

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Pronounced on: 03.04.2024

Case No. : CrI A (D) No. 11/2023
CrI M No. 1629/2023
CrI M No. 526/2023

Khalid Latif Butt, Age 34 years,
S/o Sh. Abdul Latif Butt,
R/o Village Kotal, Tehsil Bhagwah District Doda,
Presently lodged in District Jail, Bhaderwah,
District Doda,
through his father Sh. Abdul Latif Butt,
S/o Late Abdul Gaffar Butt,
R/o Village Kotal, Tehsil Bhagwah,
District Doda.

...Applicant/Appellant..

Through: - Ms. Rozina Afzal, Advocate.

V/s

The Union Territory of Jammu and Kashmir
through Incharge/Station House Officer,
Police Station, Pir Mitha, Jammu.

... Non-applicant/Respondent..

Through: - Ms. Monika Kohli, Sr. AAG.

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

03.04.2024

(Per Puneet Gupta-J)

1. The appeal has been preferred against the order dated 17.02.2023 passed by the Court of learned Additional Sessions Judge, Jammu (Special Judge Under NIA Act) whereby the bail application filed by the appellant herein stands dismissed. The challan was presented against the appellant-accused, Khalid Latif and eleven co-accused in a terror related case arising out of FIR No. 42/2020 under various sections of UAPA Act, 1967. The learned trial court has framed

charges in the matter. The charges have been framed against the appellant-accused for the commission of offence under Sections 17, 18, 20, 21, 38 & 40 of the said Act and is facing trial for the aforesaid offences.

2. The trial court has dismissed the bail application moved by the accused on the ground that the appellant is *prima facie* involved in raising terror funds for subversive activities after hatching criminal conspiracy with the handlers of Pakistan and the co-accused. Serious prejudice shall be caused to the prosecution in case the accused is admitted to bail.
3. Objections to the application have been filed.
4. Ms. Rozina Afzal, learned counsel appearing for the accused has submitted that the accused is entitled to bail as the evidence collected against the accused is inadmissible in law and unsubstantiated. The counsel has referred to the statements which according to her are relevant to the case of the appellant and submits that the evidence on which the challan has been produced by the respondent cannot be a reason for not granting the bail to the accused. The evidence cannot bring home the guilt of the accused even remotely after trial. The contention raised in the nut-shell is that the rigour of Section 45-D (5) of the Act will not be applicable.
5. Ms. Monika Kohli, learned Senior Additional Advocate General has argued that the trial court has found sufficient material on record and, therefore, the charges have been framed by the trial court against the accused. The involvement of the accused along with the

co-accused is very much evident from the allegations which have been levelled against them. The accused is involved in terrorist activities and letting him off will only prejudice the sovereignty and security of the Nation.

6. The apprehending of the accused, namely, Mubashir Bhat led to the investigation and during investigation other accused were also found to be involved and thus the challan came to be presented against them. The terror funding and handling of the same by the accused persons along with persons from Pakistan for terrorist activities in the country as mentioned in the challan and also handling of arms and ammunition by them came to fore during investigation. The court need not go into the role of all the accused persons arrayed in the challan for the purposes of disposal of the present appeal and the court will necessarily confine itself to the case of the appellant.
7. The accused-Khalid Latif Butt is stated to be member of LeT outfit and handled money and arms and ammunition for carrying out terrorist activities in the country. The accused is stated to have given Rs.20,000/- to one Farooq Malik on the directions of Mohd. Amin alias Haroon and Asif, accused in the case for delivery of arms and ammunition. The accused is also alleged to have received grenades and SIM cards from one Toqueer Ahmad-accused and handed over the same to accused-Asif.
8. The main plank of the argument of the appellant is that the statement given by the co-accused before the police against the

appellant has no evidentiary value and the conspiracy theory also alleged against the accused is without force of law. The counsel has also argued that Section 10 of the Evidence Act cannot also be applied qua the accused as there is no evidence on record to hold so. Infact no terror activity can be said to have been made out against the accused qua the evidence that has been collected by the agency.

9. The Court has gone through the record of the case including the statements referred to by the appellant. The Court while deciding the application will not go deep into the legal aspects regarding the admissibility of the evidence brought on record by the prosecution. The challan has been presented against the accused and others after detailed investigation from different angles. It cannot be said that the evidence that is brought on record against the accused is such which may be said to be *prima facie* having no serious and tenable accusation against him. In the present case, it is not just a single circumstance which has culminated into presentation of challan against the present appellant. The argument of the counsel for the appellant may have some force that the statement disclosure made by the accused against co-accused cannot be the reason to refuse bail to the accused. In the present case, there are many circumstances which have convinced the investigating agency to present the challan against the appellant-accused. As stated above, the charges have been framed against the accused under Section 18 of the Act also. The counsel for the appellant has vehemently argued that the conspiracy angle that is being made out against the

appellant is not there. The Court is, however, of the view that the court cannot finally determine in the application in hand about the establishing of conspiracy angle qua the accused. It has been alleged in the challan that the appellant-accused has handled the money and also the arms and ammunition and thus acted as conduit of some of the accused persons. The investigating agency has also collected call records of the accused persons in order to cement its case that the accused were in touch with each other around the time when the alleged criminal activities were taken out by the accused persons including the appellant. The prosecution also relied upon the bank transactions that have taken place between the appellant and other accused persons. It cannot be said that the evidence that is brought on record against the accused is such which can be said to be prima facie having no serious and tenable accusation against him. The conspiracy is normally hatched in secrecy and the chain of events make out the conspiracy angle alleged against the accused in any given case.

10. In terror related case, the bail has to be granted in a cautious manner as the activities in which the accused is involved pertain to the security of the Nation. The accused cannot be granted bail unless there are circumstances which convince the Court that the accused is entitled to the same on facts and that the rigour of Section 43-D(5) does not apply. The accused cannot be released on bail if the court is of the opinion that there are reasonable grounds for

believing that the accusation against the accused is prima facie true and letting him off can have grave consequences.

11. In *Vernon Vs. The State of Maharashtra and another*, Criminal Appeal No. 640/2023 decided on 28.07.2023, the Hon'ble Supreme Court took into consideration various judgments including that of *National Investigating Agency Vs. Zahoor Ahmad Shah Watali* (2019) 5 SCC 1 while deciding the bail application of the appellant. The court interpreted various provisions of the UAPA Act and after considering the factual aspects of the case granted bail to the appellant. There can be no dispute with what has been observed by the Apex Court in the aforesaid judgments.
12. In *Union of India Vs. K.A. Najeeb*, Live Law 2021 SC 56, the Apex Court held that Section 43-D(5) of the UAPA Act is comparatively less stringent than Section 37 of the NDPS Act.
13. In case titled '*Gurwinder Singh Vs. State of Punjab and another*' [Criminal Appeal No. 704/2024] decided on 07.02.2024, the Hon'ble Supreme Court held that the bail is the rule and the jail is the exception does not find place while dealing with the bail application under the UAPA Act and that the exercise of general power to grant bail under the Act is severely restricted in scope. The Court also provided the conditions which are required to be taken care of while considering the bail application under the Act.
14. In *Peerzada Shah Fahad Vs. UT of J&K and another* [Crl A(D) No. 42/2022] decided on 17.11.2023, this Court granted bail to the appellant keeping in view the facts and circumstances of the case

and particularly the fact that the act alleged against the appellant was committed eleven years back.

15. The freedom and liberty of an individual is sacrosanct and bail cannot be denied on whimsical grounds is trite proposition of law. The Court cannot be, however, oblivious of the gravity of the accusation made against the accused under the UAPA Act. In Gurwinder Singh case (supra), the Supreme Court has in a way highlighted that the provisions of the Act are stringent and that in order to secure bail the accused has to bring out exceptional circumstances.
16. The statements of some of the witnesses out of about seventy cited prosecution witnesses have been recorded. The role of the accused can come out during the deposition of the witnesses relating to the appellant-accused. The depositions to be made by the witnesses in the case cannot be anticipated by this Court.
17. The learned counsel has also argued that the remand of the appellant was extended time and again and was not in conformity with Section 43-D(2) of the Act and, therefore, the appellant is entitled to bail on that score also. As mentioned above, the charges have been framed against the accused and the prosecution evidence is going on in the case in hand. The Court need not go into this aspect in the application in hand in view of the aforesaid circumstances. The appellant is at liberty to avail any other remedy available to him if he feels that the remand orders passed against him are against the provisions of law.

18. The other argument of the appellant that as most of the prosecution witnesses are yet to record their statements during trial which may take a considerable time because of large number of the prosecution witnesses, therefore, the appellant who is in custody for the last about 4 years should be granted bail. Merely because some time may be consumed in conclusion of the trial due to large number of prosecution witnesses that cannot alone be the reason to grant bail to the accused. In the case in hand, it cannot be said at this stage that inordinate delay has been caused in the trial which may prompt the court to grant the bail to the appellant on this ground.
19. The rule of bail and not jail is not applicable to the case of the appellant in the facts and circumstances of the case. The accused can tamper with the evidence collected by the investigating agency cannot be ruled out if he is granted bail. No case is made out for grant of bail in favour of the appellant at this stage of the case.
20. The appeal is without merit and is, accordingly, ***dismissed*** along with connected applications.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
JUDGE

JAMMU:
03.04.2024
Shammi

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes