Sr. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A(D) No. 13/2025
CrlM No. 292/2025

Reserved on: 30.03.2026
Pronounced on: 08.04.2026
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Khalid Latif Butt Th. Abdul Latif Butt …. Appellant(s)

Through:- Ms. Rozina Afzal, Advocate.

V/s

UT of J&K. …..Respondent(s)

Through:- Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

(**Per:-Sanjay Parihar-J**)

1. The appellant is aggrieved of the order dated 04.01.2025 passed by the Court of 3rd Additional Sessions Judge (Designated Court under the UAPA), Jammu (for short, "***the trial Court***"), whereby the appellant, who is facing trial in FIR No. 42/2020 for offences under Sections 17, 18, 20, 21, 38 and 40 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, "***the Act of 1967***"), has been denied the concession of bail. The trial Court has rejected the bail plea on the ground that the offences alleged against the appellant fall within Chapters IV and VI of the Act of 1967; that there are strong grounds for believing that the appellant has committed

offences under Sections 17, 18, 20, 21, 38 and 40 of the Act of 1967, for which he stands formally charged and is facing trial; that the evidence collected during investigation, including mobile transcription, call detail reports and alleged money transactions, *prima facie*, make out the commission of offences against the appellant; and that there is no reason to hold that the accusations against him are untrue. The trial Court has thus held that the appellant has not been able to persuade it to lift the bar contained in Section 43-D (5) of the Act of 1967.

2. Precisely stated, the appellant along with co-accused stands formally charged by the trial Court vide order dated 29.10.2022, whereby he, along with the co-accused, has been found to have committed offences under Sections 17, 18, 20, 21, 38 and 40 of the Act of 1967, to which they pleaded not guilty and claimed trial. The appellant had earlier also applied before the trial Court for grant of bail, which, in terms of the impugned order, has been denied.

3. As per the prosecution, the appellant along with the co-accused was found collecting funds for execution of terrorist activities in the Doda area and was in touch with terrorists and Pakistan-based LeT handler, Haroon @ Khubaib. It has been alleged that the appellant and the co-accused are members of the banned terror outfit LeT and had raised and distributed funds for terror-related activities. They are alleged to be involved in the racket of raising, receiving and distributing the proceeds of terrorism with the intention of flourishing militancy and recruiting new boys into militancy,

thereby posing a grave threat to the unity, integrity and sovereignty of the Union Territory of Jammu and Kashmir. It is further alleged that money was transferred to them by Mohd. Amin Bhat @ Haroon @ Khubaib with the objective of promoting militancy in the Union Territory of Jammu and Kashmir.

4. Insofar as the appellant is concerned, according to the prosecution case, he was a member of the LeT module/outfit and had received terror-funding money in his account for further distribution among LeT cadre. On the directions of handlers Haroon and Asif, the appellant allegedly received various funds, out of which he paid an amount of ₹20,000/- to one Farooq Malik at Iqra Masjid, Doda, for delivery of arms and ammunition. It is also alleged that, on further directions from the handlers, he received SIM cards and grenades from one Toqueer and handed over the same to one Asif. According to the investigation, offences under Sections 17, 18, 20, 21, 38 and 40 of the Act of 1967 stands established against him.

5. The respondent has opposed the bail plea of the appellant before the trial Court on the ground that his earlier bail application had been declined by the Court on 03.04.2024 and that, since then, there has been no material change in circumstances in favour of the appellant. It has been contended that the appellant is a hardcore radicalized criminal and is involved in a criminal case concerning the security of the State and that the offences for which he has been booked are very heinous in nature. It is thus urged that he cannot seek bail on

frivolous grounds, particularly when the trial is still in progress and witnesses are being examined.

6. The appellant, on the other hand, claims to be a Junior Engineer working in the R&B Department under a "Self Help Group" and submits that he has remained in custody since the year 2020. It is contended that the case against him has been built solely on the basis of his disclosure statement, which has no evidentiary value. It is argued that bail has been rejected on flimsy grounds, despite there not being even an "iota of evidence" or documentary material giving rise to grave suspicion against him. It is further contended that the trial Court declined to consider the bail plea by observing that it lacked power to grant bail, while at the same time similarly situated accused in different FIRs have been enlarged on bail. It is also urged that the prosecution has cited 107 witnesses, all of whom are hearsay witnesses, and that there is nothing incriminating against the appellant. According to the appellant, no evidence or material has been shown by the investigating agency to demonstrate that he is a member of a terrorist organization, nor has any material or contact been placed on record to establish his connection with any terrorist group. It is contended that there are no reasonable grounds for believing that the accusations against the appellant are *prima facie* true. It is further urged that the trial Court has failed to appreciate that, despite framing of charge, the material produced against the appellant does not constitute reasonable grounds for believing that the accusations are *prima facie* true. The appellant

also submits that the trial Court failed to correctly apply the mandate of Section 43-D of the Act of 1967 and remained oblivious of its contours, particularly when neither any recovery has been effected from the appellant nor has he been found associated with any terrorist organization.

7. We have given our thoughtful consideration to the submissions made at the Bar.

8. The trial of the appellant is underway for offences under Sections 17, 18, 20, 21, 38 and 40 of the UAP Act. These offences fall under Chapters IV and VI of the Act of 1967, and therefore the bar contained in Section 43-D (5) becomes applicable. According to the respondent, the prosecution has cited 107 witnesses, out of whom 28 have already been examined. The appellant submits that, having regard to the pace at which the trial is proceeding, there is no immediate prospect of its early conclusion, and that he has been in custody since 26.07.2020 and has thus undergone incarceration for more than five years. Placing reliance upon ***Vernon vs. State of Maharashtra, 2023 INSC 655,*** and ***Shiekh Javid Iqbal vs. State of U.P., 2024 INSC 534***, it has been argued that mere applicability of Section 43-D does not prevent a constitutional Court from releasing a person on bail when there is no immediate prospect of conclusion of trial, especially when every accused is presumed innocent until proved guilty.

9. It is true that in ***NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1,*** the Supreme Court cautioned that while considering bail under

the UAPA, the Courts must confine themselves to a *prima facie* assessment and ought not to conduct a mini-trial by weighing the admissibility or sufficiency of evidence. In that case, the High Court was found to have exceeded its jurisdiction by re-appreciating the evidence in detail.

10. In ***Union of India vs. K.A. Najeeb, (2021) 3 SCC 713***, however, the Supreme Court clarified that the rigours of Section 43-D (5) do not completely oust the jurisdiction of constitutional Courts to grant bail, particularly where prolonged incarceration results in violation of the fundamental right to speedy trial under Article 21 of the Constitution. It was held that statutory restrictions and constitutional safeguards must be harmoniously balanced, and where the trial is unlikely to conclude within a reasonable time, continued detention of an accused may not be justified.

11. Recently, in ***Gurwinder Singh v. State of Punjab & Anr., Criminal Appeal No. 704 of 2024,*** decided on 07.02.2024, the Supreme Court reiterated that the expression "*prima facie true*" requires the Court to assess whether the material on record discloses credible involvement of the accused in the commission of the offence. It was held that once charges are framed, a strong suspicion may arise, but even then, the accused can seek bail by demonstrating that the material relied upon does not reasonably support the accusation.

12. In ***Vernon*** (supra), the allegations against the accused therein related to possession of literature which, having regard to its

contents, was alleged to inspire and propagate violence. There was no accusation that the accused therein had committed any terrorist activity or entered into conspiracy to indulge in such activity, and it was in that backdrop that the accused, who had remained in custody for more than five years, was considered for bail. During the course of hearing, learned counsel for the appellant also placed reliance upon ***K.A. Najeeb*** (supra) to carve out a case for grant of bail. In the said case, the trial of the accused had been segregated from that of the other accused, and the accused therein had already undergone incarceration for more than half of the prescribed sentence; it was in that background that bail was granted.

13. Learned counsel for the appellant also placed reliance on ***Jalal-ud-din vs. Union of India***, ***2024 INSC 604***, wherein the premises of the accused had allegedly been used for objectionable activities of an organization known as the Popular Front of India. The property, however, was owned by his wife, and there was no proximity shown so as to establish that the accused had knowledge that the co-accused were using his premises for carrying out the objectives of the said organization. It was in that background that the Apex Court held that there were no reasonable grounds for believing that the accusations against the accused were *prima facie* true.

14. In the case at hand, it emerges from the record that the appellant maintained a bank account with SBI, Doda, into which, on 18.09.2017, certain funds were transferred by one Haroon @ Khubaib, who, as per the investigation, has been found to be the

head of the LeT module handling activities of the said organization and had supplied funds to be used by the appellant for carrying out terrorist activities in the Doda area. According to the charge-sheet, out of the funds so received, an amount of ₹20,000/- was paid by the appellant to co-accused Farooq Malik at Iqra Masjid, Doda, for carrying arms and ammunition. It is further alleged that the appellant had purchased two SIM cards, one Jio and one Airtel, which were to be used by terrorists for carrying out such activities. It is also alleged that he received SIM cards and a grenade from a co-accused and handed them over to another accused, namely Asif.

15. Learned counsel for the appellant argued that PW-3, PW-13, PW-68, PW-80 and PW-81 have been examined and that from their evidence neither the appellant has been identified nor have the co-accused been shown to have indulged in such activities. According to the appellant, these witnesses only speak of a confession allegedly made by the appellant, which itself is weak material and not worthy of reliance. It is also contended that the alleged confessional statement was neither properly recorded nor supported by independent corroboration.

16. During investigation, the statement of the appellant's bank account in SBI, Doda, was obtained, which reflects transfer of ₹83,847.58/- from the account of Haroon. During the course of hearing, learned counsel for the appellant was not able to explain the legality of this transaction. The said Haroon, as per the charge-sheet, is stated to be across the border and is alleged to have handled the activities of

LeT in the Doda area through the accused. Thus, the prosecution case is not based only upon the disclosure statement of the appellant, but also upon the aforesaid monetary transaction.

17. The prosecution is yet to produce evidence regarding the alleged delivery of arms and ammunition by co-accused Farooq Malik at Iqra Masjid, Doda, for which the appellant is alleged to have paid ₹20,000/- out of the funds received from the said Haroon@ Khubaib, a Pakistan-based LeT handler. The appellant has been charged for offences under Sections 17, 18, 20, 21, 38 and 40 of the UAP Act on the strength of the order dated 29.10.2022. The very framing of charge against him reinforces the prosecution assertion that there is *prima facie* sufficient material warranting his trial. Once that is so, and having regard to Section 43-D (5) the appellant is required to carve out a case that even though he has been charge-sheeted and put to trial, the material which the prosecution seeks to convert into evidence is not sufficient enough to hold him guilty because there are reasonable grounds for believing that the accusations are untrue.

18. From the aforesaid material, it cannot be said that the appellant has been falsely implicated or that the material collected against him connects him only peripherally rather than showing his direct involvement in activities falling within Chapters IV and VI of the Act of 1967. The allegation against the appellant is not merely that he received funds from LeT handlers across the border, but also that he was privy to the utilization of those funds for purchase and

transportation of arms, and that the SIM cards, one Airtel and one Jio, were being used by co-accused for carrying out terror activities in the Doda area. The exchange of arms and ammunition through the appellant and the utilization of money received by him for payment to such handler's *prima facie* indicates that the appellant was not only involved in preparation for commission of terrorist activity, but was also privy to terrorist activity by the banned LeT.

19. Hence, the case of the appellant cannot be said to be peripheral in nature. Although he has remained in custody for more than five years, his trial is underway. Mere delay in trial pertaining to grave offences cannot, by itself, be used as a ground to grant bail. Reliance in this regard may be drawn to ***Gurwinder Singh*** (supra). Reliance upon ***K.A. Najeeb*** (supra), ***Shiekh Javid Iqbal*** (supra), and ***Vernon vs. State of Maharashtra*** is, therefore, misplaced, as the facts and circumstances of those cases are entirely different. The appellant is not shown to be a mere sympathizer, but is *prima facie* shown to be directly involved in acts not only of preparation, but also of receiving funds for furthering such activities.

20. Reliance was also placed on a judgment of this Bench in ***Abdul Rashid*** in Crl A(D) 24/2025, but the same too is misplaced, for in that case the material collected did not exhibit direct involvement of the accused, and the reliance of the prosecution on testimonies recorded after inordinate delay was held to constitute strong material for taking the view that there were reasonable grounds for believing that the case was untrue. The facts of the present case

stand on an entirely different footing. Even reliance on ***Jalal-ud-din*** (supra) is uncalled for, as the said judgment is clearly distinguishable on facts.

21. We are conscious of the fact that, considering the number of witnesses cited by the prosecution, there is bound to be some delay in conclusion of the trial. However, the appellant has not been able to demonstrate that such delay is being occasioned by the prosecution through failure to produce evidence in time. As many as twelve accused have been put to trial in the present case, and it has also been pointed out that even supplementary linkage is being explored. In that background, mere custody of five years, by itself, cannot persuade this Court to exercise discretion for grant of bail in favour of the appellant, particularly when the nature and seriousness of the crime, the character of the crime, and the circumstances peculiar to the crime strongly favour denial of bail, the allegations against him not being capable of being termed as a figment of prosecutorial imagination.

22. At this stage, this Court cannot resort to a mini-trial, as that would result in transgressing the boundaries laid down for considering bail under the statute. It is true that in ***K.A. Najeeb*** (supra), it has been held that Section 43-D does not oust the power of the Court to grant bail on account of violation of the rights guaranteed under Part III of the Constitution; however, having regard to the peculiar facts and nature of the crime involved in the present matter, we are not

persuaded to exercise discretion in favour of the appellant. Accordingly, the appeal, being devoid of merit, is ***dismissed***.

23. Since the prosecution already have examined PW-3, PW-13, PW-68, PW-80 and PW-81 against the appellant out of the cited witnesses, the appellant shall remain at liberty to apply afresh for bail after the remaining material witnesses are examined in the course of trial. Once that stage approaches, the appellant may move an appropriate application seeking consideration of bail on merits. The trial Court is also expected to expedite the trial of the appellant and the co-accused, having regard to the fact that charges were framed against them in the year 2022, and it is expected that the trial Court shall make all endeavours to speed up the trial.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
08 .04.2026
Ram Krishan

Whether the order is speaking? Yes
Whether the order is reportable? Yes