



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 9815/2023

Mohammed Sarvar Azmi

----Petitioner

Versus

The State Of Rajasthan, Through Its PP

----Respondent

For Petitioner(s)	:	Mr. Syed Saadat Ali Mr. Anshul Mathur Ms. Aafreen Rizvi
For Respondent(s)	:	Mr. Rajesh Maharshi, AAG

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

09/10/2023

This Criminal Misc. Bail Application has been brought under Section 439 of Cr.P.C. in connection with FIR No. 121/2008 registered with Police Station Kotwali, Jaipur City (North) for offences under Sections 153 and 153-A of IPC and Sections 4, 5 and 6 of Explosive Substances Act, 1908 and Sections 16-A and 18 of Unlawful Activities Prevention Act, 1967.

In the year 2008, eight incidents of bomb blast took place in the city of Jaipur which resulted in seventy one casualties. Nine FIRs were registered for different incidents. This FIR relates to recovery of live bomb which was neutralized by the Police agency. In all the FIRs there was allegation of conspiracy amongst different persons including the petitioner in effecting the plot. The



petitioner is in jail since 19.01.2009 in other cases, however in the present FIR the petitioner was remanded on 25.12.2019. The trial resulted in conviction of eight persons, including the petitioner and death penalty was awarded to the petitioner and three others, whereas life imprisonment was awarded to four others. On appeal, the trial court judgment was set aside by a division Bench of this court which resulted in acquittal of all the accused including the appellant. The acquittal was challenged before the hon'ble Supreme court in an SLP, which is still pending.

Learned counsel for the petitioner submits that the petitioner is in jail since last 14 years and there is no likelihood of start of the trial, therefore petitioner deserves bail. Learned counsel further contends that in the SLP filed against acquittal, the Hon'ble Supreme court has granted bail to the petitioner and other acquitted accused persons.

Learned AAG has opposed the prayer for bail on the ground that sufficient material is there on the record to substantiate that the petitioner was involved in conspiracy to commit terrorist act and destabilize the law and order as well as security of the nation, only for long incarceration the petitioner does not deserve bail, in view of the specific bar contained in Section 43 D (5) of the Unlawful Activities Prevention Act, 1967, learned AAG has relied on the judgment of the Hon'ble Supreme Court in National Investigation Agency Vs. Zahoor Ahmad Shah Watali 2019 (5) SCC 1 for his contention that while considering prayer for bail, the court cannot enter into mini trial and elaborately examine the evidence on record to come to the conclusion whether prosecution evidence is believable or not, or the prosecution evidence makes



out a case against the accused or not. Learned counsel has specifically referred to para 17, 18, 21 and 24 of the judgment.

In Union of India (UOI) vs. K.A. Najeeb reported in 2021 (3) SCC 713 the Hon'ble Supreme Court considered the provisions of Section 43 D (5) of the UAPA in the matter of grant of bail under Section 439 Cr.P.C. and observed in para 17 as follows:-

"It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se 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 Statue as well as the 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 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 possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

Almost identical provision under Section 37 of the NDPS Act was considered by the Hon'ble Supreme Court in Rabi Prakash Vs. The State of Odisha Special Leave to Appeal Criminal No. 4169/2023 and Hon'ble Supreme Court observed:-

" The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under [Article 21](#) of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under [Section 37\(1\)\(b\)\(ii\)](#) of the NDPS Act."

In Rabi Prakash's case (Supra) the accused petitioner was in custody since last 3.5 years. In view of the aforesaid two judgments the embargo contained in Section 43 D (5) would lose its significance when a case of incarceration of 14 years is there



coupled with other facts of acquittal in other FIRs. Therefore this court is of firm view that no further detention of the petitioner is required, accordingly instant bail application stands allowed.

Let the petitioner be released on bail on furnishing bail bond of Rs.1,00,000/- (Rupees One Lakh only) with two sureties of like amount to the satisfaction of the learned trial court with following conditions :-

- (i) one of the bailor shall be resident of territorial jurisdiction of the court below.
- (ii) the petitioner would surrender his passport and shall not leave the country without permission of the trial court.
- (iii) the petitioner shall make his physical presence at least in two months before the trial Judge on the date fixed and shall fully co-operate with the trial.
- (iv) in the event of change of residence, the petitioner shall inform the court concerned alongwith proof of his new residence.
- (v) in the event of misuse of any of the aforesaid conditions, brought to the notice of the trial Judge that would be a ground to cancel the bail granted by this court.

(BIRENDRA KUMAR),J

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