

Court No. - 1

Case :- CRIMINAL APPEAL No. - 54 of 2023

Appellant :- Masood

Respondent :- The State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Appellant :- Sheeran Mohiuddin Alavi, Amarjeet Singh Rakhra, Harsh Vardhan Kediya

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Amarjeet Singh Rakhra, learned counsel for the appellant and Shri Shiv Nath Tilhari, learned A.G.A. for the State.

2. The instant appeal under Section 21(4) of the National Investigation Agency Act, 2008 (*hereinafter referred to as 'NIA Act'*), has been filed by the appellant, **Masood** challenging the order dated 06.12.2022 passed by Special Judge, NIA/ATS, Additional District and Sessions Judge, Court No.5, Lucknow in Bail Application No.8870/2022, arising out of Case Crime No.0199/2020, under Sections 153-A, 295-A, 124-A, 120B I.P.C., Sections 17 and 18 of Unlawful Activities (Prevention) Act, 1967 and Sections 65 and 72 of I.T. Act, 2000, Police Station Manth, District Mathura, whereby bail application of the appellant was rejected.

3. Learned counsel for the appellant has submitted that initially the first information report came to be lodged against four accused persons including the appellant. His further submission is that there is no allegation against the appellant that he was associated with any terrorist organization or was soliciting any donation or funding or had any linkage with either P.F.I. or C.F.I.

4. His further submission is that no incriminating article was recovered from the possession of appellant or on his pointing out. The appellant is neither engaged in any unlawful activity as defined under Section 2(o) of the UAPA nor is a part of any unlawful association as defined under Section 2 (p) of UAPA. The investigating agency has already filed a charge-sheet against the appellant.

5. Learned counsel for the appellant next argued that the offences under Sections mentioned in the chargesheet are not made out against the appellant even if the story of the prosecution is believed on its face value. Sections 17 and 18 of the UAPA which relates to raising funds for terrorist activities and punishment thereof and conspiracy for committing any terrorist act and punishment thereof are not even remotely attracted to the facts of the case.

6. Learned counsel for the appellant has also argued that the Special Court has completely failed to appreciate that the perusal of the allegations made in the F.I.R. and the contents of the case diary including the charge-sheet and material collated by the investigating agency clearly evince that accusation made against the appellant is, *prima facie*, false.

7. It is further argued that in view of the provisions of Section 43-D (5) of the UAPA, it is the duty of the court dealing with the bail application of the accused to satisfy itself with regard to there being reasonable grounds for believing that the accusation against the accused is, *prima facie*, true. This provision has been inserted with a view to ensure that the stringent provisions of the U.A.P.A. are not misused against innocent persons. In the present matter, the learned Special Court has completely failed to

satisfy itself about the applicability of Section 43-D (5) of the UAPA and has merely rejected bail application of the appellant merely because the bail application of the co accused was rejected.

8. There was neither any occasion nor any motive for the appellant to commit the offence in question. The appellant is languishing in jail since 05.10.2020 even though there is no prima facie case against him and no active role has been attributed to him by the investigating agency.

9. It is a settled position of law that presence of statutory restrictions like Section 43-D (5) of UAPA, per se does not oust the jurisdiction of the Constitutional Courts to grant bail on grounds of violation of Part-III of the Constitution of India. Indeed, both the restrictions under the statutes as well as the powers exercisable under constitutional jurisdiction may be well harmonized.

10. There are about 55 witnesses of the prosecution as per the charge-sheet. The appellant is languishing in jail since 05.10.2020.

11. There is not even a prima facie case, establishing the complicity of the appellant and the nature and gravity of charges and the absence of criminal history on his part require his release on bail.

12. Learned counsel for the appellant has vehemently submitted that the named co-accused, namely, Sidhique Kappan, who has been assigned the lead role, has been granted bail by Hon'ble Apex Court vide order dated 09.09.2022 passed in SLP (Crl.) No.7844 of 2022. His further submission is that the other co-accused, namely,

Alam @ Mohammad Alam, who was also named in the F.I.R., Atikur Rahman, K.A. Rauf Sherif and Mohd. Danish @ Tunnu have been granted bail by co-ordinate Benches of this Court vide orders dated 23.08.2022, 15.03.2023, 7.7.2023 and 7.7.2023, passed in Criminal Appeal Nos.1597 of 2022, 2674 of 2022, 43 of 2023 and 764 of 2023, respectively. It is also argued that no criminal antecedents of the present appellant could be found by the investigating agency after a thorough investigation.

13. On the basis of aforesaid submissions, learned counsel for the appellant prays that the appeal deserves to be allowed and the appellant deserves to be released on bail.

14. Per contra, learned A.G.A. has submitted that the Special Court has rejected the bail application of the appellant giving valid reasons. The appellant was named in the first information report. His further submission is that the charge sheet has been filed against the appellant after collecting sufficient evidence against him. The appellant is associated with the PFI organization which is involved in terrorist activities in the country and is trying to create unrest in the country by spreading caste and religious animosity. The bank statement of the accused appellant, Firoz Khan, Ashad Badruddin would establish a huge money transaction in the bank accounts. The appellant is having criminal history of two more cases. The details of which have been given in para 6 of supplementary affidavit dated 18.10.2023. The bail application of the accused appellant was rejected by the learned Special Court on the basis of sufficient grounds as ample evidence is there against the appellant, hence

the appeal should be dismissed.

15. However, learned A.G.A. could not dispute the other factual submissions advanced by learned counsel for the appellant including the fact that the named co-accused, namely, Sidhique Kappan, who has been assigned the lead role, has been granted bail by Hon'ble Apex Court vide order dated 09.09.2022 passed in SLP (Crl.) No.7844 of 2022. The other co-accused, namely, Alam @ Mohammad Alam, Atikur Rahman, who were also named in the F.I.R., and K.A. Rauf Sherif and Mohd. Danish @ Tunnu have been granted bail by co-ordinate Benches of this Court vide orders dated 23.08.2022, 15.03.2023, 7.7.2023 and 7.7.2023, passed in Criminal Appeal Nos.1597 of 2022, 2674 of 2022, 43 of 2023 and 764 of 2023, respectively. He has also not disputed the fact that the role of the appellant is similar to the role of co-accused, Atikur Rahman.

16. Having heard learned counsel for parties and upon perusal of the records it transpires that though initially the first information report came to be lodged against four accused persons including the present appellant, but, the charge sheet has already been filed. The co-accused, namely, Sidhique Kappan, who has been assigned the lead role has been granted bail Hon'ble Apex Court vide order dated 09.09.2022 passed in SLP (Crl.) No.7844 of 2022. The other co-accused, namely, Alam @ Mohammad Alam, Atikur Rahman, who were also named in the F.I.R., and K.A. Rauf Sherif and Mohd. Danish @ Tunnu have been granted bail by co-ordinate Benches of this Court vide orders dated 23.08.2022, 15.03.2023, 7.7.2023 and 7.7.2023, passed in Criminal Appeal

Nos.1597 of 2022, 2674 of 2022, 43 of 2023 and 764 of 2023, respectively. The appellant is languishing in jail since 05.10.2020.

17. Considering the aforesaid orders, it transpires that Hon'ble Apex Court, while granting bail to the co-accused, Sidhique Kappan, has considered the length of custody undergone by the accused- Sidhique Kappan and thereafter the other co-accused persons have been enlarged on bail by a coordinate Bench of this Court. The ground of long custody period is also available to the present appellant, who is in jail since 05.10.2020.

18. After having considered the facts and circumstances of the case and that the Hon'ble Supreme Court has granted bail to co-accused and other co-accused persons named above have been enlarged on bail by a coordinate Bench of this Court, without expressing any opinion on the merits of the case, we are of the considered view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

19. The appeal deserves to be allowed and is, accordingly, **allowed**. Consequently, the impugned order dated 06.12.2022 passed by Special Judge, NIA/ATS, Additional District and Sessions Judge, Court No.5, Lucknow in Bail Application No.8870/2022, arising out of Case Crime No.0199/2020, under Sections 153-A, 295-A, 124-A, 120B I.P.C., Sections 17 and 18 of Unlawful Activities (Prevention) Act, 1967 and Sections 65 and 72 of I.T. Act, 2000, Police Station Manth, District Mathura is hereby set-aside.

20. Let the appellant, **Masood** be released on bail in the aforesaid case crime number with the following conditions:-

a). The appellant shall furnish a personal bond and two sureties of the like amount, to the satisfaction of the learned trial court.

b). The appellant shall furnish to the investigating officer/S.H.O. a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times.

c). The appellant shall ordinarily reside at his place of residence and shall inform the investigating officer if he changes his usual place of residence.

d). If the appellant has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court.

e). The appellant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case. The appellant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

21. Here, it is made clear that observations made in this order shall not affect the trial, in any manner.

Order Date :- 12.3.2024

A.Dewal

(Ajai Kumar Srivastava-I,J)

(Attai Rahman Masoodi,J)