

**IN THE COURT OF SH. SAMEER BAJPAI  
ADDITIONAL SESSIONS JUDGE-03  
(SHAHDARA), KARKARDOOMA COURT, DELHI**

**Bail Application Registration No. 441/2024 (Umar Khalid)**

SC No. 163-2020

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)  
U/S. 13/16/17/18 UA (P)Act, 120B read with Section  
109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/  
353/395/419/420/427/435/436/452/454/468/471/34 IPC &  
Section 3 & 4 Prevention of Damage to Public Property Act,1984  
and Section 25/27 Arms Act  
Tahir Hussain Vs. State

28.05.2024

**ORDER**

1. This is the second bail application of the applicant/accused Umar Khalid filed under Section 437 of Code of Criminal Procedure, 1973 read with Section 43D (5) of the Unlawful Activities Prevention Act, 1967 for grant of regular bail.

2. The submissions on behalf of the applicant/accused in brief are that the applicant has been charge-sheeted under Section 120B read with Sections 124A, 302, 207, 353, 186, 212, 395, 427, 436, 454, 109, 114, 147, 148, 149, 153A, 34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Prevention of Damage to Public Property Act,1984, Sections 25/27 Arms Act, 1959 and Sections 13, 16, 17 & 18 of the UAPA.

2.1 It is further submitted that the present application has been filed by the applicant on account of change of circumstances. The first bail application as filed by the applicant was dismissed by this court vide the order dated 24.03.2022, pursuant to which the appeal dated 20.04.2022 was filed by

the applicant before the Hon'ble High Court of Delhi and the same was dismissed vide order dated 18.10.2022. After dismissal of the appeal, the applicant approached the Hon'ble Supreme Court by way of a special leave petition dated 06.04.2023, wherein, the Hon'ble Supreme Court was pleased to issue notice vide order dated 18.05.2023 and granted leave on 12.09.2023 but thereafter on 14.02.2024, the applicant was permitted to withdraw the said petition on the ground that there is change of circumstances.

**2.2** It is submitted that the applicant, who is 36 years old researcher and scholar, was arbitrarily arrested in the present FIR on 13.09.2020 and he has spent over three and half years in custody. Further, the applicant was arrested more than six months after the registration of the impugned FIR, despite having fully cooperated with the investigating agency in the interregnum.

**2.3** Further, the applicant was falsely implicated in FIR No.101/2020 dated 25.02.2020 PS-Khajoori Khas also, in which he was granted bail vide the order dated 15.04.2021 and was subsequently discharged vide order dated 03.12.2022.

**2.4** Further, the applicant has committed no offence as alleged against him. The charge-sheet and the supporting material do not satisfy the ingredient of alleged offences under the UAPA. The alleged act of the applicant does not fall within the definition of "terrorist act" as provided under Section 15 of UAPA and as such no offence under sections 16 and 18 of the UAPA is made out. Further, it is not even the case of the prosecution that the applicant has any affiliation or remote connection with any banned or terrorist organization. Further, it is not also the case of the prosecution that the applicant was involved in raising any funds for terrorist act and as such section 17 of UAPA is not applicable. Further, even examination of the prosecution witnesses, including the protected witnesses does not show any

involvement of the applicant in the alleged activities.

2.5 Further, the applicant is entitled to bail on the ground of parity as several co-accused persons including Natasha Narwal, Devangana Kalita and Asif Iqbal @ Tanha have been granted bail despite the fact that as per the prosecution story they had more direct role as compared to the applicant.

2.6 Further, this court while rejecting the first bail application of the applicant and the Hon'ble High Court of Delhi while dismissing the appeal, had no occasion to consider the dictum as given by the Hon'ble Supreme Court in *Vernon Vs. State of Maharashtra & Anr., 2003 SCC Online, SCC 885* in which the earlier judgment of Hon'ble Supreme Court in *National Law Agency Vs. Zahoor Ahmad Shah Watali (2019) 5SCC 1* was also discussed, and as such this court should now consider the said judgment and should grant bail to the applicant.

2.7 Besides the judgments as mentioned hereinbefore, the Ld. Counsel for the applicant also mainly relied upon *Sudesh Kedia Vs. Union of India (2021) 4SCC 704* and *Union of India Vs. K. Nazeer, 2021 3 SCC 713*.

3. In written arguments as submitted on behalf of the applicant, Ld. Counsel for the applicant just elaborated the submissions as given in the bail application. Ld. Counsel gave minute details of the facts as are there in the charge-sheet in order to show that the alleged offences against the applicant are not attracted and the applicant deserves bail. Ld. Counsel further relied upon *State of Haryana Vs. Basti Ram (2013) 4SCC 200*; *State of Andhra Pradesh, through Inspector General, National Investigation Agency Vs. Mohd. Hussain @ Saleem, (2014) 1 SCC 258*; *Shaheen Welfare Association Vs. Union of India and Others, (1996) 2 SCC 616* and *Angelia Harish Sontakke Vs. State of Maharashtra, (2021) 3SCC 723*.

4. In reply, the submissions on behalf of the prosecution are that the first bail application of the applicant was dismissed by this court vide the order dated 24.03.2022 and the said order was challenged in appeal and the Hon'ble High Court of Delhi was pleased to dismiss the appeal vide the judgment and order dated 18.10.2022. Further, after perusal of the report u/s. 173 Cr.P.C, the Hon'ble High Court formed the opinion that there are reasonable grounds for believing that the accusation against the applicant is prima facie true. Further, the applicant then approached the Hon'ble Supreme Court by way of filing an SLP, wherein leave was granted and the same was converted into a criminal appeal but the same was finally withdrawn by the applicant without citing any cogent reason, except stating that there is change in circumstances. Further the said "change in circumstances" in real terms were neither stated before the Hon'ble Supreme Court nor specially pleaded in the present bail application and the same might be just claiming parity with a few other co-accused persons who have been granted bail and that the charge has still not been framed and the trial has delayed. Further, while withdrawing the criminal appeal, the applicant did not take leave of the Hon'ble Supreme Court that his bail application may be considered afresh without being influenced by the material on record or may be considered afresh ignoring the concurrent findings given by this court and the Hon'ble High Court vide the judgment and order dated 18.10.2022 and as such this court is now required to consider the present second bail application being bound by the findings given at the time of rejection of the first bail application as well as the judgment and order dated 18.10.2022 as passed by the Hon'ble High court, which has become final and binding upon this court. Further, the applicant cannot claim parity with the co-accused persons, who have been granted bail as this court is bound by the order and judgment dated 18.10.2022 of the Hon'ble High Court. Further, the applicant cannot also

claim relief on the ground of delay, as on 11.09.2023 the prosecution was ready to begin arguments on the point of charge but the Id. Counsel for co-accused persons raised objection stating that before addressing arguments on the point of charge, the prosecution has to make it clear if the investigation was complete. Further, on the ground of delay alone the applicant cannot be given benefit considering the gravity of offences. Further, the Hon'ble Supreme Court in Gurvinder Singh vs. State of Punjab 2024 SCC Online SC 209 has clarified that the exercise of the general power to grant bail under UAP Act is severely restrictive in scope and the bail in such cases is the exception and jail is the rule. Further, it has been clarified in the said judgment that mere delay in trial regarding such serious offences cannot be used as a ground to grant bail. Further, the aforesaid judgment again reiterates the settled law regarding the duration of the limitation u/s 43D(5) that the special provision i.e. section 43D of the 1967 Act applies right from the stage of FIR under chapter 4 and 6 of the 1967 Act until the conclusion of trial thereof.

5. The court has already heard arguments and gone through the record.

6. It is noted first, that this court has already dismissed the first bail application of the applicant and the Hon'ble High Court vide the order dated 24.03.2022 has also dismissed the criminal appeal in which the order of this court was challenged and after withdrawing the criminal appeal from the Hon'ble Supreme Court, the applicant has now moved the present second bail application taking ground that there are change in circumstances.

6.1 Although the applicant has not specifically mentioned as to what are the change in circumstances, on the basis of which this court should again

consider his second bail application but, if the court gives a thought to the said situation, the change in circumstances may be either delay in the proceedings or the relevant law which the Id. Counsel for the applicant tried to explain by citing the judgment of the Hon'ble Supreme Court in Vernon Vs. State of Maharashtra & Anr., which came after the bail application of the applicant was dismissed by the Hon'ble High Court.

**6.2** With regard to the aspect of delay, the Id. Public Prosecutor submitted and the record also shows that there is no delay in framing of charge and commencement of the trial on the part of the prosecution and infact, it is the accused persons who have moved separate applications, praying therein that before considering the matter on charge the prosecution be asked if the investigation is complete. Thus, when the delay in the proceedings is not on the part of the prosecution and infact is on the part of the accused persons, the applicant cannot take benefit of the same.

**6.3** The other aspect of change of circumstance might be the judgment in 'Vernon vs. State of Maharashtra' which was pronounced after the order of this Court and of the Hon'ble High Court. It is submitted in the application that neither this Court nor the Hon'ble High Court had the occasion to consider the case of the applicant in view of the said judgment of the Hon'ble Supreme Court and thus the same must be considered now. The court agrees with the submissions of Id. counsel that if there is any change in law, the court can definitely consider the same as change in circumstances, but the court has to see first if infact there is any change in law and the applicant can get any benefit out of the changed law.

**6.4** The Id. counsel for the applicant pointed out certain portions of the said judgment in order to show that while deciding a bail application the court must do surface analysis of the probative value of the evidence and the surface analysis has to be done in the manner as has been done by the Hon'ble

Supreme Court in the said judgment i.e. the Vernon's case.

6.5 Thus, to make it clear as to what exactly the applicant wishes the court to do now, it would be appropriate to reproduce the relevant portions of the said judgment as under -

*“9. Barring section 13, on the offences with which the appellants have been charged with under the 1967 Act fall within chapters 4 and 6 of the said statute. Hence, there is a duty of the court to form an opinion on perusal of the case diary or the report made under section 173 of the Criminal Procedure Code 1973 (“1973 Code”) that there are reasonable grounds for believing that the accusations against such persons are prima-facie true while considering the prayer for bail, to reject prayers for bail of the appellants.”*

*“15. The Prosecution has referred to some letters alleged to have been recovered from the computers or other devices of the co-accused persons in which activities of the two appellants have been referred to. We shall deal with these communications in the subsequent paragraphs of this judgment. Under ordinary circumstances in a petition for bail, we must point out this exercise of analysis of evidence would not have been necessary. But in view of the restrictive provisions of section 43D of the 1967 Act, some element of evidence analysis becomes inevitable.”*

*“24..... The High Court while analyzing each of these documents individually did not opine that there were reasonable grounds for believing that the accusations against such persons were not prima-facie true. Those offences which come within chapters 4 and 6 of the 1967 Act, charged against the appellants, are sections 16, 17, 18, 18B, 20, 38, 39 and 40. We have summarized the nature of allegations reflected in the charge sheet as also the affidavit of the NIA. Now, we shall have to ascertain if on the basis of these materials, the prosecution has made out reasonable grounds to persuade the court to be satisfied that the accusations against the appellants are prima-facie true.”*

*“29..... Moreover, actual involvements of appellants in any terrorist act had not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters 4 and 6 of the 1967 Act. Mere participation in Seminars by itself cannot constitute an offence under the bail restricting sections of the 1967 Act, with which they have been charged.”*

*“37. In the case of Zahoor Ahmad Shah Watali (Supra), it has been held that the expression ‘prima-facie true’ would mean that the materials/evidence collected by the investigating agency in reference to the accusations against the accused concerned, in the charge sheet must prevail, unless overcome or screwed by the other evidence, and on the fact of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusations against the accused ought to prevail. In our opinion, however, it would not satisfy the prima-facie “test” unless there is at least surface analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are the appellants has been brought before us.”*

*“38..... We have dealt with the summary of their statements earlier in this judgment. We have also observed earlier that mere possession of the literature, even if the content thereof inspires or propagates violence, by itself cannot constitute any of the offences within chapters 4 and 6 of the 1967 Act.”*



**6.6** In para no. 9 of the said judgment, it has been first noted by the Hon'ble Supreme Court that if the offences as alleged against the accused fall within chapters 4 and 6 of the Act, after perusing the case diary and the report u/s 173 Cr.P.C., it is the duty of the court to see if there are reasonable grounds for believing that the accusations against the accused are prima-facie true. Further, in para no. 24, the Hon'ble Supreme Court observed that it has to be ascertained if on the basis of the material, the prosecution has made out reasonable grounds to persuade the court to be satisfied that the accusations are prima-facie true. Further, in para no. 37, which the Id. Counsel for the applicant is mainly stressing upon, after discussing 'Zahoor Ahmad Shah Watali' the Hon'ble Supreme Court gave observation that it would not satisfy the prima-facie test unless there is at least surface analysis of probative value of the evidence at the stage of examining the question of deciding the bail.

**6.7** Thus, all the judgments as cited on behalf of the applicant including the judgment *Vernon vs. State of Maharashtra & Anr.* make it clear that the court has to be satisfied on the prima-facie test and question remains only regarding the surface analysis of probative value of the evidence, as far as the case in hand is concerned.

**6.8** Before analyzing, if the applicant can get any relief on consideration of *Vernon vs. State of Maharashtra*, it is to be noted that recently in *Union of India vs. Barkatullah etc.* as decided by the Hon'ble Supreme Court on 22.05.2024 in Criminal Appeal Nos. 2715-2719 of 2024 out of the SLP (Crl.) Nos. 14036-14040 of 2023, the law as laid down in *National Investigation Agency vs. Zahoor Ahmad Shah Watali, Gurvinder Singh vs. State of Punjab & Anr., Union of India vs. K M Nazeer and Vernon vs. State of Maharashtra & Anr.* has been discussed. The Hon'ble Supreme Court in the said judgment has confirmed the law as laid down in *National Investigation Agency vs. Zahoor Ahmad Shah Watali and Gurvinder Singh vs.*

State of Punjab & Anr. and opined that the court at the stage of considering the bail application of the accused is merely required to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offence. The Hon'ble Supreme Court regarding Vernon vs. State of Maharashtra & Anr. gave opinion that the reason for granting bail in the said case was the consideration of the allegations and long incarceration of five years.

**6.9** Although, the court has to consider the latest judgment of the Hon'ble Supreme Court as mentioned herein before i.e. Union of India vs. Barkatullah etc., but even if as prayed by the applicant, the judgment in the Vernon's case is considered, this court is of the view that there are no change in circumstances only due to the fact that the words 'surface analysis' have been added in it.

**7.** The court must note now that in its order dated 24.03.2022, while dismissing the first bail application of the applicant, this court discussed the merits and role of the applicant in detail and thereafter, the Hon'ble High Court in its order dated 18.10.2022, while dismissing the appeal of the applicant, not only categorically analyzed the order of this court but also discussed the role of the applicant and considered all the facts and circumstances in detail.

**7.1** The order of the Hon'ble High Court dated 18.10.2022 shows that in the paras from 11 to 38, the Hon'ble High Court noted all the contentions of the applicant, which the applicant has again raised in the present bail application and only after considering all the contentions, the Hon'ble High Court analyzed the case of the applicant in the paras from 39 to 61 of its judgment. In the initial paras the Hon'ble High Court made it clear that as to what was supposed to be seen while considering the bail application

of the applicant and also noted the case National Investigation Agency vs. Zahoor Ahmad Shah Watali, which has been discussed and infact is the basis of the Vernon's case. After analyzing the law, the Hon'ble High Court discussed the role of the applicant from paras 46 to 57 of the judgment. In between, the Hon'ble High Court also observed that the Id. trial court, while dismissing the first bail application of the applicant correctly analyzed and explained the facts of the case and thereafter, the Hon'ble High Court, specifically in paras 52 to 54 itself noted all the relevant facts against the applicant. Further, in the next paras also, the Hon'ble High Court analyzed the case against the applicant and finally concluded that allegations against the applicant are prima-facie true and that the embargo created by section 43D(5) of UAPA squarely applies against the applicant and the applicant does not deserve bail.

7.2 It is clear that the Hon'ble High Court has minutely considered the role of the applicant and declined the relief as desired by him. As according to the Vernon's case as relied upon by Id. counsel for the applicant, while considering bail, no 'deep analysis' of the facts of a case can be done and only 'surface analysis' of the probative value of evidence has to be done and as such the Hon'ble High Court has infact did complete surface analysis of probative value of the evidence while considering the prayer of the applicant for grant of bail and after doing so it was concluded that prima-facie case is made out against the applicant.

8. Thus, when the Hon'ble High Court has already dismissed the criminal appeal of the applicant vide order dated 18.10.2022 and thereafter, the applicant approached the Hon'ble Supreme Court and withdrew his petition, the order of this Court as passed on 24.03.2022 has attained finality and now, in no stretch of imagination this court can make analysis of the facts

of the case as desired by the applicant and consider the relief as prayed by him.

9. In view of the facts as discussed above, the court finds no merit in the case of the applicant and accordingly the bail application is dismissed.

10. Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

11. Copy of this order be given dasti to the Ld. Counsel for the applicant/accused.

(Sameer Bajpai )  
Addl. Sessions Judge-03  
Shahdara District, Karkardooma Courts,  
Delhi : 28.05.2024