

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P. No. 27309 of 2023**

**Between:**

Abdul Khadar @ Abdul Quader

... Petitioners

**And**

The Union of India and another

... Respondents

**JUDGMENT PRONOUNCED ON: 15.04.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 27309 of 2023**

**% 15.04.2024**

**BETWEEN:**

Abdul Khadar @ Abdul Quader

... Petitioners

**And**

The Union of India and another

... Respondents

**< Gist:**

**➤ Head Note:**

!Counsel for the Petitioner: Sri Mohammed Moinuddin

^counsel for Respondents : Sri Narasimha Sharma  
Addl. Solicitor General of India

**? Cases Referred:**

**HON'BLE MRS JUSTICE SUREPALLI NANDA****WRIT PETITION No.27309 OF 2023****ORDER:**

Heard Mr. Mohammed Moinuddin, the learned counsel appearing on behalf of the Petitioner and Mr. Narasimha Sharma, the learned Additional Solicitor General of India appearing on behalf of the respondents.

**2. The petitioner approached the Court seeking prayer as under:**

"to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari to Quash the statements mentioned at List No. 1 and also presented in ANNEUXRE P3 SERIES which are enumerated the witnesses list of charge sheet at ANNEXURE P2 filed by the Respondent in Spl. S.C. No. 1 of 2023 on the file of IV Metropolitan Session Judge cum Special Court for NIA Cases arising out RC03/2022/NIA/HYD in NIA Police Station, Hyderabad on 26.08.2022 U/s. 120B, 121A, 153A, 141 r/w 34 of IPC and section 13(1)(b), 18A and 18B of the UA (P) Act 1967 wherein petitioner is arrayed as accused No.1"

**3. The case of the petitioner in brief as per the averments made by the Petitioner in the affidavit filed by**

**the Petitioner in support of the present writ petition is as under :**

i) The Petitioner is the husband of one Zubaida Begum who is presently in judicial custody and a criminal case vide FIR No.141/2022 dated 04.07.2022 was registered at VI Town P.S., Nizambad District, Telangana U/s.120-B, 121-A, 153-A, 141, r/w 34 IPC and Sec.13(1)(b) of UA (P) Act, 1967 against the Petitioner along with few other persons as accused. The Respondent NIA Hyderabad took over the investigation of the case in Crime FIR No.141/2022, dt. 04.07.2022 of VI Town P.S., Nizamabad, Telangana, by re-registering the original case as No.RC-03/2022/ NIA/Hyderabad in NIA Police Station, Hyderabad on 26.08.2022 U/s.120-B, 121-A, 153-A, 141, r/w 34 IPC and Sec.13(1)(b), 18A and 18B of UA (P) Act, 1967.

(ii) It is further the case of the Petitioner that as on 29.12.2022 the NIA, Hyderabad had filed a charge sheet against (11) eleven of the accused including the Petitioner before the IV Additional Metropolitan Session Judge-cum-Special Court for NIA cases at Hyderabad and the same is numbered as SPL. S.C.No. 1 of 2022, in the charge sheet of SPL SC 1 of 2023, Respondent Agency has cited total 85 witnesses in list and out of this list 30

are one or the other way affiliated to the organization Popular Front of India, Nizamabad, Telangana State as per the statements recorded by the Respondent Police under the guise of investigation.

(iii) It is further the case of the Petitioner that the Investigation Agency has falsely implicated the accused persons along with the Petitioner/Accused No.1 under the stringent provision of law on the basis of fabricated documents and make-belief narratives in Special SC No.01 of 2023 on the file of IVth MSJ-cum-Special Judge for NIA, Hyderabad, for the crime punishable U/s.120-B, 121-A, 153-A, 141 r/w 34 of IPC, and Sec.13(1)(b), 18A, 18B of UA(P) Act, 1967.

(iv) It is further the case of the Petitioner that Investigation Agency has summoned the 30 witnesses and made them sit for several hours in their offices and told them very specifically, if they won't co-operate they would also be made accused in the subject case and would remain in the jail for a period of 15 years. It is the specific grievance of the Petitioner that in the present case the mandate of Sec.306 of the Criminal Procedure Code had been bypassed by the Respondents and the witnesses had been tortured and the entire statement recorded under

Sec.161 and 164 of Criminal Procedure Code is by instilling fear of prosecution. Aggrieved by the same the Petitioner filed the present writ petition.

**4. The learned counsel appearing on behalf of the Petitioner mainly put-forth the following submissions:**

- (i) The entire statements recorded under Sec.161 and 164 of Criminal Procedure Code is by instilling fear of prosecution by torturing the witnesses.
- (ii) The mandate of Sec.306 of Criminal Procedure Code had been bypassed.
- (iii) Fair investigation is implied under Article 21 of the Constitution of India which gives absolute protection from the illegal procedure adopted by the Respondents.
- (iv) There is a specific bar to record the statement of accomplice under Section 161, 164(5) of Criminal Procedure Code and right and proper procedure to elicit facts of the case or tender pardon is provided under Sec.306 of Criminal Procedure Code.
- (v) The Respondents on their own whims and fancies declared certain witnesses as protected witnesses to protect their own wrong.
- (vi) The Respondents made the witnesses to sit in the office for hours together and force them to own the statement as per the Respondents own narrations.

5. Based on the aforesaid submissions and referring to the judgment dated 04.04.2011 of the Division Bench of the Apex

Court in Chandran Vs. State of Kerala and Manikantan Vs. State of Kerala & Others in Criminal Appeal Nos. 1528, 1530, 1531 of 2005 and the judgment dated 23.08.2017 of the Apex Court in Girish Sharma Vs. State of Chattisgarh, the learned counsel for the Petitioner contended that the Petitioner is entitled for the relief as prayed for in the present writ petition.

6. **The learned counsel appearing on behalf of the Respondents mainly puts forth the following submissions:**

(i) The accusations against the Petitioner/Accused No.1 are contained in sub-para (i) of paragraph 17.26 of the charge sheet filed on 29.12.2022 and a bare perusal of the same clearly indicates the role and evidence against the Petitioner.

(ii) The allegations levelled against the Respondents are not by the concerned witnesses as alleged by the Petitioner but are in fact levelled by the Petitioner/Accused.

(iii) There is no single complaint by any of the witness against the Respondent herein towards their ill-treatment or for intimidation done by the Respondent.

(iv) No threat, duress, coercion were made to the witnesses and accordingly their statements are voluntary in nature.

(v) The transparency and dignity of the witnesses being examined was duly maintained by the Respondents as per the mandated procedure in Sec. 161 Criminal Procedure Code.

(vi) The witnesses are neither accomplice nor accused and hence the provisions of Sec.306 Cr.P.C do not attract to them and their statements had been rightly recorded U/s.161/164 Criminal Procedure Code.

(vii) No procedural violations occurred during the recording of the statement of the witnesses by the Respondents and no single witness had come forward complaining against the Respondents for the allegations levelled by the Petitioner.

**The learned counsel appearing on behalf of the Respondent's placing reliance on the averments made in the counter affidavit filed by the Respondents No.1 and 2 contends that the Petitioner is not entitled for the relief as prayed for in the present writ petition.**

**DISCUSSION AND CONCLUSION:**

7. A bare perusal of para 17.26 of the charge sheet RC-03/2022/NIA/Hyderabad, filed on 29.12.2022 under Sec. 173 of Criminal Procedure Code before the IV Additional



Metropolitan Session Judge, Special Court for NIA cases, Nampally, Hyderabad, clearly indicates the role of the petitioner and the evidence against the Petitioner.

8. The counter affidavit filed by the Respondents, the relevant paragraphs read as under :

**“C.PARAWISE REPLY (GROUNDS)**

**Reply to para (i) : That the contents and averments made in Para (i) of the grounds in petition are false and concocted and the same are denied by the respondent-NIA stating that Investigation has revealed that the petitioner/accused Abdul Khader (A-1) was an active cadre of the unlawfully declared organization Popular Front of India (PFI) and he was involved in imparting the Physical Efficiency (PE) training and weapons training to the PFI cadres/members and motivating them to commit violent terrorist activities by assassinating the senior leaders of the RSS and other right wing organizations.**

It is further submitted that one of the documents seized from the house of the petitioner on 04.07.2022 and bearing his handwriting contained the five days schedule of Physical Efficiency (PE) wherein there is mention of knife and Koduwal (sickle) attack, as revealed in the statements of witnesses. It is pertinent to mention that the heading of that document is ‘5

Days Yoga Schedule'; that there is no such form of Yoga or martial art that teaches about attacking and killing a person with knife or sickle, Further, during investigation, the specimen handwriting of the petitioner/ accused Abdul Khader (A-1) were collected before the Hon'ble NIA Court and the Account Opening Form (AOF) of his SBI account bearing his admitted handwritings were collected from SBI. The specimen & admitted handwritings of Abdul Khader (A-1) along with documents seized from his possession were sent to the TSFSL, Hyderabad through the Hon'ble NIA Court for comparison and the report of TSFSL in this regard communicating positive match of the handwriting of the accused with the seized documents is submitted to the Hon'ble NIA Court. The role and evidence against the petitioner has been clearly brought out in Para 17.26 of the Charge-sheet filed on 29.12.2022.

Reply to Para (iii) & (vii): That the contents and averments made in Para (iii) & (vii) are false, baseless and devoid of merits. No evidence in support of their alleged claim have been produced by the petitioner. In order to cover his misdeeds, the petitioner is trying to malign the image of the respondent by producing false narrative and stories. It is pertinent to mention here that these allegations have been levelled by the

**petitioner accused and not by those witnesses and on this basis alone, the present petition is liable to be dismissed. No such cited witnesses have made any complaints against the respondent towards their ill-treatment or for intimidating them by the respondent. The statements of the witnesses have been recorded by following due legal procedures as mandated in section 161 CrPC in order to maintain the transparency and dignity of the witnesses being examined. No threat, duress, coercion were made to the witnesses and accordingly their statements are voluntary in nature.** Further, examination of witnesses for the subsequent times has not been barred under any court of law.

**Reply to Para (iv), (v), (vi) & (viii):** That in reply to Para (iv), (v), (vi) & (viii), it is respectfully submitted that it is true that the said witnesses were the member of the Popular Front of India (PFI) which has been declared as an unlawful association. The PFI by way of organizing and showcasing the various social programmes, used to attract the several Muslim gullible youths towards them and used to recruit them as the members of PFI. However, the PFI used to show its actual agenda during the Beginners Course training programmes being organized for the newly recruited members wherein they were being

radicalized and motivated for violent unlawful activities by asking them to undergo the weapons training and learn about the three books (viz. Book-1, Book-2 & Book-3 code words for knife, rod and sickle respectively) so that their services can be utilized by PFI to target and eliminate those who are against establishment of Islamic rule in India. It is worthy to mention here that the deals of weapons training under the above said code names were also found mentioned in the hand writing of the petitioner in the records seized from his house. The witnesses cited by the respondent are some of those members of PFI who underwent training for Beginners Course in Heaven Garden Function Hall, Kurnool or Mubarak Function Hall, Nandyal or PFI Office Chandrayangutta. These witnesses after undergoing the Beginner's Course could realize the actual malicious agenda of PFI and gradually separated themselves from PFI and thereby they are the victims of the nefarious activities of PFI who were misled by various senior members of PFI including the respondent herein. When the assurance was given to these witnesses for safety of their lives, they came forward on their own and narrated the entire incidents as to how they became victims of the PFI, without under duress and coercion. Some of these witnesses were so afraid for their lives

from the accused/members of PFI that they could come forward to give evidence against them only after the assurance given to them by the respondent that they would be made as protected witnesses and their names would not be revealed to the accused and their identities would be concealed in terms of Section 17 of the NIA Act, 2008 read with section 44 of the UA(P) Act, 1967. The petitioner in order to save his skin is trying to mislead the Hon'ble Court by addressing Victims as accomplice. It is further to be submitted that the witnesses are neither accomplice nor accused and hence the provisions of section 306 do not attract to them and their statements have been rightly recorded under section 161/164 Cr.P.C.

Reply to Para (ix): That in reply to Para (ix), it is respectfully submitted that as submitted in above paras, there are no procedural violations by the respondent in recording of the statement of the witnesses. So far no such witnesses have come forward complaining against the respondent for the allegations levelled by the petitioner. The fog would get cleared once the witnesses are examined during the trial of the instant case. The statements of these witness are corroborating the evidence recovered from the house of the petitioner during house search as to how deep the petitioner was indulged in

carrying out the nefarious activities of the PFI for its ultimate goal to establish Islamic Rule in India by way of violent jihad.”

9. A bare perusal of the averments made in the counter affidavit filed by the Respondents referred to and extracted above clearly indicates the stand of the Respondents that the witnesses are neither accomplice nor accused and hence the provisions of Section 306 Cr.P.C. do not attract to them and their statements had been rightly recorded under Sec.161/164 Criminal Procedure Code and further it is specifically averred at para 9 of the counter affidavit filed by the Respondents Nos.1 and 2 that there are no procedural violations in recording the statement of the witnesses and the statements of witnesses recorded are voluntary in nature which had been in fact recorded without any threat, duress or coercion by the Respondents and further no single witness had come forward complaining against the Respondents for the allegations levelled by the Petitioner against the Respondents herein.

10. Taking into consideration the aforesaid facts and circumstances of the case and duly considering the

**averments made in the counter affidavit filed by the Respondents (referred to and extracted above) this Court opines that the judgments relied upon by the Petitioner do not apply to the facts of the present case and accordingly the present writ petition is dismissed since the same is devoid of merits. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending shall stand closed.

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**SUREPALLI NANDA,J**

Date: 15.04.2024

Note: L.R. copy to be marked

b/o

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