

Court No. - 9

Case :- CRIMINAL APPEAL No. - 1389 of 2023

Appellant :- Shahnawaz Ansari @ Bunty Ansari @ Bunty

Respondent :- Union Of India Through Nia

Counsel for Appellant :- Mohammad Alishah Faruqi, Azizullah Khan, Parmanand Gupta

Counsel for Respondent :- Shikha Sinha

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the appellant, Ms. Shikha Sinha, learned counsel for the respondent/ National Investigation Agency (hereinafter referred to as "N.I.A.") and perused the material available on record.

2. This is an appeal under Section 21(4) of the National Investigation Agency Act, 2008 challenging the order dated 02.03.2023 passed by the Special Judge, N.I.A./ ATS/ Additional District & Sessions Judge, Court No.5 Lucknow rejecting the third bail application of the appellant, Shahnawaz Ansari @ Bunty Ansari @ Bunty bearing No.1042 of 2022. The said third bail application was filed in Case Crime No.RC 02 of 2020, under Sections 120B, 489A, 489B, 489C of the Indian Penal Code (hereinafter referred to as "I.P.C."), Sections 16, 18 Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "Act, 1967") and Sections 3/25 Arms Act, Police Station N.I.A., District Lucknow.

3. Charge sheet has already been filed against the appellant way back on 05.06.2021 as stated by the appellant's counsel himself. Out of the seventy witnesses mentioned in the charge sheet, sixteen witnesses have already been examined.

4. Ms. Shikha Sinha, learned counsel for N.I.A. says that not all the seventy witnesses would be examined and only those, whose testimonies are found relevant, would be examined and she says that the trial shall be completed at the earliest.

5. The contention of the appellant's counsel is that on 11.12.2019, one Murad Alam was apprehended by A.T.S. at Railway Station Ghaziabad at about 02:30 PM and some currency notes were recovered from him, which, according to the police, were forged and fabricated. F.I.R. was lodged by A.T.S. on 11.12.2019 wherein the present appellant, Shahnawaz Ansari @ Bunty Ansari @ Bunty was not named as an accused. In 2020, the investigation of the case was transferred to N.I.A. N.I.A. filed a charge sheet on 05.06.2020 and therein also the present appellant was not named as an accused. However, when the second supplementary charge sheet was filed by N.I.A., the appellant was named on the basis of statements of the main accused, Murad Alam and other accused.

6. His further submission is that there is no recovery of currency notes from the appellant. The appellant is in jail since 11.12.2020. The trial is still

pending and only sixteen witnesses have been examined, therefore, the present criminal appeal deserves to be allowed and the accused-appellant is entitled to be enlarged on bail.

7. Learned counsel for the respondent/ N.I.A. has opposed the present criminal appeal by submitting that for the offence under Section 489B I.P.C., the punishment is life imprisonment. She has also submitted that so far as the offences under Sections 16 and 18 of the Act, 1967 are concerned, the provisions of Section 43D of the said Act, 1967 are attracted and such offences as they fall under Chapter 4 of the Act, 1967, the accused/ appellant is not entitled to be released on bail. If on a perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."), this Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

8. In this very context, learned counsel for N.I.A. has invited our attention to the extracts of the report filed against the appellant and another accused under Section 173(2) Cr.P.C. at page No.38 of the present criminal appeal bearing paragraph No.17.6 of the report, and submits that there is sufficient evidence available against the appellant pointing towards the commission of the offence alleged against him. Therefore, this is not a fit case for enlargement of bail for the reasons aforesaid.

9. Learned counsel for the respondent/ N.I.A. has also invited our attention to paragraphs No.16.6, 16.8, 17.1, 17.3, 17.4 and 17.5 and various other paragraphs of the charge sheet, and submits that based on the evidence available against him as referred in the charge sheet, this is not a fit case for enlarging the appellant on bail.

10. Learned counsel for the respondent/ N.I.A. has also invited our attention to the first information report, which mentions the name of the present appellant, Shahnawaz Ansari @ Bunty Ansari @ Bunty as having been stated by the accused mentioned therein as being involved in the commission of the offences as alleged.

11. Her further submission is that the appellant has criminal history of five other cases and, out of which, four cases are of similar nature as the offences alleged herein, therefore, this is an additional reason for not releasing the appellant on bail.

12. In response, counsel for the appellant says that in two of the other criminal cases bearing Case Crime No.52 of 2020, under Section 3(1) U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangster Act"), Police Station Phoolpur, District Azamgarh and Case Crime No.0249 of 2018, under Sections 489-A, 489-B, 489-C, 120B I.P.C., Police Station Sector 39 NOIDA, District Gautam Buddh Nagar, the accused/ appellant has already been enlarged

on bail.

13. Learned counsel for the respondent/ N.I.A. says that so far as the Gangster Act is concerned, she has no instructions in this regard but apart from it, the appellant has five other criminal cases out of which four are of similar nature and so far as the case at hand is concerned, there is sufficient evidence pointing towards the involvement of the appellant, therefore, he is not entitled to be enlarged on bail.

14. We have perused the charge sheet/ report and find that in paragraph No.15.5 thereof, there is mention of recovery of a mobile from the present appellant, Shahnawaz Ansari, which was sent to CFSL, Hyderabad for scientific examination. The charge sheet in paragraph No.16.6 refers to CDR details and its analysis. According to which, the telephonic interconnections and transcripts of legal intercepts between Murad Alam and Shahnawaz Ansari, accused-appellant herein, before and after delivery of consignment of fake currency notes, established that it was a part of larger conspiracy of which the appellant and accused, Tausif Alam were a party. Details of mobile number of the accused are also mentioned in the charge sheet. In paragraph No.16.8, it has been mentioned that Tausif Alam was connected to Shahnawaz Ansari during travel of Murad Alam to Bengal to collect FICN. According to the prosecution, the transcripts along with CDRs has established that Mohammad Murad Alam had

travelled on the directions of Shahnawaz Ansari and later he had given him funds for the journey and was also connected to him throughout the onward and return journeys. Shahnawaj Ansari was directing Murad Alam regarding time and place of meeting with Tausif Alam. Various other communications have also been revealed. The aforesaid paragraphs of the report/ charge sheet as also paragraphs No.17.1, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10, 17.11 etc. referred to the involvement of the appellant herein in commission of the crime with which the accused have been charged. Based on facts and evidence referred in the report/ charge sheet submitted against the appellant, another accused, we have no hesitation in recording that there are reasonable grounds for believing that the accusation against the appellant is *prima facie* true. This ofcourse is without prejudice to his rights in the pending trial. Merely because there is no recovery from the appellant does not persuade us to take any other view of the matter considering his alleged involvement in the commission of crime with which he has been charged especially as he has been charged with the offences punishable under Section 120B read with 489B, 489C I.P.C. and Sections 16 and 18 of the Act, 1967.

15. We have perused the order of the court below dated 02.03.2023, which is impugned herein, the court below has rejected the third bail application on the ground that there is evidence pertaining to

communication between the accused, Murad Alam and the appellant herein.

16. Having gone through the contents of the report/ charge sheet submitted under Section 173(2) Cr.P.C. in the light of the provisions contained in the proviso to Section 43D(5) of the Act, 1967 and also otherwise in the light of the provisions contained in Section 489B I.P.C. etc. with which the appellant has been charged and looking into the evidence available against the appellant as mentioned in the charge sheet as also his criminal history of five other cases as has been detailed in paragraph No.17.11 of the charge sheet, relevant extract of which is at page No.39 of the present criminal appeal and as out of the five criminal cases, four are in respect of offences of similar nature as are alleged to have been committed by the appellant in this case, we are not inclined to allow this appeal as we do not find any error in the order of the court below in rejecting the third bail application preferred by the present appellant.

17. Accordingly, the present criminal appeal is **dismissed**.

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

Order Date :- 17.11.2023

cks/-