

COURT OF 3RD ADDITIONAL SESSIONS JUDGE: JAMMU
Special Judge Designated Court TADA/POTA UA(P)A Cases

Bail No. :858/2023
D.O. I. : 28.11.2023

CNR No : JKJM010048542023
D.O.D. : 08.02.2025

Abdul Aala Fazili, Age 32 years
S/o Late Mohd Rafi Fazili
R/o Humhama Chowk, New Airport Road, Budgam...Applicant
(Through Suhail Ahmed Dar Advocate)
Vs.

UT of Jammu & Kashmir, through JIC/SIA, Jammu
...Non-Applicant
(Through Ld. APP)

In the matter of:- (Application for and on behalf of the applicant/accused soliciting, enlargement on bail inter alia, on the grounds enumerated herein below.)

CORAM: Madan Lal
(UID Code-JK00120)
08.02.2025

ORDER

1. Through this application, applicant has applied and prayed for his admission to bail on the grounds that the applicant/accused has suffered detention on account of FIR No.1/22 registered at police station JIC/SIA, Jammu under sections13/18 of the Unlawful Activities (Prevention) Act, 1967&121, 153-B/201 IPC titled "JIC Versus Abdul Aala Fazili &Anr." and is shown as accused No. 1 in the array of accused. The case is pending full dress trial before this Court and is for recording the evidence of prosecution witnesses. It is to be noted here that Ten (10) out of Forty- four (44) witnesses have been recorded by this Court so far. The facts which have given rise to the instant case and led to the arrest of applicant/A-1are briefly stated and recapitulated here for proper adjudication and disposal of the present bail application. On 04/04/2022, investigating agency received a source information which led to the discovery of an article titled "The Shackles of Slavery will Break" allegedly written by A-1, and published on a webpage, The Kashmir Walla, which is alleged by the prosecution to be owned by A-2. It is alleged by the prosecution that the write up of A-1 is highly provocative, seditious intended to create unrest in Jammu & Kashmir, to abet the gullible youth to take path of violence and create communal unrest. It is also alleged by the prosecution that the write up has brazenly glorified terrorism and intended to abet the commission ofunlawful activities across Jammu & Kashmir. However, the write up in question had allegedly been written by A-1 in the year 2011.

GROUND

2. It is no longer a controversy that whether an application for bail after framing of charges can be considered by the Hon'ble court. This controversy has been put to rest by a catena of decisions of different courts and it has been ruled that a person, accused of an offence under chapters IV & VI of the UA (P) Act and is under detention for the same would be entitled to get consideration for bail under section 43D (5) of the Act irrespective of whether a charge is framed against him or not. The prosecution has cited 44 witnesses in support of their case. Out of forty-four some nine or ten witnesses have also been recorded by this Hon'ble Court. However, no witness has deposed anything against A-1 as the author of the write up, "the shackles of slavery will break". The position will remain the same even if the un rebutted evidence as against A-1 is accepted in its face value. It is to be noted here that the role of A-1 has been confined only to the authorship of alleged write up, which has recently been commented upon by the Hon'ble High of Jammu & Kashmir and Ladakh in Fahad Shah's case in the words which are of great importance for deciding the present application. The finding of Hon'ble High is being reproduced here for ready reference. Having read the offending article, this Court prima facie finds that the same calls for the secession of Jammu and Kashmir from India. There is no reference to in the article for its accession with Pakistan. It accuses India and the Indian government of Genocide against Kashmiris and that they would one day secure freedom. It must however be stated here that there is no call to arms by the author. There is no incitement to an armed insurrection against the State. There is no incitement to violence of any kind much less acts of terrorism or of undermining the authority of the State with acts of violence. The 'write up' had allegedly been authored by the present applicant/A-1 in the year 2011, and the case in hand has only been registered in 2022 which means the write up has never been provocative even at the time when the militancy was at its peak in the valley. There is no evidence on record. The entire charge sheet is silent with respect to this fact that somebody has chosen the path of violence, merely because the "Article" was provocative in nature. Nothing seemed to have been attributed to it. However, the author has accused the government of genocide through the medium of said Article. As far as the charge under section 18 of U.A. (P) Act is concerned, the same is attracted only for the commission of terrorist act as defined under section 15 of the Act of 1967. It is submitted here that the alleged act of A-1 is nowhere being recognized under the provisions of section 15 of U A (P) Act. The offence of conspiracy can only be for committing a terrorist act as defined under section 15 of UA(P) Act. Moreover, it is not the case of prosecution that the applicant/A-1 has committed or conspired to commit a terrorist act in light of section 15 as the same requires the usage of bombs, dynamite or other explosive substances of inflammable nature or

firearms or other lethal weapons or poisonous or noxious gases, or other chemicals or by any other substances (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature. Ostensibly, the act of applicant/A-1 does not fall within the definition of a terrorist act under section 15 of UA (P) Act as prima facie there is no material to suggest that the article allegedly written by the applicant/A-1 has any content that provokes people to take arms and resort to violence. Admittedly, every fundamental right as enshrined in Part III of the constitution is subject to reasonable restrictions. However, it can never be construed that State has unbridled or uncontrolled power to impose restrictions and made a person to suffer detention under the rigid provisions of UA (P) Act which allows for a blind reliance on cases. The fundamental right of freedom of speech and expression of any citizen can be restricted but not snatched in the present fashion by invoking the provisions of UA (P) Act. In one of the landmark decisions of U.S Supreme Court concerning enforcement of the Espionage Act of 1917 during World War I, Justice Oliver Wendal Holmes held;

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree".

Nothing is discernible or forthcoming from the material available with the file which could prima facie disclose the commission of the offence of waging war against the Government of India. As far as the offence u/s. 153-B IPC is concerned, there is no evidence on record that the write up brought about disaffection on the basis of caste or religion. The charges levelled against the applicant/A-1 are based on assumptions, without any legal foundation and is languishing in judicial custody since 17-04-2022. The evidence on record bars the application of Watali precedent to the facts of the present case. The applicant/A-1 shall abide by all terms and conditions which this court may impose in lieu of bail. Further, the applicant/accused undertakes that he shall not jump over the bail and shall remain present before this Hon'ble court on each and every date of hearing of the case. The applicant/A-1 undertakes not to try to influence the prosecution witnesses. The applicant/A-1 shall also furnish sureties to the satisfaction of this court. The applicant reserves the right to project other grounds at the time of arguments. In the facts and circumstances of the case, it is, therefore, most respectfully submitted that this Hon'ble court may graciously be pleased to allow the present motion and enlarge the applicant/A-1 on bail in the interest of justice and fair play.

3. On presentation of this application on 28.11.2023 copy of application was provided to the APP for his objections who has filed objections on 14.12.2023. Ld.APP has filed his objections and submitted therein that on the receipt of discreet reliable source information along with printout of an

article titled "The Shackles of Slavery will Break" written by one Aala Fazili (applicant) and published in monthly digital magazine "The Kashmir Walla" instant FIR was registered in P/S CID CI/SIA Jammu. The article was part of an ongoing operation to build and propagate the false narrative that is essential to sustain the secessionist-cum-terrorist campaign and take it to its logical conclusion: break the territorial integrity of Union of India, by making Jammu and Kashmir secede. The article written by Aala Fazili (applicant) is highly provocative, seditious and intended to create unrest in Jammu and Kashmir, to abet the gullible youth to take the path of violence and create communal unrest. The article brazenly glorifies terrorism and intends to abet the commission of unlawful and terrorist activities. The input further stated that the consequence of publication of this article has led to an increase in terrorism and unlawful activities across Jammu and Kashmir. The plain reading of the article of accused/applicant published in the monthly digital magazine "The Kashmir Walla" reveals that the article per-se is against the nation integration, intending to support the claim of secession of a part of territory of India, and advocated and abetted commission of terrorist act and violence. On this information case FIR No.01/2022 was registered against Aala Fazili, the author of the article and other associates of the monthly digital magazine "The Kashmir Walla". The Investigation was carried out and on 12-10-2022 charge sheet was produced against applicant/accused, the author of the article u/s 13, 18, UA (P) Act, 121, 153-B, 201 IPC, and one Peerzada Fahad Shah the Editor in Chief of monthly digital magazine "The Kashmir Walla" u/s 13, 18 UA (P) Act, 121, 153-B, 35, 39 FCRA. Pursuant to filing of charge sheet the arguments on charges were held and the charges have been framed against the two accused by the Ld. Trial Court on 16-03-2023. It is submitted here that prior to filing of instant application for grant of bail the applicant had preferred two (02) applications for grant of bail inter-alia on the ground that he is a Ph.D Scholar in the Department of Pharmaceutical Sciences in Kashmir University and has been falsely roped and has never throughout his life was involved in any case, the arrest has caused grave and serious prejudice to the applicant and his reputation and image in society has been tarnished and in the subsequent application filed by the brother of applicant namely Abdul Sami on 11-10-2022 it was averred that the applicant is a student of Ph.D whose degree is going to complete on 22- 01-2023 and whole career of the applicant will collapse, if he is not released on bail. Both these applications were dismissed by virtue of a orders, dated 15-07-2022 holding that the embargo contained in section 45-D (5) is attracted in the present case and bail cannot be granted when the national interest are involved and order dated 26- 11-2022. In both the orders Learned Trial Court at that time had held that the article written and published as alleged shall have the effect of provoking, inciting and abetting the youth to join militancy and indulge in subversive activities.

Since in the subsequent orders the charges in the main file were not framed, so the Learned Trial Court in its prudence thought it not to be safe to exercise the discretion for grant of concession of bail to the applicant and consequently this bail application was also rejected. It shall be in place to submit here that the applicant herein filed an appeal u/s 21 of NIA Act against the order of rejection of bail dated 26-11-2022, which was registered as CrI A (D) No. 70/2022 and the Hon'ble High Court has disposed off the appeal and did not grant the relief of bail to the accused/applicant vide order dated 23- 12-2022, which is annexed as annexure R-1. Reply to the grounds is submitted as under :-

- i. It is admitted that the application for bail after framing of charge can be considered by the Courts and when a person is accused of an offence under Chapter -IV and VI of UA (P) Act, the case of Zahoor Ahmed Shah Watali lays down the guiding principle that the Court only needs to examine the broad probabilities of the case and does not have to enter into roving enquiry regarding the evidence. In the instant case the accused applicant is charged of offences under section 13, 18 UA(P)A read with 121, 153-B, 201 IPC by the trial Court. Meaning thereby that the trial court is satisfied that the case prima-facie discloses the offence under Chapter IV of the UA(P)A, thus attracting the bar of proviso to section 43-D(5).
- ii. It is a fact that prosecution has cited 44 witnesses in the case out of which about 10 witnesses have been examined and 34 are yet to be examined. It would be premature for the Learned trial Court to assume at this stage that the position will remain the same, there are several witnesses who are yet to be examined in the Court. The assertion of the applicant regarding role of applicant A-1 confined only to authorship of the impugned article in light of the comment of the Hon'ble High Court of Jammu and Kashmir & Ladakh in Peerzada Fahad Shah's case are utterly misplaced. It seems that the applicant has forgot to mention here the contents of paragraph-2 of the judgement, relevant portion of which is reproduced here under as:-

"It is pertinent to mention that the appellant is Accused No.02 (hereinafter referred to as "A2") with one Abdul Aala Fazili being the Accused No.01 (hereinafter referred to as "A1"). In this order, this Court is not concerned with charges framed against A1."

The judgement and the comments referred to by the applicant as the words which are of great importance for deciding the present application does not apply in light of the above mentioned observations contained in the same Judgement. The findings reproduced by the applicant deserve no consideration by the trial Court, which itself is conducting the trial. The contents reproduced

by the applicant in his application in his application are sufficient in the ordinary course to attract the provisions of UA (P) Act under which the accused/applicant has been charge sheeted and section 121, 153-B IPC.

- iii. It is the admitted case of the prosecution that the article has been authored in the year-2011 by the applicant/accused and it is also a fact that the case has been registered in April-2022, the existence of this fact does not lead to this inference that write-up has never been provocative even at the time when the militancy was at its peak in the valley, as is alleged by the applicant/accused. The charge sheet gives a sufficient example of the increase in violent incidents post writing/publication of the article, for which a table has been depicted in the charge sheet which shows an unprecedented upward trend in violence and terrorism, consistently post 2011. Terrorist activities and subsequent killings have increased with the sole purpose to build and propagate false narrative that is essential to sustain secessionist cum terrorist campaign. The applicant is a compromised journalist and has played with the facts, by manipulation and selective reporting for creating a narrative which glorifies secession and terrorism by terming terrorism as movement for freedom struggle. Not only this the charge sheet unambiguously states that applicant/accused had organized a Gaibana-Namaz-e-Janaza for a terrorist namely Mohd Rafi killed in an encounter with security forces, this function was organized to stir the emotions of Jihad among the students of Kashmir University for motivating them to take up arms against Indian nation. Moreover, it is submitted that the punishment provided for the act/s of the applicant/accused does not carry any limitation and it was duty of the Police to register the case upon the receipt of reliable information regarding article, though published in the year-2011. The charge sheet also contends that the applicant was in touch with 02 terrorist who were subsequently killed by security forces in encounters. In his articles the accused has not only glorified terrorism by giving it different names such as - movement, struggle, resistance, resilience, sacrifices and Jihad, to attain independence from India, but has also instigated the youth to become part of the movement/terrorism and justified violence in the name of struggle.
- iv. It is strange that in the garb of instant application, for grant of bail to the accused/applicant, the framing of charge under section 18 of UA (P) Act has been disputed and Learned Trial Court is not the forum either for challenging or disputing the charges framed against the applicant/accused. However, for brevity section 18 of UA (P) Act is reproduced hereunder as :-

"18. Punishment for conspiracy, etc. Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine".

The section even makes advocating, advising, inciting or facilitating of terrorist act or any act preparatory to the commission of terrorist act, punishable and the applicant/accused has incited, advised, advocated and thereby facilitated glorification of violence and terrorist acts is thus liable. Moreover the article of the applicant has been written with the intention that the young and gullible youth is converted into cannon fodder for terrorism. Lot of spade work is required to bring a common citizen into the fold of terrorism and the accused has done the said work, with the power of his pen, that is why it is said that: "The pen is mightier than sword". The accused cannot escape his liability by disputing the section 18 UA(P) Act before this forum.

- v. At this stage of the trial, it cannot be disputed that the State has exercised unbridled/uncontrolled power and made applicant to suffer detention under UA (P) Act. Blowing hot and cold in the same breath on the issue should not be allowed, because on one hand applicant talks about reasonable restrictions and on the hand the reasonable restrictions become unbridled power of the State. Whether the accused/applicant was "clear and present danger" is a question to be determined in the instant trial, however it is submitted that incriminating material consisting of images, speeches, videos of protest (with potential to flare of communal tensions and anti India sentiment apart from Pakistani contacts of the applicant with the family of Rehmani, Convener of all Party Hurriyat Conference (PoK Chapter) have been retrieved/extracted from the electronic devices further the social media history of the applicant establishes him to be clear and present danger.
- vi. In the rest of the paragraphs of the instant application for the grant of bail the applicant/accused has disputed the charges framed against him by the Learned Trial Court as based on assumption and without any legal foundations etc., knowing well that this Court cannot sit in revision against its own order of framing of charges.
- vii. The applicant is not entitled to any relief much less the relief of grant of bail, when charges have been framed against him under Chapter-IV of UA (P) Act which attracts the embargo contained in section 43 D (5) of UA (P) Act.

- viii. It is strongly apprehended that the accused, if enlarged on bail, may indulge in unlawful and anti-national activities or may even jump the bail and become unavailable or may indulge in threatening the prosecution witnesses, which may prove to be detrimental for the prosecution case otherwise also the Ld. Trial Court has framed charges against the applicant/accused which establishes the existence of reasonable grounds for believing that accusation against applicant/accused are prima facie true, which disentitles the accused from concession of bail in terms of rigor contained in section 43-D (5) of UA (P) Act.

Additional submissions:-

It is submitted that even before the framing of charges the applicant had challenged order dated 26-11-2022 passed by the Trial Court, whereby the Trial Court has rejected the bail application of the applicant, in an appeal u/s 21 of NIA Act before the Hon'ble Division Bench of High Court of Jammu and Kashmir & Ladakh but even at that time the relief of bail was not granted to the applicant/accused, who wanted to complete his Ph.D thesis in last chance. The Hon'ble Court denied the relief after considering the objections as the allegations were found to be serious. Now, when charge has been framed which attracts the embargo of section 43 D (5) the bail cannot be granted. In this regard Hon'ble Supreme Court in K.A. Najeeb v/s Union of India at Para 18 of the judgement has held that:

"18. It is thus clear to us that the presence of statutory restrictions like Section 43 D (5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibilities of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial. Adverting to the case at hand, we are conscious of the fact that the charges labelled against the respondent are grave and serious threat to societal harmony. Had it been a case at the threshold, we would have rightly turned down the respondent's prayer. However, keeping in mind the length of period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court seems to be

left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's right guaranteed under Part III of our Constitution have been well protected."

The Hon'ble Supreme Court has thus made it clear that at the commencement of proceedings Courts are expected to appreciate legislative policy against the grant of bail and bail can be granted by Constitutional Courts, when it is found that the constitutional right of speedy trial of the accused is being violated. In his application the applicant/accused has not mentioned that he has remained incarcerated for a long time or that there is no likelihood that the trial would take a long time for its culmination. In this case, the trial is proceeding at a quick pace, about 10 witnesses have been examined in the trial and remaining witnesses are yet to be examined, who will depose regarding the role of accused and concession of bail is not available to the applicant/accused at this pre-mature stage of trial.

In the premises thereof it is most humbly prayed that keeping in view the submission made herein above and those to be urged at the time of advancement of arguments, the application filed by the applicant may very kindly be dismissed. In their arguments Ld. Counsel for the applicant and APP have reiterated the pleas taken in their application and objections.

4. In his arguments Ld Counsel for the applicant submitted that applicant is a PhD Scholar. He is a first time offender. Article was allegedly written and published in 2011 but there is no mention about the impacts of the Article in the Law and Order and militancy related incidents in the State/UT of Jammu and Kashmir. Ld Counsel for the applicant has referred to the Judgment of **Hon'ble High Court of J&K, dated: 17.11.2023 passed in the case of co-accused Peerzada Shah Fahad Vs UT of J&K and Another**, in which the Hon'ble High Court of J&K in last sentence of Para 3 of the Judgment which is reproduced as under:

"It was in this backdrop that current case against the appellant was dug out by the respondent with the registration of aforesaid FIR."

Further arguing the Ld Counsel for the appellant has referred to para 9 of the same Judgment, which is reproduced as under:

5. He has further argued that there is no evidence on record which connects the applicant with the Article that he has authored the said Article. Prosecution/respondent is relying upon the statement of only one witness Mr. Yah Raj Sharma, who was appointed by accused No. 2 in the year 2018 as employee in the 'The Kashmirwala', who has published the offending Article. So, his statement cannot be relied about the occurrence which has taken place in the year 2011. On these grounds, the Ld Counsel for the applicant has prayed for release of the applicant on bail.

6. On the other hand Ld Spl. PP has argued that from the statement of Yash Raj Sharma employee of '*The Kashmirwala*' it becomes clear that '*The Kashmirwala*' publishes articles only after verification of its author and they do it ethically and if they have written the name of the author, both at the end and at base of the article, it is sufficient evidence that the Article has been written by the applicant. He has further argued that his objections may be read as part and parcel of arguments.
7. **Heard and perused.**
8. The Court perused the application, objections, considered the arguments of Ld Counsel for the applicant and Spl. PP.evidence recorded in the Court, relevant provisions of law and case law which reveals that allegations against the accused-applicant are that:

"The article "shakles of slavery will break" published in the monthly digital magazine "The Kashmirwalla" written by you is highly provocative, seditious and creates unrest in J&K. You have advocated, abetted and instigated the gullible youths to pick up arms against the Govt. of India by way of writing such anti-Indian articles and motivated the youths to resist "Indian Occupation" by way of picking guns. You along with other accused on the direction of Pak based handlers conspired to wage war against the Govt. of India by way of instigating the youths of Kashmir to raise their voice against the Indian Govt. You have also created the sense of hatred and disaffection towards the Government of India and created the narrative which is anti-Indian; propagated the feeling of disaffection against other religions and communities. The article is against the National integration, intending to support the claim of secession of a part of territory of India; challenging the sovereignty and integrity of India and advocating the commission of terrorist acts and violence. Hence, you are charged for the commission of offence u/s 13/18 UA(P) Act, 121/153-B/201 IPC which are within the cognizance of this court and I hereby direct you to be tried on the above said charge.

9. It is not disputed that offending Article has been written in the year 2011 and published in the digital magazine '*The Kashmirwala*' on 06.11.2011. The Government neither took notice nor any action on the said Article from 6-11-2011 till 4-4-2022 from which it can be inferred that this Article has neither affected the Law and Order nor aggravated the militancy related incidents. Otherwise Government would have definitely booked the applicant soon after the publication of the Article and as argued and referred by Ld Counsel of the applicant, para 3 of the Judgment referred above by the Ld Counsel for the applicant the case

against the applicant has been dug out by the respondent by the registration of FIR on 05.04.2022. Further the gravity of the Article has already been assessed by the Hon'ble High Court of J&K in the Judgment of Hon'ble High Court as referred above in its para 9 which says that there is no call to arms by the author, there is no incitement to an armed insurrection against the State, there is no incitement to violence of any kind much less the acts of terrorism or of under mining the authority of the State with acts of violence.

10. It is not disputed that applicant is a first-time offender, there is no other case pending against him. It is also admitted that he is not a terrorist. His co-accused had already been admitted to bail who has allegedly published the Article and his role is not less than the role of the applicant because had the Article not been published it was of no effect if remained in the diary of the applicant.
11. The applicant is behind the bars for the last about 02 years and 09 months. There is very weak evidence which connects the applicant with the authorship of the Article and if the applicant due to weak evidence is acquitted at the end of the trial, his period of incarceration would not be compensable by any means. No doubt to the charges framed by the Court u/s 18 of UA (P) Act, the bar of Section 43(D)(5) of UA (P) Act is extended but as per Judgment of Hon'ble Supreme Court of India in **"Jalaluddin Khan Vs Union of India"** dated 13th August 2024: para 21 which is reproduced as under: -

21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our constitution.

12. As per Judgment of Hon'ble Supreme Court of India in **"Vernon Vs The State of Maharashtra &Anr"** dated **28th July 2023**:

Unlawful Activities (Prevention) Act, 2002; Section 15 Mere possession of literature even if it inspires or propagates violence by itself would neither amount to a 'terrorist act' within the meaning of Section 15 of the Act, nor any other offences under Chapters IV and VI of the Act. (Para 26)

Relevant para 26 of which is reproduced as under: -

"26. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary.**Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true.**"

13. In a recent Judgment Hon'ble SUPREME COURT OF INDIA in case titled: "Vernon Vs State of Maharashtra" Date of decision: 28 July 2023, has held that **mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act and released the accused on bail**. Relevant paras 26 & 45 of the said Judgment are reproduced as under:

26. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any allegation against them which would attract sub- clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1) (b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves gives hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal

force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. **Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act.** Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1) (b) of 1967 Act can be held to be true.

45. We accordingly set aside the impugned judgments and direct that the appellants be released on bail in respect of the cases(s) out of which the present appeals arise, on such terms and conditions the Special Court may consider fit and proper, if the appellants or any one of them are not wanted in respect of any other case.

14. In a recent Judgment **Hon'ble High Court of Judicature at Bombay Nagpur Bench, has granted anticipatory bail in bail application titled: "Nitin Vs State Of Maharashtra"** in a similar case of writing provocative article and relevant paras 2 & 12 of the said Order dated: 02.09.2024 are reproduced as under:

"2. Assistant Police Inspector Sarang Vijayrao Bompilwar, working in Anti Terrorist Squad at Yavatmal, lodged a complaint stating in it that on 3.6.2024 he received a letter from the office of the Special Inspector General of Police (Anti Naxal Operation) that the applicant has written an Article and circulated the same on WhatsApp titled as " "भारतात पुन्हा नक्षलवाद पेटनार, देश वाचविण्यासाठी सशस्त्र कांतीची गरज." He also circulated in the Article a slogan as "जय भारत, जय संविधान, जय नक्षलवाद". He is supporter of Naxalites and he promotes enmity between different groups on grounds of religion, race, place of birth, residence, language and as such he committed an offence. On the basis of the said letter and the complaint by the informant, First Information Report came to be registered under Section 153-A(1)(b) of the Indian Penal Code.

12. In view of the above, following order is passed:

ORDER

1. The criminal application is allowed.
2. Applicant Nitin s/o Vasantrao Bode shall be released on bail, in connection with Crime No. 549/2024 registered with the non-applicant/police station for offence punishable under Section 153-A(1)(b) of the Indian Penal Code, on his executing a P. R. Bond in the sum of Rs. 25000/- with one solvent surety of the like amount.
3. He shall attend the concerned police station once a week i.e. on Sunday between 10:00 am and 1:00 pm, till filing of charge sheet.
4. He shall produce his mobile phone before the investigating officer and this period shall be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

5. He shall not induce or threat or promise to any witnesses connected with the crime in question and shall not tamper with the prosecution evidence.”
15. In view of the Court, this is a deserving case in which the accused at this stage of the trial should be released on bail. Accordingly this application is allowed and the accused is admitted to bail subject to the following conditions:-
- i. he shall furnish one personal bond of Rs 1 Lakh and two surety bonds of like amount of solvent sureties, who shall by documentary evidence prove their financial capacity to pay the penalty of the surety bonds.
 - ii. he shall attend the nearest Police-Station: Mahore on weekly basis and get & present, attendance in the Court on each date of hearing.
 - iii. he shall regularly appear in this Court on each and every date of hearing without fail.
 - iv. he shall not leave the UT of J&K without prior permission of this Court.
 - v. he shall surrender his passport before this Court, if issued but not already surrendered.
 - vi. he shall not involve themselves in any criminal activity leading to registration of fresh FIR, if they do so, their bail shall be treated as cancelled.
 - vii. he shall not come in contact with the witnesses of the case who are yet to be examined in the Court.
 - viii. he shall furnish the phone numbers to be used by them while on bail which shall never be kept of.
 - ix. he shall not jump over the bail bonds.

On furnishing, acceptance and attestation of bonds as aforesaid and submission of passport and phone number, release order of the applicant shall be issued with the direction to the I/C Jail to release him after obtaining personal bond of Rs. 1 Lakh and after informing the conditions of bail order to him.

Announced
08.02.2025

(Madan Lal)
3rd Addl. Sessions Judge,
(Designated Court Under
TADA/POTA/UAPA Cases)
Jammu.