section 15 of the UAP Act is covered under Sections 17, 18, 18A and 20 of the UAP Act. Such interpretation defeats the object and purpose of those provisions and ultimately the UAP Act. Law should be applied adopting purposive interpretation. Therefore there is no merit in the contention that to invoke Section 43D(5) of the UAP Act the accused being a member of a terrorist organization or involving in the violent acts of causing death or injury to any person or persons or destruction of any property by using the explosives, fire arms or lethal weapons etc is a pre-condition.

24. Admittedly the judgment of the coordinate bench of this Court in **Saleem Khan's** case (accused No.11) referred to supra which is relied on by the learned counsel for the appellant has not attained finality, as the challenge to the said order is pending before the Hon'ble Supreme Court. More over accused No.11 who was the appellant therein is not facing the allegations of raising funds for terrorist activity. In this case the charge sheet records contain the bank statements whereunder he had

transferred the funds to accused No.1 who in turn was acting to the tune of an ISIS handler. Therefore, on that count also that judgment cannot be applied to the facts of the present case and parity does not apply. Further another coordinate bench of this Court in a later judgment in ***Irfan Pasha and another vs. NIA***<sup>13</sup> in similar circumstances interpreting the word 'Whoever' appearing in Section 15 of the UAP Act rejected the contention that to attract the said section such accused should be a member of a terrorist organization. We are persuaded to accept the view taken in the said later judgment.

25. So far as the question whether the accusations made against the appellant are prima facie true to apply Section 43D(5), the trial Court on analyzing the charge sheet material had already once ruled against the appellant. He did not challenge that finding/order. Thereby the same has attained finality. Therefore, it is not open to him again to reagitate the same point contending that acquiring tent materials etc itself does not amount to terrorist act. Even otherwise, the charge

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<sup>13</sup> 2022(5) Kar.L.J. 450

sheet contains the material to hold that there are reasonable grounds for believing that the accusations against the appellant are prima facie true.

26. Though learned counsel for the appellant relied on host of judgments to substantiate his grounds, in the light of the discussions made above, suffice it say that the said judgments cannot be justifiably applied to the facts of the present case. The appeal deserves no merit. Hence the following:

**ORDER**

The appeal is dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Akc