

Neutral Citation No. - 2023:AHC-LKO:85540-DB

Court No. - 9

Case :- CRIMINAL APPEAL No. - 2869 of 2023

Appellant :- Mufti Qazi Jahangir Alam Qasmi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko.
And 2 Others

Counsel for Appellant :- Salil Kumar Srivastava,Rahul
Srivastava,Varun Kumar Gupta

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Shri Salil Kumar Srivastava, learned counsel for the applicant-appellant and Shri S.N. Tilhari, learned Additional Government Advocate for the State.

2. This Criminal Appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act, 2008') challenging the order dated 04.10.2023, passed by the Special Judge (NIA/ATS), Lucknow in Second Bail Application No.7286 of 2023, by which, the second bail application of the applicant-appellant (herein) has been rejected.

3. The facts of the case are that the applicant-appellant is an accused in Sessions Trial No.13751 of 2021 (State vs. Salahuddin and others), arising out of Case Crime No.09 of 2021, under Sections 417, 120-B, 153-A, 153-B, 295-A, 298, 121-A, 123 IPC and Section 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station - ATS, Gomti Nagar.

4. At the very outset learned counsel for the appellant contended that in respect of the same case crime number bail has been granted to

as many as 12 accused, many of whom having similar role as that of the appellant herein and two of the bails have been granted by Hon'ble the Supreme Court. He has relied upon a similar judgment passed by this very Bench on 04.08.2023 in Criminal Appeal No. 1421 of 2023; *Mhod. Umar Gautam Vs. State of U.P. and Ors.*

5. On being confronted learned counsel for the State fairly stated that it was a case of parity with the said appellant. The aforesaid judgment reads as under:-

"1. Heard Shri Salil Kumar Srivastava, Advocate assisted by Shri Arsh R. Shaikh, learned counsel for the applicant-appellant and Shri S.N. Tilhari, learned Additional Government Advocate for the State.

2. This Criminal Appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act, 2008') challenging the order dated 25.04.2023, passed by the Special Judge (NIA/ATS), Lucknow in Second Bail Application No.3199 of 2023, by which, the second bail application of the applicant-appellant (herein) has been rejected.

3. The facts of the case are that the applicant-appellant is an accused in Sessions Trial No.13751 of 2021 (State vs. Salahuddin and others), arising out of Case Crime No.09 of 2021, under Sections 417, 120-B, 153-A, 153-B, 295-A, 298, 121-A, 123 IPC and Section 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station - ATS, Gomti Nagar.

4. There are total 17 accused in the said criminal case. The appellant (herein) had filed an application for enlargement on bail before the Trial Court, which was rejected on 5.5.2022, against which, he preferred an appeal u/s 21(4) of the Act, 2008, which was rejected by this Court on 16.12.2022. The said order was not challenged any further by the appellant, however, after the aforesaid rejection, it is submitted that the co-accused were granted bail, some by this Court and others by the Hon'ble Supreme Court. Some of the bail orders of the co-accused have

been annexed by the appellant along with the appeal while others have been placed before us. The details of the orders passed by the High Court as well as in Hon'ble the Supreme Court are reproduced hereunder in tabulation form :-

Sr. No.	Case	Passed by	Party Name	Order Date
1.	Criminal Appeal No.1737 of 2023	Hon'ble Supreme Court	Abudullah Umar vs. The State of Uttar Pradesh	4.7.2023
2.	Criminal Appeal No.567 of 2023	Hon'ble Supreme Court	Irfan Khan @ Irfan Shaikh vs. The State of Uttar Pradesh	22.2.2023
3	Criminal Appeal No.615 of 2022	Hon'ble High Court	Dr. Faraz Shah vs. State of U.P. Thru. Prin. Secy. Home Lucknow and Anr.	2.3.2023
4.	Criminal Appeal No.2734 of 2022	Hon'ble High Court	Maulana Kaleem Siddiqui vs. State of U.P. Thru. Prin. Secy. Home, Lucknow	5.4.2023
5.	Criminal Appeal No.987 of 2023	Hon'ble High Court	Bhupriya Bando @ Arsalan Mustafa vs. State of U.P. Thru. Prin. Secy. Home, Lucknow and Anr.	19.7.2023
6.	Criminal Appeal No.311 of 2023	Hon'ble High Court	Kausar Alam vs. State of U.P. Thru. Prin. Secy. Home, Lucknow and Anr.	19.7.2023
7.	Criminal Appeal No.988 of 2023	Hon'ble High Court	Adam @ Prasad Rameshwar Kaware vs. State of U.P. Thru. Prin. Secy. Home, Lucknow and Anr.	19.7.2023
8.	Criminal Appeal No.134 of 2023	Hon'ble High Court	Dheeraj Govind Rao Jagtap vs. The State of U.P. Thru. Ats, Gomti Nagar, Lko.	19.7.2023
9.	Criminal Appeal No.1809 of 2023	Hon'ble High Court	Sallahuddin Zeinuddin Sheikh vs. State of U.P. thru Addl. Chief Secy. Home Deptt. Lko. And 2 Others	31.7.2023

5. The contention of learned counsel for the applicant-appellant is that after rejection of the bail application of the applicant-appellant

on 5.5.2022 by the Trial Court and thereafter the appeal on 16.12.2022, the other co-accused were granted bail and in fact, the main accused were enlarged on bail by this Court and by the Hon'ble Supreme Court. Therefore, in these circumstances, the appellant (herein) filed an application for enlargement of bail before the Trial Court. The Trial Court has rejected the 2nd bail application as the first bail application was rejected by it on 05.05.2021 and according to it there was no new ground for enlarging the applicant on bail. The submission is that the High Court and the Hon'ble Supreme Court have enlarged the co-accused on bail, therefore, the same gave a fresh cause of action to the appellant to maintain the second bail application (hereinabove). Charge-sheet has already been filed against the appellant, therefore, the order impugned suffers from an apparent error.

6. Shri S.N. Tilhari, learned Additional Government Advocate has opposed the bail application primarily on the ground that the present appeal before the High Court after rejection of the earlier appeal u/s 21 (4) of the Act, 2008 is not maintainable. However, he did not deny the fact that the co-accused have already been enlarged on bail by the High Court as well as by the Hon'ble Supreme Court after rejection of the appellant's first bail application.

7. We have gone through the orders passed by the Hon'ble Supreme Court in Criminal Appeal No.1737 of 2023 (Abdullah Umar vs. The State of Uttar Pradesh) dated 4.7.2023 and other order dated 22.2.2023 passed in Criminal Appeal No.567 of 2023 (Irfan Khan @ Irfan Shaikh vs. The State of Uttar Pradesh) wherein the co-accused have been enlarged on bail i.e. subsequent to the dismissal of the earlier appeal filed by the appellant u/s 21(4) of the Act, 2008.

8. We are of the opinion that this appeal in the circumstances, already noticed hereinabove, is maintainable and the objection of learned Additional Government Advocate to contrary, is not acceptable. We are also of the opinion that the learned Trial Court

should have taken into consideration the fact that the co-accused have already been granted bail by the High Court and by the Hon'ble Supreme Court. We may in this context refer to the orders passed by this Court in Criminal Appeal No.988 of 2023 dated 19.7.2023; Criminal Appeal No.987 of 2023 dated 19.7.2023; Criminal Appeal No.311 of 2023 dated 19.7.2023, Criminal Appeal No.134 of 2023 dated 19.7.2023 and Criminal appeal No. 1809 of 2023 dated 31.7.2023, which have been passed in the case of co-accused enlarging them on bail. Therefore, we are of considered opinion that appellant is also entitled to be enlarged on bail especially as the accused who have been assigned the main role namely Abdullah Umar and Maulana Kaleem have already been enlarged on bail, vide order dated 5.4.2023 passed in Criminal Appeal No.2734 of 2022. Therefore, the appellant is also entitled to be released on bail on the same ground.

9. *Accordingly, the appeal is allowed. Consequently, the impugned order dated 25.04.2023 passed by the Special Judge (NIA/ATS), Lucknow, in Second Bail Application No.3199 of 2023, arising out of Case Crime No.09/2021, under Sections 120-B, 153-A, 153-B, 295A, 417, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.*

10. *Let the appellant/accused-Md. Umar Gautam involved in the aforesaid case be released on bail on such terms the NIA Court may deem fit and proper, in addition to the conditions we enumerate in the succeeding paragraphs.*

We, accordingly, direct that the appellant shall be subjected to the following conditions by the NIA Court in addition to those that may be imposed by the NIA Court :-

(i) *Appellant while being enlarged on bail, shall keep his mobile phone functional 24 hours a day. He shall share his mobile phone number with the Investigating Officer and his live location shall also*

be kept on round the clock and paired with the mobile phone of the Investigating Officer. For this reason, the Investigating Officer shall also make available to the appellant his mobile phone number.

(ii) He shall not use any mobile phone apart from the one, the number of which would be shared with the Investigating Officer.

(iii) The appellant shall not communicate or try to communicate with any of the witnesses or alleged victims or try to influence them otherwise.

(iv) The appellant shall not leave the country without permission of the Trial Court and if he has any passport, he shall surrender the same to the Investigating Officer.

(v) He shall not enter the State of Uttar Pradesh for any reason whatsoever except for attending Trial or for meeting any Officer of the Investigating Agency, if required to do so. He shall, however, also attend the office of the Investigating Agency, ATS, NOIDA, once every three days and report to the Officer there, whose name and designation shall be made available to the appellant by the Investigating Officer.

(vi) He shall otherwise co-operate with the Investigating Agency and in the Trial.

(vii) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(viii) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(ix) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(x) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. We, also, make it clear that in the event the appellant cannot furnish any local surety, the concerned Court shall accept as sureties persons residing outside the State of U.P. to the satisfaction of the said Court.

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

6. After judgment in the aforesaid appeals other similar appeals have also been allowed including ***Criminal Appeal No. 2903 of 2023; Sarfaraz Ali Zafari Vs. State of U.P.*** and ***Criminal Appeal No. 2937 of 2023; Mohd. Idrisqureshi Vs. State of U.P.*** on 07.12.2023 on the same terms. The judgment dated 07.12.2023 passed in Criminal Appeal No. 2937 of 2023 reads as under:-

"1. Heard Shri I.P. Singh, learned counsel for the applicant-appellant and Shri S.N. Tilhari, learned Additional Government Advocate for the State.

2. This Criminal Appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as 'the

Act, 2008') challenging the order dated 04.10.2023, passed by the Special Judge (NIA/ATS), Lucknow in Second Bail Application No.7286 of 2023, by which, the second bail application of the applicant-appellant (herein) has been rejected.

3. The facts of the case are that the applicant-appellant is an accused in Sessions Trial No.13751 of 2021 (State vs. Salahuddin and others), arising out of Case Crime No.09 of 2021, under Sections 417, 120-B, 153-A, 153-B, 295-A, 298, 121-A, 123 IPC and Section 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station - ATS, Gomti Nagar.

4. There are total 17 accused in the said criminal case. The appellant (herein) had filed an application for enlargement on bail before the Trial Court, which was rejected on 22.03.2022, against which, he preferred an appeal u/s 21(4) of the Act, 2008, which was rejected by this Court on 23.08.2023. The said order was not challenged any further by the appellant, however, after the aforesaid rejection, it is submitted that the co-accused were granted bail, some by this Court and others by the Hon'ble Supreme Court. Some of the bail orders of the co-accused have been annexed by the appellant along with the appeal while others have been placed before us. The details of the orders passed by the High Court as well as in Hon'ble the Supreme Court are reproduced hereunder in tabulation form :-

Sr. No.	Case	Passed by	Party Name	Order Date
1.	Criminal Appeal No.1737 of 2023	Hon'ble Supreme Court	Abudullah Umar vs. The State of Uttar Pradesh	4.7.2023
2.	Criminal Appeal No.567 of 2023	Hon'ble Supreme Court	Irfan Khan @ Irfan Shaikh vs. The State of Uttar Pradesh	22.2.2023
3.	Criminal Appeal No.615 of 2022	Hon'ble High Court	Dr. Faraz Shah vs. State of U.P. Thru. Prin. Secy. Home Lucknow and Anr.	2.3.2023
4.	Criminal Appeal No.2734 of 2022	Hon'ble High Court	Maulana Kaleem Siddiqui vs. State of U.P. Thru. Prin. Secy. Home,	5.4.2023

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| | | | <i>Lucknow</i> | |
| 5. Criminal Appeal
No.987 of 2023 | Hon'ble High
Court | Bhupriya Bando @
Arsalan Mustafa vs.
State of U.P. Thru. Prin.
Secy. Home, Lucknow
and Anr. | 19.7.2023 | |
| 6. Criminal Appeal
No.311 of 2023 | Hon'ble High
Court | Kausar Alam vs. State of
U.P. Thru. Prin. Secy.
Home, Lucknow and
Anr. | 19.7.2023 | |
| 7. Criminal Appeal
No.988 of 2023 | Hon'ble High
Court | Adam @ Prasad
Rameshwar Kaware vs.
State of U.P. Thru. Prin.
Secy. Home, Lucknow
and Anr. | 19.7.2023 | |
| 8. Criminal Appeal
No.134 of 2023 | Hon'ble High
Court | Dheeraj Govind Rao
Jagtap vs. The State of
U.P. Thru. Ats, Gomti
Nagar, Lko. | 19.7.2023 | |
| 9. Criminal Appeal
No.1809 of 2023 | Hon'ble High
Court | Sallahuddin Zeinuddin
Sheikh vs. State of U.P.
thru Addl. Chief Secy.
Home Deptt. Lko. And 2
Others | 31.7.2023 | |
| 10 Criminal Appeal
No. 3175 of
2023 | Hon'ble
Supreme Court | Mohammad Salim vs.
The State of Uttar
Pradesh | 12.10.202
3 | |
| 11 Criminal Misc.
Bail Application
No. 13803 of
2023 | Hon'ble High
Court | Mannu Yadav @ Abdul
Mannan vs. State of U.P. | 24.11.202
3 | |

5. The contention of learned counsel for the applicant-appellant is that after rejection of the bail application of the applicant-appellant on 22.03.2022 by the Trial Court and thereafter the appeal on 23.08.2023, the other co-accused were granted bail and in fact, the main accused were enlarged on bail by this Court and by the Hon'ble Supreme Court. Therefore, in these circumstances, the appellant (herein) filed an application for enlargement of bail before the Trial Court. The Trial Court has rejected the 2nd bail application as the first bail application was rejected by it on 22.03.2022 and according to it there was no new ground for enlarging the applicant on bail. The submission is that the High Court and the Hon'ble Supreme Court have enlarged the co-accused on bail, therefore, the same gave a fresh cause of action to the

appellant to maintain the second bail application (hereinabove). Charge-sheet has already been filed against the appellant, therefore, the order impugned declining to enlarge the appellant on bail suffers from an apparent error.

6. Shri S.N. Tilhari, learned Additional Government Advocate has opposed the bail application primarily on the ground that the present appeal before the High Court after rejection of the earlier appeal u/s 21 (4) of the Act, 2008 is not maintainable. However, he did not deny the fact that the co-accused have already been enlarged on bail by the High Court as well as by the Hon'ble Supreme Court after rejection of the appellant's first bail application.

7. We have gone through the orders passed by the Hon'ble Supreme Court in Criminal Appeal No.1737 of 2023 (Abdullah Umar vs. The State of Uttar Pradesh) dated 4.7.2023 and other order dated 22.2.2023 passed in Criminal Appeal No.567 of 2023 (Irfan Khan @ Irfan Shaikh vs. The State of Uttar Pradesh) wherein the co-accused have been enlarged on bail i.e. subsequent to the dismissal of the earlier appeal filed by the appellant u/s 21(4) of the Act, 2008.

8. We are of the opinion that this appeal in the circumstances, already noticed hereinabove, is maintainable and the objection of learned Additional Government Advocate to contrary, is not acceptable. We are also of the opinion that the learned Trial Court should have taken into consideration the fact that the co-accused have already been granted bail by the High Court and by the Hon'ble Supreme Court. We may in this context refer to the orders passed by this Court in Criminal Appeal No.988 of 2023 dated 19.7.2023; Criminal Appeal No.987 of 2023 dated 19.7.2023; Criminal Appeal No.311 of 2023 dated 19.7.2023, Criminal Appeal No.134 of 2023 dated 19.7.2023 and Criminal appeal No. 1809 of 2023 dated 31.7.2023, which have been passed in the case of co-accused enlarging them on bail. Therefore, we are of considered opinion that appellant is also entitled to be enlarged on bail especially as the accused who have

been assigned the main role namely Abdullah Umar and Maulana Kaleem have already been enlarged on bail, vide order dated 5.4.2023 passed in Criminal Appeal No.2734 of 2022. Therefore, the appellant is also entitled to be released on bail on the same ground.

9. Accordingly, the appeal is allowed. Consequently, the impugned order dated 04.10.2023 passed by the Special Judge (NIA/ATS), Lucknow, in Second Bail Application No. 7286 of 2023, arising out of Case Crime No.09/2021, under Sections 120-B, 153-A, 153-B, 295A, 417, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.

10. Let the appellant/accused-Mohammad Idris Qureshi involved in the aforesaid case be released on bail on such terms the NIA Court may deem fit and proper, in addition to the conditions we enumerate in the succeeding paragraphs.

We, accordingly, direct that the appellant shall be subjected to the following conditions by the NIA Court in addition to those that may be imposed by the NIA Court :-

(i) The appellant shall not communicate or try to communicate with any of the witnesses or alleged victims or try to influence them otherwise.

(ii) The appellant shall not leave the country without permission of the Trial Court and if he has any passport, he shall surrender the same to the Investigating Officer.

(iii) He shall not leave boundaries of the State of Uttar Pradesh without permission of the Trial Court. He shall present himself before the Investigation Officer of Police Station ATS, Lucknow in the third week of every month and if not possible on the said date, he shall positively appear by the last day of the month.

(iv) He shall otherwise co-operate with the Investigating Agency and in the Trial.

(v) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(vi) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(viii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

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

7. In this case also after rejection of the first bail application an appeal was preferred before this Court which was dismissed. The matter was not taken up further, however, in interregnum co-accused were granted bail, therefore, based on ground of parity the second bail

application was filed, but, the Court below has not considered the matter appropriately and has rejected the second bail application cursorily ignoring the earlier orders passed by this Court and Hon'ble the Supreme Court. Hence this appeal against the order impugned dated. 04.10.2023.

8. This appeal is **allowed** on the same terms as Criminal Appeal No. 2937 of 2023 and consequently the impugned order dated 04.10.2023 passed by the Special Judge (NIA/ATS), Lucknow on Second Bail Application No. 7286 of 2023 is **quashed**.

9. Let the appellant/accused- **Mufti Qazi Jahangir Alam Qasmi** involved in the aforesaid case be released on bail on such terms the NIA Court may deem fit and proper, in addition to the conditions we enumerate in the succeeding paragraphs.

We, accordingly, direct that the appellant shall be subjected to the following conditions by the NIA Court in addition to those that may be imposed by the NIA Court :-

(i) The appellant shall not communicate or try to communicate with any of the witnesses or alleged victims or try to influence them otherwise.

(ii) The appellant shall not leave the country without permission of the Trial Court and if he has any passport, he shall surrender the same to the Investigating Officer.

(iii) He shall present himself before the Investigation Officer of Police Station ATS, Lucknow in the third week of every month and if not possible on the said date, he shall positively appear by the last day of the month.

(iv) He shall otherwise co-operate with the Investigating Agency and in the Trial.

(v) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(vi) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(viii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 22.12.2023

R.K.P.