

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Pronounced on : 23.02.2024

Case: Cr1A(D) No.18/2023
CrIM Nos.1611/2023 & 1084/2023

Baseerat-ul-Ain, Age-31 years, Appellant(s)
D/o Nazir Ahmad Wagay,
R/o Ganowpora, Shopian, Kashmir
Through father Nazir Ahmad Wagay,
Age-56 years, S/o Ramzan Wagay, R/o
Ganowpora, Shopian, Kashmir

Through :- Mrs. Surinder Kour, Sr. Advocate with
Mr. Dalvinder Kumar, Advocate.

Vs

1. National Investigation Agency throughRespondent(s)
Special Public Prosecutor, Jammu.
2. Jail Superintendent, District Jail,
Baramulla.

Through :- Mr. Vishal Sharma, DSGI
Mr. Vipin Kalra, Public Prosecutor.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

23.02.2024

1. The appellant/accused Baseerat-ul-Ain has preferred the present appeal against the order dated 12.06.2023, passed by learned court of 3rd Additional Sessions Judge Jammu (Special Judge under NIA Act) whereby the bail application of the appellant has been dismissed.
2. The appellant-Hidayat Ullah Malik (accused No.1 in the challan) and others stand charge-sheeted by the NIA Court in an FIR No.16/2021 dated 06.02.2021 initially registered with Police Station Gangyal and

later on taken over by the NIA Jammu and re-registered the case vide RC No.01/2021/NIA/JMU dated 02.03.2021. It is suffice to mention here that the trial court had initially granted bail to the appellant herein vide order dated 07.01.2022 and the same came to be cancelled vide order dated 25.07.2022 on the ground that the charges have been framed against the accused in terms of section 18 & 19 of Unlawful Activities (Prevention) Act, 1967 herein after called 'the Act'.

3. Aggrieved by order dated 25.07.2022 passed by the trial court, the appellant preferred appeal before this Court and the Division Bench vide order dated 03.04.2023 directed the trial court to again consider the bail application afresh after affording opportunity of being heard to both the sides and pass reasoned order. In pursuance to the aforesaid direction the order impugned dated 12.06.2023 has been passed by the trial court. The appellant has also filed an appeal against the order whereby the charges have been framed against the accused and that petition has been treated as one filed under Section 482 Cr.P.C. The objections filed in that petition by the respondents herein have been treated as objections to the present appeal.
4. Mrs. Surinder Kour, learned Sr. counsel, appearing for the appellant has argued that the bail granted initially by the trial court could not have been canceled by the said court unless there were compelling reasons for passing order of cancellation. It is further argued that the allegations as leveled against the appellant in the charge-sheet even if taken as they are the same should not deprive the appellant of concession of bail by the

Court. The appellant is the wife of Hidayat Ullah Malik and her presence with the said accused-Hidayat Ullah Malik at different places, as alleged by the respondent, is but natural she being his wife. There is no such circumstance in the case set up against appellant which should debar the appellant from being granted bail.

5. Mr. Vishal Sharma, learned Dy. SGI, has argued that the complicity of the appellant in the terror case has been prima facie established and the charges have also been framed against the accused. The appellant has a role in the case in hand. The counsel has also disputed that the appellant is wife of the accused no.1 in the challan and submits that the so called marriage document is only a smokescreen for the appellant to escape from clutches of law.
6. The Court at the outset makes it clear that this Court is not to record any finding regarding the relationship of the appellant herein with Hidayat Ullah Malik as wife and husband on the basis of document (Nikahnama) dated 08.12.2020 on which appellant has also relied upon during course of arguments.
7. The Court need not set out the facts of the case in detail as mentioned in the challan and can restrict itself to the facts which are relevant qua the appellant for the purpose of disposal of the instant appeal.
8. The framing of charge against the accused under Section 18 & 19 of the Act by itself shall not be sufficient to reject the bail to the appellant if, prima facie, the Court is of the view that the accused has otherwise made out a case for grant of bail.

9. The senior counsel appearing for the appellant though has argued that the order impugned is, in fact, the cancellation of bail granted earlier to the appellant vide order dated 07.01.2022 passed by the trial Court, Mr. Vishal Sharma, appearing for the respondents, on the other hand, submits that the order impugned is not cancellation of bail as the order initially granting bail to the appellant was itself challenged by the respondents in appeal. The Court is of the view that it need not go into this aspect of the matter as this court will determine if the present appellant is otherwise to be held entitled to bail on the allegations which stand leveled against her.
10. The accused-Hidayat Ullah Malik and the appellant and a child were occupants of a Santro car bearing No.UP 80 BN-2708 which was parked in front of Vishal Mega Mart, Kunjwani Bye pass road. Hidayat Ullah Malik is stated to be member of Lashker-e-Mustafa (LeM), an off shoot of proscribed terrorist organization and intended to carry out terrorist activities in Jammu area with an intention of threatening the sovereignty and security of India. SHO Police Station Gangyal who had proceeded towards Kunjwani area in search of this terrorist noticed the aforesaid vehicle in the parking area and the said Hidayat Ullah Malik on being asked to disclose his identity tried to run away from the spot but was overpowered by the police. The appellant herein, who was sitting in the car, however, managed to escape from the spot. The incident is of 06.02.2021. Some arms and ammunitions were recovered from Hidayat Ullah Malik and also from the rented accommodation which he had

allegedly shared with the appellant. The appellant who claims to be an Advocate by profession was also apprehended by the police on 09.02.2021. The investigations further led to arrest of other accused in the case. The sum and substance of allegation leveled against the appellant is that she had stayed with Hidayat Ullah Malik at different places so as to evade the arrest of said accused. It may be mentioned herein that the appellant is stated to have stayed along with Hidayat Ullah Malik at Hotel Fortune Inn Rivera at Jammu, Chandigarh and also at Sunjwan Jammu in the rented accommodation. Two pistols, three magazine and 28 live cartridges were also recovered among other articles from the rented accommodation at Sunjwan Jammu. The appellant harbored Hidayat Ullah Malik who is a terrorist, and also conspired with him in order to facilitate commission of terrorist acts. The court has been taken through the statements of prosecution witnesses pertaining to the appellant. The statements include that of the family members where the appellant shared rented accommodation with accused Hidayat Ullah Malik and of the staff of Hotel Fortune Inn Rivera. The argument raised on behalf of the appellant is that only allegation attributed against the appellant is that she is stated to have been found in the company of Hidayat Ullah Malik at different places and locations before her arrest. The court is of the view that the counter argument by the respondents that the acts of the appellant clearly speaks of the conspiracy angle of the appellant in facilitating Hidayat Ullah Malik in his unholy acts and also of harboring him who is a terrorist and,

therefore, the concession of bail cannot be granted cannot be the reason not to grant the bail to the appellant in the case in hand. The investigation against the appellant has not moved beyond the aforesaid allegation of the appellant having stayed with the accused Hidayat Ullah Malik at different places. The mere stay of the appellant with Hidayat Ullah Malik will amount to appellant in league with Hidayat Ullah Malik for his alleged activities or harboring him is a matter of trial. The appellant escaping from the parking place when the vehicle was stopped by the police and the said Hidayat Ullah was asked to disclose his identity is the circumstance on which the respondent also relies upon to oppose the bail. This allegation is not sufficient to deny bail to the accused as the accusation against appellant of managing to escape from the parking area in presence of the police is to be explained and proved by the respondent during trial. No covert act is attributed to the appellant.

11. No doubt the provisions of the Act are stringent as the same have been legislated keeping in view the security and sovereignty of the nation which cannot be compromised. At the same time the liberty to the person cannot be denied only for the reason that the person is stated to be involved in offence which is serious in nature. The nature of allegations, antecedents and the punishment prescribed for the offences in which the accused is facing trial are required to be seen while considering the bail application.

12. The appellant is in incarceration for some time now and that aspect can also be taken into consideration in addition to other aspects of the case while considering the bail of the appellant. The punishment prescribed under Section 18 and Section 19 can extend to imprisonment for life. The minimum punishment prescribed under Section 18 is not less than five years and under Section 19 not less than three years in case the charges against the accused for the aforesaid offences stand proved.
13. In AIR 2021 (SC) 712 titled Union of India Vs. K.A.Najeeb, the Hon'ble Supreme Court held that the Constitution courts can grant bail though there are statutory restrictions like Section 43 (D) (5) of the Act.
14. In (2021) 4 SCC 704 titled Sudesh Kedia Vs. Union of India, the Apex Court granted bail to the accused though he was stated to have been involved in offences under Sections 17/18/21 of the Act.
15. In 2023 Live Law (SC) 575 titled Vernon Vs. The State of Maharashtra and anr., the Apex Court granted bail to the accused though he was also accused for commission of offence under the Act under discussion. The Court held that merely because the allegations against the accused are serious that cannot be alone the reason for denying bail to the accused.
16. In view of the aforesaid discussion, the court finds no impediment in granting bail to the appellant-accused so far as the present case is concerned. The order impugned is set aside and the appeal is allowed. The appellant Baseerat-Ul-Ain is granted bail subject to furnishing of personal bond and surety bond to the tune of Rs.1 lac each subject to the satisfaction of the Presiding Officer of the trial court. The accused shall

not tamper with the prosecution evidence in any manner or try to contact the prosecution witnesses during the course of trial. The accused shall provide her mobile number to the respondent no.1-NIA and keep the agency informed of her whereabouts during the course of trial. The appellant shall appear before the trial court regularly during trial unless exempted. The appellant shall deposit her Passport if she possesses so with the NIA. Any observation made in the order shall have no bearing whatsoever on the trial the same being confined to the disposal of the present appeal.

17. The trial court is at liberty to pass orders as it deems necessary in case the appellant fails to adhere to the bail conditions imposed by this Court.
18. CrIA(D) No.18/2023 along with connected CrIMs stands **disposed of** in the aforesaid terms.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
JUDGE

JAMMU
23.02.2024
Narinder

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No