



2025:DHC:4966-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.05.2025

Pronounced on:12.06.2025

+ CRL.A. 600/2023

SHABIR AHMED SHAH

.....Appellant

Through: Mr. Colin Gonsalves, Sr. Adv.
With Mr. Kamran Khwaja,
Adv.

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr. Sidharth Luthra, Sr. Adv.
with Mr. Akshai Malik,
SPP/NIA with Mr. Ayush
Agarwal, Mr. Khawar Saleem,
Mr. K.P. Rustom Khan, Adv.
Mr. B.B. Pathak, DSP NIA.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Criminal Appeal has been filed by the Appellant under Section 21 of the National Investigation Agency ('NIA') Act, 2008 to assail the Order dated 07.07.2023 passed by the learned Additional Session Judge – 03 (New Delhi), Patiala House Courts, New Delhi (hereinafter referred to as, 'Trial Court') in NIA case



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bearing RC No. 10/2017/NIA/DLI titled *NIA v. Hafiz Saeed & Ors.*, whereby the Bail application of the Appellant was dismissed.

2. The present case emanates from the registration of the NIA case bearing no. RC-10/2017/NIA/DLI for offences under Sections 120B, 121 and 121A of the Indian Penal Code, 1860 (IPC), and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act], by the NIA, pursuant to the Order No. 11011/2017-IS-IV issued by the Ministry of Home Affairs on 30.05.2017. The Prosecution's case is premised on an alleged Conspiracy hatched among several accused persons who were purportedly engaged in secessionist activities in the erstwhile State of Jammu and Kashmir ('J&K') through various terrorist activities, such as organization of violent protests, instigating the general public to commit violence, pelting of stones at the Security Forces, burning of Schools, damaging public property, etc and waging war against the Union of India. Their ultimate aim and objective was to seek the secession of the J&K from the Union of India, all in the garb of 'Freedom'.

3. The Prosecution's case is that the NIA launched an investigation and tried to unfold the said Conspiracy, during which it was allegedly found that the accused persons were members of various terrorist organizations and unlawful associations, such as Lashkar-e-Taiba (LeT), Hizb-ul-Mujahideen (HM), Jammu Kashmir Democratic Freedom Party (JKDFP), Jammu Kashmir Liberation Front (JKLF), Jaish-e- Mohammad (JoM) etc., and are members of the



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All Parties Hurriyat Conference (APHC). Their operations were allegedly funded through a regular influx of large sums of money obtained by them through domestic and international unlawful channels, including *hawala* networks, etc. This funding, it is alleged, sustained the continued perpetration of violence in the valley, despite the heavy deployment of the Security Forces.

4. The investigation allegedly established that the secessionist and separatist leaders were also raising funds, to be utilized in the aforementioned terrorist and separatist activities through the Line of Control (LoC) trade. This was allegedly done by way of directing the Kashmiri traders to engage in under-invoicing and under-weighting of the goods which were imported through the LoC barter trade and to commit irregularities in the maintenance of records, etc. They would then sell the goods to the traders in Delhi, and a portion of the profits was allegedly used for anti-national propaganda, with the objective of mobilizing violent protests and other unlawful activities in J&K. The traders, so engaged, would have relatives across the borders who were closely associated with the terrorist organisations, especially Hizb-ul-Mujahideen, and who would smuggle weapons and contrabands.

5. Upon conclusion of the investigation, though, the NIA filed its main Chargesheet on 18.01.2018 under Sections 120B, 121, 121A, and 124 A of the IPC, read with Sections 13, 16, 17, 18, 20, 38, 39, and 40 of the UA(P) Act against 12 accused persons, however, the investigation was still underway with respect to the other suspected individuals who were being interrogated by the NIA.



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6. In this background, the first Supplementary Chargesheet came to be filed by the NIA, and in the course of the investigation, the Appellant was arrested on 04.06.2019.

7. In continuation of the investigations, a second Supplementary Chargesheet was filed by the NIA on 04.10.2019 against the Appellant under Sections 120B, 121, 121A, and 124A of the IPC read with Sections 13, 16, 17, 18, 20, 38, 39, and 40 of the UA(P) Act. Following additional accused persons were also arrayed in the said Supplementary Chargesheet.

- *Mohd. Yasin Malik @ Aslam (A-14)*
- ***Shabir Ahmad Shah @ Shabir Shah (A-15)***
- *Masarat Alam @ Masarat Alam Bhat (A-16)*
- *Syeda Aasiya Andrabi @ Asiya Andrabi @ SyedahAasiya Firduous Andrabi (A-17)*
- *Abdul Rashid Sheikh @ Er. Rashid @ Sheikf Rashid (A-18)*

8. The gist of allegations against the Appellant, as per the Prosecution, is that he has played a substantial role in facilitating a separatist/militant movement in the J&K by inciting and instigating the general public to chant slogans in support of the secession of the J&K, paying tribute to the family of slain terrorists/militants by eulogizing them as ‘martyrs’, receiving money through *hawala* transactions and raising funds through the LoC trade, which were allegedly used to fuel subversive and militant activities in the J&K.

9. The Prosecution has alleged that the Appellant is the head of the JKDFP, a constituent of the APHC. During the course of further investigation, the NIA searched the Appellant’s residence on 26.02.2019 and allegedly recovered incriminating materials, including



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documents and electronic devices.

10. As per the Prosecution's case, the Appellant had earlier joined the People's League, a secessionist organization promoting the merger of the State of J&K with Pakistan. The said League allegedly founded its own militant outfit, *vis-a-vis* the Muslim Janbaz Force, which launched militant attacks on the Security Forces. Many of its members later joined the APHC, headed by Moulvi Umar Farooq.

11. The Appellant was initially arrested in 1989 in Ramban, District Doda, while allegedly attempting to cross over to Pakistan. Upon being released on Bail in 1994, he joined the APHC on the proposal of SAS Geelani and Abdul Gani Lone. In 1996, he left the APHC and formed his own organization under the name JKDFP, and became its Chairman on 24.05.1998.

12. The Prosecution has further alleged that the Appellant's organization has been one of the frontline secessionist entities, vigorously pursuing the secession of the J&K from the Union of India. Since the formation of the JKDFP, the Appellant allegedly became the mouthpiece of Pakistan's ISI, which had been handling him through a Pakistan based representative, namely, Mehmood Ahmed Sagar.

13. Further, it is alleged that from the Compact Disk (CD) recovered from the Appellant's residence, it was revealed that the Appellant had made inflammatory speeches at Kishtwar, Bhadarwa, Anantnag, Kargil, Poonch, etc, instigating the general public to chant slogans in furtherance of secessionist activities in the J&K and thus, created a surcharged atmosphere against the Government of India.



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14. Investigations have also allegedly revealed that the Appellant was in contact with Pakistan based militant leaders, including Syed Salahuddin, Hafiz Mohd. Saeed and Iftikar Haidar Rana. The Appellant is also alleged to have been supported by Pakistani Agencies through Hurriyat representatives Shafi Shair and Mehmood Sagar, both based in Pakistan.

15. The Prosecution has also alleged that the Enforcement Directorate (ED) had filed a complaint against the Appellant under the Prevention of Money Laundering Act, 2002 (PMLA) case bearing ECIR No. 04/DZ/2007, based on the FIR No. 122/2005 registered under Sections 121, 121A, 122, 123, and 120B of IPC, and Sections 4 and 5 of the Explosive Substances Act, 1883 read with Section 25 of the Arms Act, 1959 by the Special Cell, Delhi Police ('Predicate FIR'), wherein it was alleged that one Aslam Wani, an associate of the Appellant and a cash mule for the terrorist organization Jaish-e-Mohammad, collected *hawala* funds in Delhi and handed them over to the Appellant for carrying out subversive and anti-national activities. The said Aslam Wani was arrested on 26.08.2005 with Rs. 63 lakhs received through *hawala* channels, along with explosives, arms, and ammunition by the Delhi Police. The said PMLA case is stated to be currently pending trial.

16. According to the Prosecution, during the investigations, the NIA had recovered the Appellant's email ID, and scrutiny of the downloaded emails therefrom, revealed that he had received an email from Shaifi Shair, who disclosed therein about the monies distributed



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in the U.S. Dollars and Indian Rupees among various accused persons, including the Appellant. It is further the case of the Prosecution that the emails found in the inbox of the Appellant contained the pictures of slain militants along with an attachment titled “*Confidential Army report on Lashkar-e-Toiba Apr 2014*”, wherein the sender claimed that the militant who was killed, was an associate with LeT and he hailed from Sindh, Pakistan. The sender had also warned the Appellant to remain alert in future. Additionally, in the year 2016, the Government of Pakistan sent an amount of Rs. 1.10 Crore to the Appellant for distribution amongst the individuals who were injured while pelting stones at the Security Forces in the J&K.

17. The investigations also allegedly revealed that, on 29.04.2015, the Appellant had received a sum of Rs. 10 Lakhs from the *hawala* conduit, the accused no. 10, Zahoor Ahmad Shah Watali, and that the Appellant was involved in the smuggling of illegal weapons, drugs, and counterfeit currency through the LoC trade to further the secessionist activities.

18. Upon appreciating the arguments advanced by the parties, the learned Trial Court, *vide* Order dated 16.03.2022, framed the Charges, against the Appellant under Sections 120B, 121, and 121A of the IPC read with Sections 13 and 15, of the UA(P) Act, both read with Section 120B of the IPC; and Sections 17, 18 & 20 of the UA(P) Act, along with other accused persons.

19. The Appellant, thereafter, preferred a Bail Application under Section 437 of the Code of Criminal Procedure, 1973, which came to



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be dismissed by the learned Trial Court *vide* Order dated 07.07.2023. Aggrieved thereby, the Appellant has preferred the present Appeal before this Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

20. Mr. Colin Gonsalves, the learned Senior Counsel for the Appellant, at the outset submitted that neither the name of the Appellant nor the name of the Appellant's organization finds any mention in the main Chargesheet or the first Supplementary Chargesheet, wherein the primary allegations and interlinkages relating to the alleged Conspiracy between several accused persons are outlined. He submitted that it is only for the first time in the Second Supplementary Chargesheet that the name of the Appellant appears, and he has been arrayed as an accused by the Prosecution.

21. The learned Senior Counsel submitted that the videos recovered by the Prosecution to implicate the Appellant in the present NIA case, belong to the year 1996 and prior, the most recent being over 25 years old. He submitted that the same videos have been used by the Prosecution in as many as 24 FIRs against the Appellant, to keep him incarcerated for a prolonged period, based on the same allegations of delivering 'inflammatory speeches' and inciting violence in the J&K, thereby creating a 'surcharged atmosphere'.

22. Moreover, it was submitted that the Prosecution has not been able to show any specific incident involving a criminal act that can be attributed to the Appellant, either in the earlier FIRs or in the present one, let alone any terrorist act and therefore, till date there has been no



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conviction in any of the said FIRs, while the Appellant continues to languish in judicial custody.

23. Mr. Gonsalves further submitted that rather, what can be seen from the videos presented by the Prosecution into evidence, is that the Appellant partakes in a peaceful gathering speaking about the grief of the mothers who have lost their young children and the suffering of the people of Kashmir without any instigation to undertake any criminal activity as wrongly alleged by the Prosecution. In these videos, he contended, the Appellant has also emphasised the teachings of Islam, including the duty to aid both victims and even enemies. He argued that no overt act, by any stretch, has been made out against the Appellant in these speeches/gatherings, which are otherwise innocuous in nature.

24. He submitted, while further pointing towards these videos, that they have been recorded from a distance, and the identity of the Speaker cannot be made out. Furthermore, the Scrutiny report (AD-116), which pertains to articles allegedly seized from the house of the Appellant, does not even specify the source, date, or time of the creation of these videos.

25. The learned Senior Counsel further drew our attention to the Videos seized *vide* Seizure Memo, that is, AD-11, and submitted that these videos depict processions, protests, chanting of slogans, and making of inflammatory speeches. However, none of these videos are accompanied by a Certificate under 65B of the Indian Evidence Act, 1872 (IE Act). Therefore, the Prosecution has failed to establish the



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primary source of the contents of these videos and in the absence of the said Certification, they are not admissible into evidence. Nevertheless, he submitted that these do not seem genuine but appear to be fabricated in order to falsely array the Appellant as an accused in the alleged Conspiracy.

26. The learned Senior Counsel submitted that for argument's sake, even if these videos are taken to be authentic, in the absence of any terrorist act being attributed to the Appellant, the videos alone cannot form the basis for Prosecution under the UA(P)A against the Appellant.

27. He further submitted that the learned Trial Court grossly erred in not appreciating that the Appellant is neither a member of the APHC nor is his party JKDFP, one of the constituents of it and his party does not even reflect in the list of constituents of APHC produced by the Prosecution. In fact, in 1996, the Appellant had left the APHC and Hurriyat Leaders, to form his own separate organization, that is, JKDFP in 1998 and became its Chairman. He further submitted that the Appellant's organization was declared an unlawful association only sometime in April, 2023, which is several years later from the date of his arrest in the present case.

28. He submitted that the Appellant is a reputed political leader who, in his pursuit of a peaceful resolution to the Kashmir issue, has met certain prominent Indian political leaders. He was also invited to a round table conference in Delhi with the erstwhile Prime Minister to address the Kashmir issue. He submitted that there are also certain



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photographs in this regard and these facts, thus, water down the Prosecution's version that the Appellant's aim is to incite violence through his speeches, whereas his aforementioned conduct speaks otherwise.

29. Furthermore, he submitted, from the statement of Protected Witness AW-62 (John), on which the Prosecution heavily relies on, no specific allegation can be made out against the Appellant and it is devoid of any particular details as to when, where and what was discussed in the meetings that the Appellant is alleged to have attended, or as to any particular incident of stone pelting which was instigated by him. Neither any details of the money allegedly received by the Appellant, as to by whom or how this money was received by him nor its trail has been stated by this witness.

30. He submitted that as far as the statement of the other Protected Witness AW-81, Aslam Wani, and the allegation of terror funding are concerned, nothing is forthcoming from the same as there are again no details of the alleged transfer of money. He submitted that an alleged transaction from 19 years ago cannot be made a basis to implicate someone in a penal statute, let alone under a Special Legislation, such as the UA(P) Act. Further, this witness is alleged to have collected cash on behalf of the Appellant from a person claiming that he was from Pakistan. However, the Appellant was in Jail at that time and Aslam Wani had been acquitted on the Charge of carrying Rs. 62 lakhs, received by the Appellant, in the predicate FIR and his acquittal has been upheld by this Court *vide* Judgement dated 31.10.2017. He



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submitted that the allegations in the statement of AW-81 prove no link between the Appellant and the alleged *hawala* transfer ever being made to the Appellant, since there had been no recovery from either of them. Furthermore, he submitted that the Appellant is on Bail in the PMLA case.

31. Adverting to the loose sheet of paper, that is D132(a)/23, the learned Senior Counsel submitted that it is an unsigned statement attributed to Ghulam Mohammad Bhatt, an accountant of co-accused Zahoor Ahmad Shah Watali. It contains a single entry of Rs. 10,00,000 allegedly relating to a transaction with the Appellant on 29.04.2015. However, on the date of the said entry, the Appellant was again in Jail, and has been from 2011 to 2017. The alleged transaction has nothing to do with the Appellant and in the absence of any details as to the trail of the said transaction, as to its source, and other relevant particulars, it only makes for a weak evidence. Furthermore, this witness does not name the Appellant, which is the most relevant factor in favour of the Appellant.

32. So far as the evidence of AW-69 is concerned, the learned Senior Counsel contended that this witness mentions an alleged loan given to Fayaz Ahmed Kuloo, an initial loan of Rs. 5 lakhs from Nayeem Ahmad Khan, at the time when the Appellant was incarcerated and following the Appellant's release, the subsequent loans taken were allegedly asked to be returned to him, amounting to Rs. 28 lakhs. He submitted that the testimony of this witness is riddled with ambiguity, with no details of the transactions, as to what they



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were for, when they were made, and the place where the alleged handing over the cash took place. Moreover, this witness states that the alleged meeting took place in 2016, however, he does not mention the Appellant or his alleged role in the said meeting, therefore, nothing substantial comes out of it.

33. The learned Senior Counsel further submitted that the Prosecution is also relying upon this witness, that is, AW-69 as he allegedly stated that the Appellant had received funds from Pakistan, however, this claim is completely unsubstantiated by the Prosecution, there is no monetary trial to corroborate the same and neither the Prosecution has placed on record any supporting material thereto.

34. He submitted that the statement of AW-67 is innocuous, inasmuch as it contains no specific detail and merely refers vaguely to a sum of Rs. 20-25 lakhs being borrowed from the Appellant in 1993. However, the Appellant was in Jail since 1989 and was released only in 1994, therefore, his testimony is impeached on this ground alone. He further submitted that an email from one Shafi Shair is also relied upon by the Prosecution to arraign the Appellant in the Conspiracy, however, the same fails to bring out any particular details as to transactions and in the absence of any information as to the source of the email, it cannot be relied upon.

35. He submitted that even the statement of AW-79, Razak, is not helpful to the Prosecution, as it pertains to a hotel deal in which the Appellant had relinquished his 25% share. He pointed out that this matter is already the subject of proceedings before the ED. This



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witness also alleged that his daughter was admitted to an MBBS course in a medical College in Pakistan on the recommendation of the Appellant, however, it was argued that this is a weak attempt to link the Appellant to the Pakistani establishment. Moreover, there is no documentary evidence to support this claim.

36. Mr. Gonsalves submitted that the Appellant is 74 years old and has been arrayed as an accused in 24 FIRs, but has never been convicted for a single offence. He has been in custody since 1991 and, intermittently, for a total of 36 years till date. The Prosecution has cited approximately 400 witnesses, of whom only 20-21 witnesses have been examined till date. Considering the absence of any specific allegations in the present case and the long period of incarceration of five years undergone by the Appellant, the learned Senior Counsel prayed that he deserves to be enlarged on Bail. He submitted that the Appellant's right to life and personal liberty, enshrined under Article 21 of the Constitution of India, should be protected, subject to any conditions imposed upon him as deemed appropriate by this Court.

37. The learned Senior Counsel, in support of his contentions, has relied upon the following decisions:

- *Vernon v. State of Maharashtra & Anr.*, (2023) 15 SCC 56.
- *Dr. Anand Teltumbde v. National Investigation Agency*, 2022 SCC OnLine Bom 5174.
- *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
- *Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya v. National Investigation Agency*, (2022) 1 SCC 695.
- *Thwaha Fasal v. Union of India*, (2021) SCC OnLine SC 1000.
- *Dr. P. Varavara Rao v. National Investigation Agency*, 2022 SCC OnLine SC 1004.



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- *Anvar P.V. v. P.K. Basheer and Ors.*, (2014) 10 SCC 473.
- *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616.
- *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
- *Sagar Tatyaram Gorkhe and Anr. v. State of Maharashtra* (2021) 3 SCC 725.
- *Angela Harish Sontakke v. State of Maharashtra* (2021) 3 SCC 723.
- *Devangana Kalita v. State of NCT of Delhi*, 2020 SCC OnLine Del 1902.
- *Balwant Singh and Another v. State of Punjab* (1995) 3 SCC 214.
- *Directorate of Enforcement v. Shabir Ahmad Shah @ Shabir Shah & Ors.* in SC 357/2017, Order dated 07.06.2024.
- *Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr.*, (2024) 9 SCC 813.
- *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh*, 2023 INSC 534.
- *Shoma Kanti Sen v. The State of Maharashtra & Anr.*, 2024 INSC 269.
- *Chandeep Singh @ Gabbar Singh v. National Investigation Agency*, 2023 SCC OnLine P&H 6332 .
- *Baseerat-ul-Ain v. National Investigation Agency*, 2024 SCC OnLine J &K 36.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

38. The learned Senior Counsel, Mr. Sidharth Luthra, appearing on behalf of the NIA, while vehemently seeking dismissal of the Appeal, contended that the Charges against the Appellant have already been framed by the learned ASJ and, therefore, the embargo under Section 43D(5) of the UA(P) Act is applicable, and the Appellant has to meet with a higher threshold for securing a grant of Bail. He submitted that although the Appellant has challenged the Order on Charge before this Court in a Criminal Appeal bearing no. 27/2023, nonetheless, there is ample material against him to sustain the Charges framed *vide* Order dated 16.03.2022.

39. The learned Senior Counsel submitted that as per the dictum of



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the Supreme Court in *NIA v. Zahoor Ahmed Shah Watali*, (2019) 5 SCC 1, the degree of satisfaction to be recorded to decide the issue of grant or denial of Bail, is lesser than the degree of satisfaction required to be recorded for considering a discharge or framing of Charges in relation to offences under the UA(P) Act. In the present case, the Charges having been framed, the *prima facie* accusations already exist to deny Bail to the Appellant.

40. The learned Senior Counsel submitted that the investigating agency has unearthed and collated substantial incriminating evidence against the Appellant and found that he had played an active part in a deep-rooted Conspiracy related to secessionist and terrorist activities in the J&K. Furthermore, it was submitted that the Appellant was the head/Chairman of the JKDFP, an organization which was declared an Unlawful Association by the UA(P) Act Tribunal *vide* Order dated 03.04.2024.

41. Adverting to the statement of John (AW-62/AD-125), the learned Senior Counsel submitted that it reveals that the Appellant, along with the co-accused persons; Bitta Karate, Zahoor Ahmed Shah Watali and Yasin Malik, (who pled guilty before the learned Trial Court), was present at the meetings of the APHC and had also participated in *Jalsa-Juloos* in different districts of the J&K, thereby, instigating the general public to commit acts of violence aimed at the secession of the J&K from the Union of India. He contended that, in pursuance of this, they had also organized '*hartal*' and encouraged stone pelting, all of which posed a threat to the unity, integrity and



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security of India. Moreover, it was submitted that these protests were peaceful only on paper, while in their speeches, exhortations were made to 'break India', wage war, and promote 'freedom' through funds obtained *via* LoC Trade and by facilitating students' admission to medical Colleges in Pakistan. These funds, he argued, were used to burn Schools, incite stone pelting, and perpetuate other anti-national activities.

42. The learned Senior Counsel further submitted that the Appellant's connection with the other accused persons is also evident through the CDR analysis, which establishes his key role in the Conspiracy. Specifically, he had received several calls on his mobile number from Mohd. Shafi Shair, who used a Pakistani number, during the period from 22.01.2017 to 26.01.2017.

43. Mr. Luthra brought to our attention the emails recovered at the instance of the Appellant (AD-120/43) and submitted that Shair Shafi had also sent emails to the Appellant. One of these emails contained the details of funds in USD and INR distributed to various individuals, which is corroborated by the statement of Protected Witness John. It was submitted that the Appellant was also regularly updated about the Indian Army, and photographs of the terrorist encounters in the J&K were attached to those emails.

44. The statement of Alpha (D-279), he submitted, corroborates the statement of John and reveals the true objective behind the protest calendars and the involvement of the Pakistan Embassy in New Delhi. The Appellant is also stated to have been present at the meeting where



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the Protest Calendar was decided. Furthermore, funds were also generated through LoC Trade, and investigations revealed that the relatives of some of the LoC Traders were closely associated with the banned terrorist organization Hizb-ul-Mujahideen. It was submitted that the Pakistani Government had sent the Appellant Rs. 1.10 Crores to be distributed among the Stone Pelters. The Protected Witness John also specifically stated that the Appellant was closely associated with the Stone Pelters, one of them being Danish, who is stated by the Protected Witness AW-62 to be a regular visitor to the Appellant's House and whose phone number is also saved in the Mobile Phone of the Appellant. Upon Danish's arrest, the Appellant also provided him with a lawyer to secure his release on Bail.

45. The learned Senior Counsel submitted that this witness (AW-62) also states that following the killing of the terrorist, namely Burhan Wani, there was unrest in the Kashmir Valley. On the directions of the Appellant, a large sum of money, around Rs. 35 lakhs, was collected, out of which Rs. 14-15 Lakhs were disbursed amongst the Stone Pelters, and the remaining was kept by the Appellant for himself.

46. It was contended that Document D-132(a)/23, is a loose sheet seized from the house of the Accountant of the co-accused Zahoor Ahmed Shah Watali, which reflects the exchange of funds between the several Hurriyat leaders and the Pakistan High Commission, New Delhi, it also shows transactions with the Appellant, and the said sheet has been signed by co-accused Zahoor Ahmed Shah Watali, whose



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Regular Bail was dismissed by the Supreme Court in the case titled as *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1. He further contended that said decision also discusses this document against the accused no. 10, which also implicates the Appellant herein.

47. The learned Senior Counsel also submitted that the investigations revealed that Hurriyat leaders had recommended students for admission to Universities in Pakistan and charged a commission, which were ultimately used for secessionist and terrorist activities. As per the statement of AW-79, the Appellant had also recommended students for medical seats in the Universities in Pakistan to gather funds thereby, further aiding such activities.

48. The learned Senior Counsel, drawing our attention to the statement of AW-81, contended that it reveals that the Appellant was receiving funds from Pakistan which is corroborated by the statement of AW-69, who stated that the Appellant received funds from Pakistani establishments. In this regard, our attention was also drawn to the statements of AW-67 and AW-79. Furthermore, the inflammatory speeches made by the Appellant and as can be seen in the videos recovered by the Investigation Agency unearth the true nature and intention of the Appellant to support the militants and incite hatred amongst the people of Kashmir against India and further to promote activities related to secession. He submitted that the speeches do not depict a case of general resentment but rather these speeches threaten the sovereignty and integrity of India as can be seen from the transcripts of the videos.



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49. Mr. Luthra submitted that the decisions relied upon on behalf of the Appellant do not support the Appellant's case as they are distinguishable on facts. He submitted that in the case of **Gurwinder Singh** (supra), the Supreme Court has categorically distinguished the application of **K.A. Najeeb** (supra). Hence, the said decision does not come to the aid of the Appellant. Moreover, the decisions in **K.A. Najeeb** and **Vernon** are not applicable to the facts of the present case, as the delay is attributable to the Appellant and co-accused persons herein and secondly, the Charges stood framed against the Appellant *vide* Order dated 16.03.2022. Additionally, the material in **Vernon** (supra) was hearsay in nature, unlike the evidence in the present case.

50. The learned Senior Counsel submitted that in light of the above and other incriminating evidence, there is sufficient material on record to make out a *prima facie* case against the Appellant and his involvement in various violent protests and anti-national activities and as Charged against him.

51. Mr. Luthra submitted that the Trial is already underway, and no delay can be attributed to the Prosecution. This is also evident from the affidavit dated 16.11.2024 filed on behalf of the NIA, which outlines in a tabular form, the dates and reasons for adjournments. Therefore, in light of the overwhelming evidence against the Appellant and the facts and circumstances of the present case, the Appellant is not entitled to be enlarged on Regular Bail.

52. In rebuttal, the learned Senior Counsel for the Appellant, while disputing the submissions, reiterated his claim to seek Regular Bail for



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the Appellant, however, he urged that in the event this Court is not inclined to grant Bail to the Appellant, the Court may release the Appellant on House Arrest to enable him to be with his family members, with only a few relatives allowed as visitors. He submitted that the Appellant would give an undertaking to that effect and would refrain from making any public speeches.

53. While strenuously opposing this prayer on behalf of the Appellant, the learned Senior Counsel for the Respondent contended that since the trial is underway and the Protected Witnesses are yet to be examined, given the sensitive nature and the gravity of the offences levelled against the Appellant, it would not be, at all, appropriate to even place him under House Arrest with his family.

ANALYSIS AND FINDINGS

54. We have considered the arguments put forth by the learned Senior Counsels for the parties and have carefully perused the record as well as the statements of the Protected Witnesses.

55. As is evident from the Prosecution's case, it primarily rests on the key aspect of a Conspiracy to secede J&K from the Union of India. To put this secessionist goal into action, the Appellant, along with the other co-accused persons, in furtherance of the said Conspiracy, threatened the Unity, Integrity, and Security of India. Thus, the necessity of an agreement, and the role of individual action in furtherance of a Conspiracy are fundamental in understanding the application of criminal Conspiracy in a particular case.

56. At this stage, it would be befitting to extract the observations of



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the Supreme Court in *Kehar Singh and Others vs State (Delhi Administration)* (1988) 3 SCC 609, the relevant portions thereof are as under:

“275. Generally, a Conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The Prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The Prosecution will also more often rely upon circumstantial evidence. The Conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of Conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299]

“Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of



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agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'."

(emphasis supplied)

57. Having noted the above, in the present case, the Prosecution has alleged that the Appellant is one of the key conspirators, having attended various meetings in pursuance of the Conspiracy, secured funds through *hawala* and other illegal channels to propagate violence in J&K, delivered inflammatory speeches, etc. Accordingly, we may note the broad allegations levelled by the Prosecution against the Appellant, as well as the evidence relied upon in support, which are enumerated below:

A. Instigating violence through his Inflammatory speeches:

The Prosecution has relied upon several videos, which allegedly depict the inciting of hatred and making of inflammatory speeches by the Appellant to provoke the people in J&K against India and to promote activities related to secession such as stone pelting, burning of Schools, and mass violence towards the Security Forces. It is further alleged that the Appellant raised slogans to garner public support for terrorist organizations. Document AD-114 and AD-116 have been cited in support.



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- B. Receipt of funds through *hawala* transactions and from LoC Trade:** The Appellant has been alleged to be receiving *hawala* money from one of the financial conduits, namely, co-accused Zahoor Ahmed Shah Watali. The document relied upon is D132(a)/23. Further, it is alleged that the Appellant is also involved in raising funds through illegal LoC Trade. Statements of Protected Witnesses AW-81 and AW-69 have been cited in support. It emanates from the statements that after the killing of a terrorist namely, Burhan Wani, on the directions of the Appellant, around Rs. 35 lakhs were collected, out of which, Rs. 14-15 lakhs were distributed among Stone Pelters for bringing unrest in the Kashmir Valley
- C. Financially aiding the Stone Pelters:** The Appellant has been alleged to have received Rs. 1.10 crores from the Pakistani Government and to have disbursed a portion of this amount to Stone Pelters who were injured in such action.
- D. Attended Conspiratorial meetings:** The Appellant, along with other co-accused persons, has been alleged to have attended meetings of the Hurriyat Conference at the residence of SAS Geelani to decide the protest calendar, as per which the violent protests were undertaken in the J&K. Several Protected Witnesses have been cited in support of this allegation such as John (AW-62), Alpha, (D-279), etc.
- E. Earning commissions through securing admission of**



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students in Pakistani Colleges: It has been alleged that the Appellant and other co-accused persons would recommend students for securing seats in Medical Universities in Pakistan and earn commission therefrom. This commission was utilized in funding the terrorist and secessionist activities in the J&K. Protected Witnesses AW-79, AW-81 and AW-69 have been cited by the Prosecution in support.

F. Chairman of JKDFP, declared unlawful association by UA(P) Tribunal: The Appellant is the Chairman of the JKDFP Organization, which was propagating unlawful activities and has been declared an Unlawful Association by the UA(P) Tribunal *vide* Order dated 03.04.2024.

G. Eulogizing the terrorists as martyrs: The Appellant has been alleged to eulogize the terrorists as martyrs, various videos recovered by the Prosecution and the emails recovered at the instance of the Appellant, wherein attachments pertain to photographs of the terrorists who were killed in the J&K and updates on the Indian Army in the Kashmir Valley, to show his involvement in the unlawful agenda of secession.

58. From the above allegations, it can be inferred that the Prosecution has relied upon several videos, incriminating documents, and the statement of numerous witnesses, including Protected Witnesses, to implicate the Appellant for instigating the general public to perpetrate violence in the J&K, thereby waging war against the



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Union of India in furtherance of the alleged Conspiracy.

59. The learned Senior Counsel for the Appellant has claimed that the alleged videos, relied upon by the Prosecution, wherein the Appellant is alleged to have delivered inflammatory speeches, are approximately 25 years old and have already been used as a piece of evidence in other FIRs registered against the Appellant and, therefore, these videos could not have been used in the present case too, to implicate the Appellant. Moreso, it is submitted that the videos are inadmissible in the absence of a certification under Section 65B of the IE Act.

60. To the contrary, it is the Prosecution's version that even though the Appellant has been in a long period of incarceration in different FIRs, his involvement in the present case specifically pertains to the hatching of the Conspiracy and, apart from the said videos, substantial incriminating evidence has been collected against him. The material evidence collected by the investigation agency had unearthed a deep-rooted Conspiracy, hatched in secrecy, in which the Appellant is alleged to be a key part of, and being the chairman of the JKDFP organization, he had links with various terrorists and Pak-ISI. With regard to the inadmissibility of the videos in evidence, the learned Senior Counsel for the Respondent contended that this is not a stage to consider the admissibility of the evidence collected by the Prosecution, however, if required, the Certificate would be produced when the said electronic record is sought to be proved before the learned Trial Court in evidence during the trial. We, therefore, tend to



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agree with the submissions of the learned senior counsel for the Respondent.

61. Another plea raised on behalf of the Appellant pertains to the rallies, alleged to be inflammatory, being held as a part of freedom of speech and expression and the right to self-determination and therefore, it cannot be made a basis to bring a Charge under the UA(P) Act against the Appellant.

62. No doubt, the Constitution of India provides for a right to freedom of speech and expression, however, the same also places reasonable restrictions such as public order, decency, morality or incitement to an offence, etc. This right cannot be misused under the garb of carrying out rallies wherein, a person uses inflammatory speeches or instigates the public to commit unlawful activities, detrimental to the interest and integrity of the country.

63. It was also contended by the learned Senior Counsel for the Appellant that there was no incitement in the speeches, and the Prosecution is falsely accusing the Appellant of instigating violence. Therefore, it is argued, that the Charge under the UA(P) Act, much less the offence of Sedition, cannot be sustained. Reliance was placed on the decision in *Balwant Singh* (supra).

64. To appreciate this plea, we may note that in the said case, the Appellant therein had raised slogans in public, however, these slogans did not evoke any provocative response that created any disorder or any law-and-order situation. In the present case, however, the Prosecution has alleged that the speeches delivered by the Appellant



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were inflammatory and provoked several individuals to indulge in stone pelting and raising anti-national slogans. Moreover, whether these speeches had any far-reaching effects on the public or not, is a matter to be considered by the learned Trial Court at an appropriate stage of the proceedings.

65. To further establish the conspiratorial role of the Appellant, the learned Senior Counsel for the Respondent pointed towards the statements of various Protected Witnesses and documentary evidence, upon analysis of which, it *prima facie* culminates that the Appellant had received several calls from Mohd. Shafi Shair from his Pakistani number during the period from 22.01.2017 to 26.01.2017. Furthermore, Mohd. Shafi Shair had sent emails, specifically document AD-120/43, which were recovered from the Appellant. One of these emails contained details of funds, in both the USD and the INR, distributed to various individuals.

66. We may note that the position of law is well settled that the Court is not required to adjudicate upon the admissibility or credibility of the evidence at the stage of deciding Bail under the UA(P) Act, and the evidence on record is to be taken on as it is basis. Needless to say, the Charges have already been framed by the learned Trial Court, though, challenged by the Appellant in an Appeal before this Court. Infirmities therein, if any, would be considered in the trial. Even otherwise, the questions pertaining to production of Certificate under Section 65B of IE Act, the admissibility and relevancy of the statements of the co-accused Wani or the Appellant made in the



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predicate FIR or the PMLA case, the Appellant not being named by witness Ghulam Mohammad Bhatt in his statement, and the Appellant being in Jail when the accused Wani in the PMLA case is alleged to have given money to him, will all be a matter of trial.

67. One of the documents relied upon by the Prosecution, which it contended is of significance importance, is D-132(a)/23, reflects the exchange of funds between several Hurriyat leaders, the Pakistan High Commission in Delhi, and the Appellant. This document also reveals transactions of huge sums of money between the Appellant and the co-accused Zahoor Ahmed Shah Watali (A-10), whose Bail was also cancelled by the Supreme Court. This loose sheet also bears the signature of A-10 and has been confirmed by the Forensic report dated 03.11.2017 (D-154).

68. Relevantly, the Supreme Court in *Zahoor Ahmad Shah Watali* (supra), while rejecting the Bail application to co-accused no. 10 Zahoor Ahmad Shah Watali, and after evaluating the evidence as well as the redacted statements of the Protected Witnesses, and the material filed along with the Chargesheet, found that the NIA had established a linkage between the Accused no. 10 and the other co-accused persons. The relevant extract from the Judgment is reproduced herein below:-

“34. After having analysed the documents and the Statements forming part of the charge-sheet as well as the redacted Statements now taken on record, we disagree with the conclusion recorded by the High Court. In our opinion, taking into account the totality of the report made under Section 173 of the Code and the accompanying documents and the evidence/material already presented to the



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Court, including the redacted Statements of the Protected Witnesses recorded under Section 164 of the Code, there are reasonable grounds to believe that the accusations made against the Respondent are prima facie true. Be it noted, further investigation is in progress.

*35. We may observe that since the prayer for Bail is to be rejected, it may not be appropriate for us to dilate on matters which may eventually prejudice the Respondent (Accused 10) in any manner in the course of the trial. **Suffice it to observe that the material produced by the investigating agency thus far (pending further investigation) shows the linkage of the Respondent (Accused 10) with A-3, A-4, A-5 and A-6 and, likewise, linkages between the Respondent (Accused 10) and A-3 to A-12, as revealed from the CDR analysis.....***

(emphasis supplied)

69. Suffice it is to say, the Prosecution, through the evidence collected by it, has been able to *prima facie* establish the involvement of the Appellant with Accused no. 10 as well as other co-accused persons in the Conspiracy. Needless to state, in cases of Conspiracy, it is the evidence that gradually unfolds and unravels the entire scheme. The Prosecution has also adduced the CDR analysis, which indicates the connectivity of the Appellant with Mohd. Shafi Shair.

70. The learned Senior Counsel for the Appellant had drawn our attention to the Affidavit dated 14.05.2025 filed on behalf of the Appellant, which outlines the details and status of the 24 FIRs registered against the Appellant, and submitted that it is evident therefrom that most of them are FIRs older than 10-15 years and the Appellant has been in custody for an unreasonably longer period of



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time. He further submitted that the trials in most of these, if not all, are still in a nascent stage, and the Charges have also not been framed against him. He further submitted that in any case, the Appellant has not been convicted in any of these cases till date.

71. On the other hand, it was contended on behalf of the NIA, that in almost all of these FIRs, the Chargesheet have been filed and the evidence of the witnesses is being recorded. Moreover, apart from the present NIA case before the learned ASJ, the said 24 FIRs are not a subject matter of the present Criminal Appeal and, therefore, it has little to no bearing on the adjudication of the present proceedings.

72. It is not denied that the Appellant is in custody in connection with these FIRs. During the course of the proceedings, queries were put to the learned Senior Counsels for the parties on whether the Appellant has applied for Bail in these FIRs, and if so, the result thereof. The counsels, however, could not give a clear and satisfactory response as to whether any Bail applications had been filed on behalf of the Appellant in these 24 FIRs. Nonetheless, the fact remains that the Appellant continues to remain in custody. What is evident is that the Appellant has multiple FIRs registered against him involving grave offences, and what remains a mystery is, if a Bail application had been filed, the result thereof, and if not, then why?

73. It is to be noted that the Appellant was arrested in a number of FIRs, the details whereof have been provided by the learned Senior Counsel for the Appellant in a tabular format, which is reproduced below:



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S.N O	DISTRICT	FIR NO. WITH SECTION OF LAW	PS	
1.	Bandipora	17/2014 U/S 132 RP Act, 13 UAP Act, 147,148 RPC	Hajin	
2.		52/2015 U/S 13 UAP Act	Sumbal	
3.	Ganderbal	77/2014 U/S 153,153-A, 121 RPC	Kangan	
4.	Srinagar	68/2008 U/S 147,332,336,427 RPC	Nigeen	
5.		11/2011 U/S 147,332,296 RPC	Nigeen	
6.		61/2017 U/S 132-B RPC	Parimpora	
7.		155/1995 U/S 188,148,353,121/RPC	Sadder	
8.		192/1996 U/S 307,341,148,336,332 RPC, 7/27 A. Act. 13 ULAP Act.	Shergari	
9.		73/1999 U/S 188,332,427,147,336,149/RPC	Rajbagh	
10.		108/2004 U/S 353, 336, 427 RPC	Batamaloo	
11.		108/2009 U/S 153 RPC, 13 UALP Act	Batamaloo	
12.		59/10 U//S 153,121 RPC	Maisuma	
13.		10/2014 U/S 13 ULAP ACT, 109 RPC	Kothibagh	
14.		26/2016 120-B,121-A,153-A,506 RPC, 13, 18, ULAP Act	Sadder	
15.		74/2010 U/S 10 CLA, 13 ULAP Act, 153-B RPC	Shaheed Gunj	
16.		Sopore	205/2008 U/S 147,148,149,188,332,336, 121-B,427, 153-A RPC	Sopore
17.		Budgam	132/2011 U/S 147,336 RPC	Chari-Sharief
18.			114/2014 U/S 13 ULAP Act	Budgam
19.	39/2015 U/S 147,148,336,341-RPC 13 UAP Act		Magam	
20.	Handwara	44/2015 U/S 147,121-A RPC 13 ULAPAct	Kralgund	
21.	Pulwama	16/2010 U/S 153-A; RPC	Rajpora	
22.		142/2001 U/S 147,148,153-A,336, 353 RPC	Pulwama	
23.		288/2015 U/S 148,149,336,447,332,307 RPC, 13 ULAP Act	Pulwama	



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24.		86/2014 U/S U/S 505 (2) (1) RPC, 132 R-Act	Pulwama
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74. What emerges from the table above is that the Appellant is involved in a number of criminal cases of a similar nature, all of which relate to the conspiring for the secession of the J&K from the Union Territory of India. These cases reflect extensive preparations and coordinated action undertaken in furtherance of that objective.

75. It is also pertinent to note that the JKDFP, of which the Appellant is the Chairman, has been declared as an Unlawful Association by the UA(P) Tribunal. The learned Senior Counsel for the Appellant had submitted that, at the time when the Appellant has been alleged to have indulged in various activities being the Chairperson of his Organization, that is, JKDFP was not declared an Unlawful Organization. Therefore, it was contended that the Appellant was not involved in any illegal activity. We do not find any merit in the said plea raised on behalf of the Appellant. In case the Appellant was involved in unlawful activities, the same cannot be termed as lawful merely because the organization he was heading was at the time, not declared an unlawful association.

76. Furthermore, while it is submitted that the Appellant by virtue of being the Chairman of the organization, he had met several prominent political leaders, perhaps in pursuit of a peaceful resolution for Kashmir, this fact, in itself, does not assist the Appellant's case. Additionally, the fact that the videos relied upon by the Prosecution are 25 years old does not absolve the Appellant of the alleged offences



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committed at the relevant time. Needless to say, these videos and the alleged acts depicted therein came to light only when the investigation in the present case was initiated.

77. The learned Senior Counsel for the Appellant had also contended that the testimonies of the Protected Witnesses are vague and ambiguous. However, this is again a matter to be adjudicated during the trial, where the credibility and reliability of such evidence will be examined.

78. As far as the plea of delay in the trial is concerned, though, the Appellant has been in custody for five years, the Charges have already been framed and the trial is underway. There is no delay on the part of the Prosecution for not examining its witnesses, as is evident from the affidavit dated 16.11.2024 filed by the NIA. In other connected cases, the Prosecution has fairly conceded to prune the list of its witnesses. In the present case as well, it is expected that the Prosecution will drop the witnesses who are not relevant so that the trial may proceed at a faster pace.

79. It is a settled position of law that for any precedent to be relied upon, it must be examined in the context of the totality of its facts and circumstances. Even a minuscule difference in the facts can render a decision inapplicable when juxtaposed with the factual matrix of the case being dealt with at hand.

80. The consideration that arose in *K.A. Najeeb* (supra) before the Supreme Court, amongst other factors, was that the co-accused therein was held guilty by the learned Trial Court and was accordingly,



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sentenced to eight years of imprisonment. The Appellant therein had been in custody for nearly five years and thus, he was enlarged on Bail. One of the co-accused in the present case, that is, Yasin Malik, has been sentenced to life imprisonment by the learned Trial Court upon his pleading guilty.

81. The decisions in *Ashim* (supra) and *Vernon* (supra) are also distinguishable as in the former case, the Charges had been framed after seven years from the date of filing of the Chargesheet, and the examination of PW-1 was itself underway before the learned Trial Court. In the latter case, the Charges had not been framed, and the surface analysis of the probative value of the material therein pertained to hearsay evidence, as it was recovered from the possession of the co-accused and not from the Appellant therein. In *Shoma Kanti Sen* (supra), the Charges had not been framed and the allegations against the Appellant were found to be *prima facie* true. Other decisions relied upon by the learned Senior Counsel for the Appellant also do not come to his aid and are not further discussed for the sake of brevity, particularly in view of the fact that the Appellant is involved in 24 FIRs of a similar nature.

82. In view of the overwhelming evidence, it is premature to evaluate the veracity of the material available on record at this stage. However, it cannot be brushed aside or said to fall short of proof in any manner, such assessment shall be considered by the learned Trial Court at an appropriate stage of the trial.

83. Also, the Appellant's involvement in a number of cases of a



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similar nature, thus, the possibility cannot be ruled out that being a Chairman of the unlawful organization JKDPF, he would not indulge in similar unlawful activities and may attempt to tamper with evidence as well as influence witnesses who are yet to be examined.

84. It is well-settled law that at the stage of Bail the court is concerned with the existence of the material against the accused and not as to whether those materials are credible or not. Therefore, considering the entire gamut of facts and circumstances, the present case is not a fit case to extend the benefit of the grant of Bail to the Appellant. Consequently, there is no question of entertaining the alternative prayer made by the Appellant seeking House Arrest, in view of the serious allegations against the Appellant as well as the sensitivity and gravity of the issues involved.

85. Needless to state, the Charges have been framed by the learned Trial Court, and for the purpose of adjudicating the plea of Regular Bail, there are reasonable grounds to believe that the accusations against the Appellant appear *prima facie* to be true. The Appellant has not been able to discharge the burden upon him in order to secure Bail.

86. Accordingly, in view of the foregoing discussion, the present Appeal is dismissed.

87. It is made clear that the observations made hereinabove shall not tantamount to be an expression on the merits of the Appellant's case pending before the learned Trial Court or to be read as an expression of opinion on the merits of the pending Appeal on Charge



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before this Court, These observations are confined to the consideration of the prayer for Bail alone.

CRL.M.A. 875/2025

88. This is an application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) filed on behalf of the Appellant, seeking a copy of his Medical Record.

89. *Vide* Order dated 27.01.2025, The medical record of the Appellant from the Office of the Senior Medical Officer, Central Jail, Tihar, New Delhi, was placed on record, and a copy of the same was furnished to the learned Senior Counsel for the Appellant.

90. In view of the above, the application stands dismissed as being infructuous.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

JUNE 12, 2025
KM/s