

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.514 of 2023

Arising Out of PS. Case No.-31 Year-2022 Thana- NIA District- Patna

Jalaluddin Khan @ Md. Jalaluddin, aged about 61 years, male, son of Late Md. Hassan, resident of Mohalla- Moulabagh, Nayatola, Phulwarisharif, P.S.- Phulwari Sharif, District- Patna (Bihar).

... .. Appellant/s

Versus

The Union of India through the National Investigation Agency.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 516 of 2023

Arising Out of PS. Case No.-31 Year-2022 Thana- NIA District- Patna

Athar Parwez, aged about 56 years, male, son of Md. Abdul Qayum Ansari, resident of Mohalla- 127, Gulistan, P.S.- Phulwari Sharif, District- Patna (Bihar).

... .. Appellant/s

Versus

The Union of India through the National Investigation Agency.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 749 of 2023

Arising Out of PS. Case No.-31 Year-2022 Thana- NIA District- Patna

Nooruddin Jangi @ Advocate Nooruddin Jangi, male, aged about 44 years, son of Late Md. Mouddin, resident of Muhalla- Urdu Bazar, Sher Mohammad Gali, P.S.- Laheriasarai, District- Darbhanga.

... .. Appellant/s

Versus

The Union of India through National Investigation Agency.

... .. Respondent/s

Appearance :



(In CRIMINAL APPEAL (DB) No. 514 of 2023)

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Adv.
Mr. Manoj Kumar Singh, Adv.
Mr. Shivaditya Dhari Sinha, Adv.
Mr. Abhijeet Gautam, Adv.
Mr. Amarjeet, Adv.

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

(In CRIMINAL APPEAL (DB) No. 516 of 2023)

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Adv.
Mr. Manoj Kumar Singh, Adv.
Mr. Shivaditya Dhari Sinha, Adv.
Mr. Abhijeet Gautam, Adv.
Mr. Amarjeet, Adv.

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

(In CRIMINAL APPEAL (DB) No. 749 of 2023)

For the Appellant/s : Mr. Ansul, Adv.
Mr. Kundan Kumar Ojha, Adv.
Mr. Madhav Raj, Adv.
Mr. Navneet Prabhakar, Adv.
Mr. Sheikh Saipan Dastgir, Adv.

For the Respondent/s : Dr. Krishna Nandan Singh, ASG

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-11-2023

All the three appeals, *viz.*, Cr. Appeal (DB) No. 514 of 2023 (*Jalaluddin Khan @ Md. Jalaluddin Vs. The Union of India through the National Investigation Agency*); Cr. Appeal (DB) No. 516 of 2023 (*Athar Parwez Vs. The Union of India through the National Investigation Agency*) and Cr. Appeal (DB) No. 749 of 2023 (*Nooruddin Jangi @ Advocate Nooruddin Jangi Vs. The Union of India through the National Investigation*



Agency), which have been filed under Section 21(4) of the National Investigation Agency Act, 2008, have been heard together on the issue of grant of bail and they are being disposed off by this common order.

2. The application for bail of appellants/Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez was rejected by the Special Judge, N.I.A., Patna in Special Case No. 07 of 2022/R.C. No. 31 of 2022, arising out of Phulwari Sharif P.S. Case No. 827 of 2022, by order dated 15.04.2023, whereas the prayer for bail of appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi in Special Case No. 07 of 2022/R.C. No. 31 of 2022, arising out of Phulwari Sharif P.S. Case No. 827 of 2022, has been rejected *vide* order dated 01.05.2023.

3. The appellants are said to be the active members of Popular Front of India (*in short P.F.I.*), which is a banned organization and have been associated in its ulterior aim of causing bloodshed in



achieving its so-called target of re-establishing *Muslim* rule in India.

4. The Bihar Police had received information about a plan of accused persons to cause disturbance during the proposed visit of the Prime Minister of India. On a tip-off, a raid was conducted by Phulwarisharif Police on 11.07.2022 at the house of appellant/Jalaluddin Khan @ Md. Jalaluddin, who had given the upper floor of his house on rent to appellant/Athar Parwez. From the floor of the house taken on rent by appellant/Athar Parwez, documents relating to unlawful activities aimed at disrupting the sovereignty of India and to cause disaffection against the country as also for establishing Pan-*Islamic* rule in India by subverting the Constitution of India, were recovered. The reading of the documents so recovered suggested propagation of armed struggle and violent means to implement the afore-noted agenda.

5. The appellants/Jalaluddin Khan @ Md.



Jalaluddin and Athar Parwez were arrested and against them and others, a case *vide* Phulwari Sharif P.S. Case No. 827 of 2022 was registered. Later on, appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi was also arrested in the said case on 16.07.2022.

6. It further appears from the records that the Govt. of India, Ministry of Home Affairs, after considering the nature and gravity of the offence, directed the National Investigation Agency (*in short the N.I.A.*) to take up the investigation of the case *vide* order dated 22.07.2022.

7. Pursuant to the afore-noted directions, the N.I.A. re-registered the case as R.C. -31/2022/NIA/DLI dated 22.07.2022 under Sections 120, 120B, 121, 121A, 153A, 153B and 34 of the I.P.C.

8. The police, after investigation, submitted charge-sheet against the appellants, whereupon cognizance has been taken against them.

9. The appellants have argued that the



recovery of so-called hate literature, even if assumed to be correct, would not make out any case against the appellants under any one of the sections of the I.P.C. for which they have been charge-sheeted. The P.F.I. was banned only in August, 2022 and, therefore, the appellants cannot even be held guilty by association.

10. Apart from this, it has been alleged that appellant/Jalaluddin Khan @ Md. Jalaluddin was never ever a member of P.F.I. or Socialist Democratic Party of India (SDPI) nor was he ever connected with the activities of such organizations. He has superannuated from the Police Department and has been leading a retired life since then.

11. On behalf of appellant/Athar Parwez, it has been submitted that he was a member of P.F.I., but only till such time that it was not declared unlawful but he still is a member of SDPI, which is a political party, recognized by the Election Commission of India. The party was formed in 2009 and has contested elections



all over the country including the State of Bihar. Even otherwise, it has been submitted that at the relevant point of time when P.F.I. was not banned in Bihar, it only promoted national integration, communal amity and social harmony and aimed at upholding the democratic set-up, secular order and the rule of law in the country.

12. On behalf of both the appellants, *viz.*, Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, it has been submitted that only a seven-pages booklet/document, namely, "India 2047, Rule of Islamic India, Internal Document", was recovered, which document could be downloaded by all and sundry from the internet. They have also questioned the correctness of the claim of the police of the recovery of such document from the place which was raided.

13. With respect to seizure-list, the claim of the appellants is that the same was signed only later by them under duress and that nothing was recovered from the residential house of appellant/Jalaluddin Khan @



Md. Jalaluddin or the rented premises of appellant/Athar Parwez.

14. On behalf of appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi, it has been urged that he is a serious law practitioner representing clients in different Courts of law. He had been arrested from Lucknow (Uttar Pradesh) on 15.07.2022 while he had gone there to appear before the learned District & Sessions Judge-cum-Special Judge, PMLA, Lucknow on behalf of his client, M.K. Ashraf. There is nothing on record to indicate anything about his involvement in any nefarious activity endangering the security and integrity of India.

15. All the appellants pray that the orders refusing bail to them be set-aside. They have lent assurance to the Court that they shall participate in the Trial and shall also cooperate in the investigation with respect to other accused persons.

16. It has been submitted on behalf of all the appellants that they are in custody for more than a year



and that there are no chances of the Trial being concluded in near future. It has further been submitted that the Special Court has rejected their prayer for bail on the ground of their association and active participation in anti-India activities, which action was beefed-up immediately prior to the proposed visit of the Prime Minister of India in Bihar.

17. We have examined the police papers, the charge-sheet and the statement of the protected witnesses, produced in sealed cover.

18. It was disclosed during investigation that there was a definite plan to disturb the visit of the Prime Minister to Bihar. During the raid, five sets of document, India 2047 towards Rule of Islamic India, Internal Document; not for circulation and pamphlet of Popular Front of India, 20th of February, 2021 in different languages were recovered. The documents propagated and adjured participation in the activities of the P.F.I.



19. Appellant/Jalaluddin Khan @ Md. Jalaluddin admitted of having rented the first floor of his house to appellant/Athar Parwez for imparting training to the cadre of P.F.I. on 6th and 7th of July, 2022 (in fact, the rental document is in the name of the wife of appellant/Jalaluddin Khan @ Md. Jalaluddin and appellant/Athar Parwez). In the afore-noted training on 6th and 7th of July, 2022, many persons from outside the State of Bihar had received training. This was confirmed by appellant/Athar Parwez, who admitted of his being actively associated with Student Islamic Movement of India (SIMI) earlier, which today is a banned terrorist organization. He had been providing legal help to SIMI members lodged in jail. On the directions of P.F.I., investigations revealed, he was preparing a secret group of ex-SIMI members with the aim of taking revenge against the atrocities committed against *Muslims* in India and to attack the persons who had, in the past, made derogatory remarks against



Islam. It was found during the investigation that the assemblage was in support of the revenge action taken at Amrawati (Maharashtra) and Udaipur (Rajasthan) in retaliation to derogatory comments against *Islam*.

20. From the documents recovered from the premises of appellants/Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, it was found that it contained an estimation that even if 10 per cent of the total *Muslim* population would rally behind P.F.I., the majority community would be subjugated. Four stages were spelt out for carrying out the objective, namely, to establish the rule of *Islam* in India. Those stages are: uniting *Muslims* and giving training of weapons; using violence selectively to demonstrate strength and terrorize opponents; alliance with S.Cs. and S.Ts. to divide the *Hindus* and to somehow or the other infiltrate in police, army and judiciary. With these objectives in mind, the final stage was conceived of when the P.F.I., would declare a new constitution based on *Islamic* principles



with the help of external forces. While doing this, it was also urged to use the reference of *Babri Masjid* for radicalization and mass mobilization. It also suggested collection of information against extremist *Hindu* organizations so as to take selective revenge.

21. During the course of investigation, the mobile phones, SIM cards and other digital devices, which were seized, were sent to Thiruvananthapuram, Kerela, for data extraction and analysis. The extracted data was found to be replete with communally objectionable videos which were circulated to spread religious animosity and hatred. Those extracted data also confirmed the participation of the appellants in various protests organized by P.F.I. and other organizations under its umbrella.

22. The statements of the protected witnesses, namely, X, Y and Z, clearly reveal that all of them were allured to join P.F.I. by promising to provide scholarships and later they were attempted to be drawn



into the nefarious vortex of hate. The prime purpose of their enlistment was to give further fillip to *Muslim* empowerment and to execute future plans of P.F.I.

23. We are conscious enough not to discuss and evaluate the materials collected during the course of investigation in any greater detail, except for the purposes of testing the correctness of the orders passed by the Special Court, N.I.A., rejecting the prayer for bail of the appellants.

24. It may not be out of place here in this context to mention that Section 43D (5) and (6) of the Unlawful Activities (Prevention) Act, 1967 casts an obligation on Courts not to release any person on bail, if on a perusal of the case diary or a report made under Section 173 of Cr.P.C., it is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true and that the restrictions on granting of bail, namely, the Public Prosecutor to be given an opportunity of being heard on



the application of such release and no bail under the circumstance of the Court finding the allegation to be *prima facie* true, are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail. There is definitely a lot of difference between the satisfaction of the Court regarding the allegations being *prima facie* true and the Court coming to a finding that the accused is guilty of such offence, which requirement is there in other special criminal legislations.

25. In ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali; (2019) 5 SCC 1***, the Supreme Court has clarified that by its very nature, the expression "*prima facie* true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the F.I.R., must prevail until contradicted and overcome or disproved by other evidence, and those on the face of it, show the complicity of such accused in



the commission of such offence. It was further adumbrated that such materials must be good and sufficient on its face to establish a given fact or the chain of facts constituting the offence, unless rebutted or contradicted.

26. Such findings are required to be recorded by the Court but only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose. Unless those materials are discussed sketchily, it cannot be analyzed from the orders whether there are good reasons for justifying the order.

27. Giving reasons is different from discussing the merits or demerits of the case. At the stage of granting bail, a detailed examination of evidence and elaborate analysis of the merits of the case is not to be undertaken, but reasoning behind concluding why bail is not being granted, must be indicated.

28. We find from the impugned orders that



with respect to appellants/Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez, the Special Court took into account all the necessary factors, namely, the nature and gravity of the charge; the severity of the punishment, in the event of conviction; danger of them absconding, if released on bail; their position and standing in the society; likelihood of the offence being repeated; reasonable apprehension of tampering of the evidence and the danger of justice being thwarted, and rejected their bail application.

29. We do not find any folly with the conclusion of the Trial Court with respect to appellants/Jalaluddin Khan @ Md. Jalaluddin and Athar Parwez.

30. The allegation raised against the police of taking them into custody on trumped-up charges and creating documents to justify their arrest, is totally misconceived.

31. We have found from the police papers that the appellants had refused to sign the seizure-list.



32. In the *memo* of Appeal also, what was brought on record was a different document and not what was seized from the Phulwarisharif residence of the afore-noted two appellants. There, therefore, appears to be a definite design of the afore-noted two appellants to project themselves as they being only ordinary members of an association and even if that is assumed, it would not make out any case against them as there is nothing called "guilt by association".

33. That the appellant/Jalaluddin Khan @ Md. Jalaluddin tergiversated in the beginning and kept on insisting about his ignorance about the purpose for giving the upper floor of his house on rent by appellant/Athar Parwez, definitely provided a smoking-gun to the police to carry out further investigation, when the complicity of many other persons came to the fore.

34. The appellant/Jalaluddin Khan @ Md. Jalaluddin had been in police service, who was only using his retired policeman's visage to carry out the



activities for creating hatred between two religious communities.

35. The appellant/Athar Parwez, on the dictates of the erstwhile P.F.I. management, has been making efforts at regrouping the ex-cadre personnel of SIMI and P.F.I. into a new lethal group with practical training, especially of firearms. The purpose of holding a meeting immediately before the visit of the Prime Minister is definitely a very strong evidence to make out a *prima facie* case against him also.

36. For the afore-noted reasons, we dismiss the appeals of appellants/Jalaluddin Khan @ Md. Jalaluddin [Cr. Appeal (DB) No. 514 of 2023] and Athar Parwez [Cr. Appeal (DB) No. 516 of 2023] and reject their prayer for bail at this stage, but with the caveat that the prosecution ought to take all steps to expedite the Trial with respect to the afore-noted two appellants.

37. However, the materials collected against appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi



[Cr. Appeal (DB) No. 749 of 2023], at this stage, *prima facie*, does not make out a case against him.

38. It was gathered during the course of investigation that he was a law graduate and has been associated with a Firm called "Legal Access and Associates", Jangpura Extension, New Delhi. He has admitted of pursuing the cases of P.F.I. members which were registered against them by the Enforcement Directorate. He has also accepted his association with P.F.I. during the course of investigation and of providing legal help to the newly recruited members during the training sessions. He had participated in interviewing the candidates who were called for the scholarship of P.F.I.

39. On behalf of appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi, it has been urged that assuming every thread of allegation against him to be true, no offence under Sections 121, 121A or 153A of the I.P.C. could be said to have been made out. He had



never ever attempted to wage war or conspire against the Govt. of India. Giving legal help to one who required such help was only his bounden duty as an Advocate. No words or sign of the appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi, either in written or oral forms, was brought on record to indicate that he promoted enmity between different groups which could have been prejudicial to national integration. None of the protected witnesses also have stated anything against him except for his association with P.F.I.

40. Terrorist organizations and Terrorist acts have been defined under the 1967 Act. The Act provides for punishment for terrorist acts, for raising funds for terrorist acts or for participating or organizing such acts as also for giving support to any Terrorist organization. But providing legal help to the P.F.I. cadre or interviewing candidates for selecting them for given scholarship would never fall in any one of the proscribed categories.



41. But for a few isolated materials, showing his participation in protest marches, organized under the P.F.I. banner, there is nothing on record which would *prima facie*, at least at this stage, establish that he had been or is indulging in activities which would constitute overwhelming public functionaries by means of criminal force.

42. Merely being a member of a banned organization, would not justify rejection of bail when the Trial is likely to continue for a longer time.

43. Considering the overall materials against appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi [Cr. Appeal (DB) No. 749 of 2023], we deem it appropriate to set-aside the order dated 01.05.2023, refusing to grant him bail, and direct for his release on bail on his furnishing bail bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each, to the satisfaction of learned Special Judge, N.I.A., Patna in connection with



R.C.-31/2022/NIA/DLI, arising out of Phulwari Sharif
P.S. Case No. 827 of 2022.

44. The appellant/Nooruddin Jangi @ Advocate Nooruddin Jangi shall but (i) surrender his passport, if he possess and which has yet not been impounded with the I.O. of the N.I.A.; (ii) he shall report to the I.O. In-charge of the case as and when required and shall provide to him as also the Special Court, the mobile telephone number on which he could be contacted along with his current address where he shall be available and he shall keep both the I.O. and the Special Court informed promptly if there is any change in either the telephone number or the current address and (iii) he shall not influence or intimidate any proposed/prospective P.W. or tamper with the evidence of the prosecution in any manner. If there is any breach of any one of the conditions, it will be open for the N.I.A. to apply before the Special Court for the cancellation of his bail.



45. It is also clarified that any observation on the merits of the materials collected during the course of investigation is to be construed only for the limited purpose of consideration of the case of the accused for grant of bail and not intended to influence the decision of the Special Court at any stage of the case hereafter.

46. All the three appeals stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/-

AFR/NAFR	NAFR
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