

Court No. - 9

Case :- CRIMINAL APPEAL No. - 1895 of 2023

Appellant :- Museeruddin @ Musir @ Raju

Respondent :- Union Of India Ministry Of Home Affairs,
Thru. Dig, National Investigation Agency, Lko. And Another

Counsel for Appellant :- Atul Benjamin Solomon,Ajmal
Khan,Javed Khan,Mohammad Shoab

Counsel for Respondent :- Shikha Sinha,G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Shree Prakash Singh,J.

Order on Bail Application No. 4285 of 2023.

Heard Sri Ajmal Khan, learned counsel for the appellant, Museeruddin @ Musir @ Raju, Ms Sikha Sinha for opposite party no. 1 and learned A.G.A. for the State.

This appeal has been filed under section 21 of the NIA Act against the order dated 29.05.2023 passed by the Additional Session Judge/Special Judge NIA/ATS court no. 5 in Sessions Case No. 31 of 2022, RC No. 2/2021 filed by the NIA under section 121, 121A, 122 and 123 of IPC and sections 16, 18, 20, 38 and 39 of UA(P) Act and sections 4/5/6 of the Explosive Substance Act.

The Additional Judge/Special Judge-NIA/ATS court has rejected the appellant's bail application no. 4285 of 2023. The counsel for the appellant while arguing the matter on behalf of appellant, Museeruddin has stated that as per the first information report lodged by Anti-Terrorist Squad(hereinafter, referred to as ATS) U.P., received some information regarding one Umar Halmandi, a member of Terrorist Organization Al-Qaeda based in Pakistan/Afganistan border who was organizing terrorist activities by radicalizing & recruiting members for Al-Qaeda in Indian sub-continent. He had identified and recruited some persons in Lucknow for raising Al-Qaeda module by the name of Ansar-Gazwatul-Hind for the purpose of terrorist activities and Museeruddin @ Musir @ Raju and Minhaj Ahmad and Shakeel were important members of such module who were planning to stage a terrorist attack before 15.08.2021 in Lucknow and other cities of U.P. On

reliable information, the ATS, U.P. conducted searches at residential premises of Museeruddin @ Musir @ Raju at Fatima Nagar, Mohibullahpur, Madion, Lucknow and at residence of Minhaj Ahmad at Adnanpalli, Ring Road, Dubagga, Lucknow and explosive material and other incriminating articles were recovered as per the recovery memo. The appellant Museeruddin @ Musir @ Raju was arrested on 11.7.2021 and a criminal case as aforesaid was registered against him.

It has been submitted by Sri Ajmal Khan by referring to the recovery memo, copy of which has been filed as annexure no. 3 to the memo of the appeal that it is evident that one pressure cooker of 7 liters which had a high power battery attached to it, detonator, 2.5 Kg of iron nails, 2 electrical solders, Soldering wire, One LED bulb with holder, 78 packets of homelite match boxes, One regmark, Tester, Double side tape, Cello tape, Scissors, Magnet attached with needles, Magnifying glass, Battery of Samsung, M-seal, Thread and Two mobile phones have been recovered at the residential premises of appellant/accused.

It has been submitted that the applicant drives an e-rickshaw for his living and such material has been recovered from the residence of the appellant can be found in the residence of any person who drives an e-rickshaw, as it is needed for charging of batteries of e-rickshaw. It has been argued that the bomb disposal report of the Bomb Disposal and Detection Squad, Jhansi which has been filed as CA-2 to the counter affidavit of the respondent mentions a pressure cooker/bomb weighing 1.7 Kg in which 1 Kg of explosive material was found. It has been submitted that no pressure cooker could be of only 700 Grams and it is evident that if, the cooker alone weighs 1.7Kg (7 liters) then, there was no explosive material in it and the BDDS, Jhansi has submitted a wrong report of black and brown coloured powder, iron nails, iron pellets and battery being found alongwith the cooker bomb.

It has been submitted that the alleged explosives that were recovered are only 'kalmi shora' which

can be bought easily from the market place by any person and is used for white-washing. It is a kin to limestone which is first dissolved in water and then painted on the walls of poor persons houses. It has also been argued that the only evidence that could be collected which was alleged to be incriminating from the appellant, related to his two mobile phones of Samsung make mentioned as M-5 and M-6 in the Digital Analysis Report, a copy of which has been filed as CA-4 to the counter affidavit filed by the respondent. It has been submitted that if, the co-accused Minhaj Ahmad sent a video containing incriminating materials on the mobile phone of the appellant, it cannot be said that the appellant was actively involved in terrorist activities as he had only received such incriminating materials. The audio clip which was recovered, related to a pledge(Baiyat) which was shared by Minhaj, the co-accused with the appellant, Museerudin, requesting him follow the modus-operandi and record his video of Baiyat and Museerudin, was assuring him that he would send such video 'Baiyat' to Minhaj, but no such video Baiyat (Pledge) was sent by Museerudin to Minhaj eventually. The other video clips that were recovered also related to the co-accused Minhaj Ahmad. Such videos showing alleged hideout of terrorist outfit of Hizbul Mujahideen probably located at Pakistan and Afghanistan border and of a controlled explosion of improvised explosive devices (hereinafter, referred to as IED) were all clips that had been sent by co-accused Minhaj to the appellant Museerudin, which only lead to the conclusion that Minhaj Ahmad was radical in his religious views and was in contact with two Al-Qaeda terrorists by the name of Musa-E-Tauhin and he used to exchange audio-video files relating to Musa-E-Tauhin with Museerudin and he radicalized Museerudin and he persuaded him to take a pledge in support of Al-Qaeda.

It has been submitted by learned counsel appearing for the appellant that in a judgment rendered by the Supreme Court in **Jalaluddin Khan Versus Union of India** reported in **AIR 2024 Supreme Court 4380**, the Supreme Court has observed that the provision relating to bail under UAPA i.e. section 43D subsection 5 has been

interpreted by the Supreme Court in several other decisions including the decision rendered in **NIA vs Zahoor Ahmad Shah Abdali 2019 5 SCC 1** and elaborate guidelines have been issued on the approach of the courts to applications for bail and the limitations under the UAPA. Reference has been made to eight point propositions emerging from such decision where, it has been emphasized that the materials that have been recovered must show the complicity of the accused in the commission of the offence and such material/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless reverted or contradicted by other evidences. The Court has also mentioned the degree of satisfaction at pre-chargesheet, post-chargesheet and post-charges stages and it has also been emphasized by the learned counsel for the appellant that when a case is made out for grant of bail, the Courts should not have any hesitation in granting bail. The allegations of prosecution may be very serious, but the duty of the court is to consider the case of grant of bail, in accordance with law. 'Bail is the rule and jail is an exception' is the settled law even in cases like the present case where, there are stringent conditions for grant of bail in the relevant statutes. The same rule would apply with only modification that the bail can be granted if the conditions in the statute are satisfied. This rule also means that once a case is made out for grant of bail, the court cannot decline to grant bail(see paragraph 21).

Having gone through the judgment rendered in Jalaluddin Khan Versus Union of India, we have also gone through the judgment cited by Miss Shikha Sinha, who appears for the respondent namely, **Union of India versus Barkatullah and others** Manu/SC/0475/2024 decided on 22.5.2024, and several paragraphs of which have been read out in Court by Miss Shikha Sinha. The Court observed that since all the offences alleged against the respondents were covered under Chapter 4 and Chapter 6 of the UAPA, the rigors and restriction of sub-section 5 of section 43D would apply and again referring to the judgment rendered in National Investigation Agency versus Zahoor Ahmad Shah Watali (Supra), the Court

referred to paragraph nos. 23, 24, 25 and 27 thereof, and after quoting such paragraphs, the Supreme Court also considered the interpretation of such guidelines as mentioned in the case of Zahoor Ahmad Shah Batali(Supra) in a recent decision of the Supreme Court in the case of **Gurinder Singh versus Punjab and other Manu/SC/0088/2024** and quoted paragraph 34 thereof which is being quoted hereinunder:-

"34. In the previous section, based on a broad inquiry which Courts seized of bail applications Under Section 430(5) textual reading, we have discussed the UAP Act r/w Section 439 Code of Criminal Procedure must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

Meaning of 'Prima facie true' [para 23]: On the face of it, the materials must show the complicity of the Accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges Compared [para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the Accused, to justify the framing of charge. In that situation, the Accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report Under Section 173 Code of Criminal Procedure), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made Under Section 173 of the Code, as in the present case.

Reasoning, necessary but no detailed evaluation of evidence [para 24]: The exercise to be undertaken by the

Court at this stage--of giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

** Record a finding on broad probabilities, not based on proof beyond doubt [para 24]:"The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the Accused in the commission of the stated offence or otherwise."*

Duration of the limitation Under Section 43D(5) [para 26] The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

** Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.*

Contents of documents to be presumed as true [para 27]: The Court must look at the contents of the document and take such document into account as it is.

** Admissibility of documents relied upon by Prosecution cannot be questioned [para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the Accused in the first information report must prevail until contradicted and overcome or disproved by other evidence..... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."*

(Emphasis supplied by us)

It is evident that the Supreme Court in the case of Barkatullah (Supra) has referred to the settled guidelines as propounded by the Supreme Court with respect to special statutes like UAPA/TADA/MCOCA etc, and has thereafter, observed that if, from the perusal of the chargesheet and the other materials, documents produced, there are reasonable grounds for believing that the accusation against the respondent are prima facie true, as contemplated and proviso to sub-section 5 of section 43D of UAPA, the court shall not in ordinary circumstances go beyond the chargesheet and if there are

reasonable grounds for believing the accusation against the accused as prima facie true, it may reject the bail application.

We may now refer to the chargesheet, copy of which has been filed by the appellant alongwith the memo of the appeal as annexure no. 5. After giving brief facts of the case and how the conspiracy was discovered which led to the search being conducted at the residences of co-accused Minhaj and that of the appellant, detailed reference has been made regarding financial transactions as recorded in the passbooks of the accused and of digital analysis of the audio and video clips recovered from the mobile phones of the accused including Museeruddin. Investigations brought out that one Tauheed Ahmad Shah instructed Minhaj, the co-accused to prepare an improvised explosive device and share PDF in the name of 'explosive course' which is a complete course in making of improvised explosive devices. The co-accused Minhaj went through the pdf and procured the items required for preparation of IED and for the same, both Minhaj Ahmad and Museerudin visited the shop of one Sudheer Pansari at Daliganj, Lucknow and procured approximately 50 Kg of Kalmi Shora(Potassium Nitrate) by paying Rs. 7,000/- and thereafter, visited different shops for purchasing Sulphur etc. A pressure cooker was purchased from a shop at Madiyaon, other material recovered from the house of Museerudin were also purchased from Gayatri Traders and Balaji Traders and one cycle store. Details of shops where the appellant alongwith Minhaj visited for buying & collecting materials for preparing the IED (cooker bomb type) have been mentioned in the chargesheet.

Museerudin in his interrogation also revealed that to earn livelihood, he was plying an e-rickshaw and alleged that to repair the e-rickshaw battery which had become non-functional, he visited the shop of Minhaj Ahmad located at Khadra, Lucknow and Minhaj and Museerudin became good friends and since Minhaj had been entrusted with the task by Musha to recruit as many persons as possible for Jihad and Museerudin was orthodox in his views, he was an easy target for Minhaj, who instigated

Museerudin to join the Jihad. He instigated Museerudin to take pledge in support of Al-Qaeda and instructed him to record his video by following the same *modus-operandi* as per the video shared by Minhaj with him on his mobile phone. Material that was collected by Minhaj Ahmad and Museerudin together for preparation of IED was found at the residential premises of Museerudin.

We have also gone through the judgment rendered by Special Judge N.I.A Lucknow, and we find that no infirmity could be pointed out in the factual contents thereof by counsel for the appellant.

In so far as the legal aspect of the case is concerned, both the judgments i.e. one cited by counsel for the appellant and the other cited by learned counsel for the respondent, have emphasized that the degree of proof and how materials placed in the chargesheet can be described as prima facie true, to infer involvement of the accused. We find from the counter affidavit, the report of the Forensic Science Laboratory, copy of which has been filed as CA-3 to the counter affidavit that besides ball bearings and iron nails and other materials as aforesaid, the dark brown powder that was recovered from the residence of the accused/appellant was found as potassium, chlorate, nitrate, aluminium, charcoal and sulphur. Such chemicals are commonly used in preparing explosives.

We find no good ground to accept the prayer as made by counsel for the appellant and grant bail to the appellant, the instant bail application is hereby **rejected**.

Order on Appeal.

Since the bail application of the appellant/applicant is rejected, the present criminal appeal is also hereby **dismissed**.

Order Date :- 16.12.2024
Mayank