



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO. 827 OF 2024

C/W

CRIMINAL APPEAL NO. 828 OF 2024

In Crl.A.No.827/2024

Between:

1. Rubah Waqas
S/o. Khalaq Shariff,
Aged about 27 years,
R/at No. 26/2,
12th A Cross, Sonnappa Block,
Pillanna Garden,
3rd Stage,
K.G. Halli,
Bengaluru-560 045.
2. Shabbar Khan
S/o. Nawab Khan,
Aged about 36 years,
R/at (present) Near Quba Masjid,
3rd Cross, Near Anwar Layout,
DJ Halli, Bengaluru-560 045,
Permanent Address
No. 540/589,
1st Main, 1st Cross,
Shampur Main Road,
Coffee Board,

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



2nd Stage,
Bengaluru-560 045.

3. Shaik Ajmal
S/o. Shaik Riyaz,
Aged about 33 years,
R/at Present Door No. 62,
12th Cross,
Vinobha Nagar,
Pillanna Garden K.G. Halli,
Bengaluru-560 045.

...Appellants

(By Sri. Mohammed Tahir, Advocate)

And:

National Investigation Agency
Ministry of Home Affairs,
Rep. by Special Public Prosecutor,
Office at High Court Complex,
Opp. to Vidhana Soudha,
Bengaluru-560 001.

...Respondent

(By Sri. Prasanna Kumar P., Spl. PP.)

This Criminal Appeal is filed u/s 21(4) of NIA Act praying to set aside the order dated 04.04.2024 passed by the Hon'ble XLIX Additional City Civil and Sessions Judge (Special Judge for trial of NIA Cases), (CCH-50), Bengaluru in Spl.C.No.141/2021 at Annexure-A and etc.,

In Crl.A.No.828/2024

Between:

Peer Pasha
S/o. Late Abdul Mazeed,
Aged about 33 years,
R/at No. 827/B,



NC: 2024:KHC:35270-DB
CRL.A No. 827 of 2024
C/W CRL.A No. 828 of 2024

14th Cross,
Near Farida Shoe Factory,
Govindapura Main Road,
A.C. Post,
Bengaluru-560 045.

...Appellant

(By Sri. Mohammed Tahir, Advocate)

And:

National Investigation Agency
Ministry of Home Affairs,
Rep. by Special Public Prosecutor,
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Opp. to Vidhana Soudha,
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Date on which the appeals were reserved for judgment	10.07.2024
Date on which the judgment was pronounced	30.08.2024

These appeals, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

These two appeals filed under section 21(4) of National Investigation Agency Act are against two separate orders dated 04.04.2024 passed by Special Court for Trial of NIA Cases, Bengaluru, rejecting the bail applications filed by accused Nos. 5, 11, 12 and 13. These accused persons amongst others are facing trial in Spl. C. No. 141/2021 for the offences punishable under sections 120B, 143, 145, 147, 188, 353 and 427 of IPC and sections 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA') read with sections 34 and 149 of IPC.

2. Criminal Appeal 827/2024 is filed by accused 11, 12 and 13 and Criminal Appeal 828/2024 is filed by accused No.5. The incident in relation to which the appellants are facing trial occurred on 11.08.2020 in the



background of posting a derogatory remarks on Prophet Mohammed on social media by one Naveen. A group of persons gathered in front of Kadugondanahalli police station (K.G.Halli police station) and demanded registration of FIR against Naveen. By that time, an FIR had already been registered at D.J.Halli police station. In spite of efforts made by K.G.Halli police to convince them that an FIR had already been registered, the mob turned violent, starting pelting stones at the police station and resorted to burning the vehicles parked in front of the police station. This is the incident in a nutshell.

3. In connection with the incident, three FIRs in Crime Nos. 227/2020, 228/2020 and 229/2020 were registered initially. Then in the FIR 229/2020 (K.G.Halli) stringent provisions under UAPA were invoked. The investigation was taken over by NIA.

4. Along with accused No.5, accused No.6 also filed an application for bail. The Special Court passed common



order on the bail applications of accused 5 and 6. Accused 11, 12 and 13 filed a common application for bail.

5. Accused 11 to 13 preferred an application for bail on earlier occasion and it was dismissed on 27.08.2021. The application upon which impugned order was passed was a subsequent bail application. Likewise accused 5 and 6 withdrew their earlier application for bail on 01.04.2021, and they too approached the Special Court for bail once again. In their subsequent applications, they mainly pleaded that NIA deliberately concealed many important statements and materials collected by the State police. Those statements and materials ought to have been produced with the charge sheet filed by the NIA. They stated that the NIA fabricated the statements of the witnesses as if they all imputed the appellants, but they had stated nothing against the appellants when they were interrogated by the State police. They alleged that the NIA handpicked the accused based on some instructions and divided all the accused into four categories. There



was no fair investigation, and the intention of the NIA was clear to implicate one particular set of people. And the ingredients of the offences under UAPA are not at all forthcoming.

6. Adverting to the grounds urged by the appellants the Special Court opined firstly that successive bail application was maintainable if there was change in factual or legal situation. Having observed so, the Special Court gave a second finding in the light of a judgment of the Supreme Court in ***Re. vs State of Andhra Pradesh and Others [(2021) 10 SCC 598]*** that the accused could seek appropriate orders for production of materials at the time of trial, and it cannot make use of documents which are not part of charge sheet for claiming bail, and the Special Court further went on to opine that if there are contradictions in the statements recorded by the State police and the NIA, they cannot be considered as change in circumstance to entertain subsequent bail applications.



7. Thirdly, the Special Court also observed that if the grounds taken up by the accused were available for being urged at the time when they made their former application for bail, and if they were not raised, they cannot be entertained in the guise of changed circumstance. It has also been observed that the first bail application filed by accused 11 to 13 was rejected after the charge sheet was filed and thereby there is no change in circumstance. The Special Court has also taken note of the order passed by this court in Criminal Appeal Nos. 585/2021, 576/2021, 1448/2021, 1640/2021 and the Supreme Court in SLP (Criminal) No. 848/2022. And the ultimate conclusion of the Special Court was to dismiss the applications.

8. Assailing the findings of the Special Court, learned advocates, Sri Mohammed Tahir for the appellants and Sri P.Prasanna Kumar for respondent-NIA addressed arguments relying on decided cases of the Supreme Court which will be referred to later.



9. It is made clear now itself that the matters under consideration are appeals, the scope of which is to examine the correctness of the order challenged. So the question that arises for discussion is, whether the Special Court's finding that a change in circumstance either on facts or law is not made out, is correct.

10. The main thrust of argument of Sri Mohammed Tahir is this : Accused 5 and 11 to 13 have been falsely implicated merely for the reason that they are the members of SDPI, which organization itself is targeted by the police. When the State police examined the witnesses, none of them took the names of accused 5 and 11 to 13, and they in fact referred to some other persons being responsible for burning the motorcycles. But in the NIA charge sheet, it is stated as if these accused set fire to the vehicles. This accusation is because of their proximity with SDPI which is actually involved in social work, and did immense social work during Covid-19 pandemic. Accused No.5 has no criminal antecedent. There are no materials



in support of offence of conspiracy. It was after NIA took over investigation, it came up with a theory that there was conspiracy to burn the vehicles and target police stations. The investigation done by the State police does not disclose conspiracy. Merely for the reason that these accused are residents of that locality, they have been targeted even though there is no material or evidence that they were very much present at the time when turmoil erupted.

11. Relating to accused Nos. 11, 12 and 13, Sri Tahir argued that they were arrested on 21.12.2020, and the statements of the witnesses were recorded on 14.08.2020. In these statements there was no imputation of accused 11, 12 and 13 and therefore it is clear that implication of these three accused is the handi work of NIA. A mob violence is given a different colour. Appellants were able to make out a changed circumstance, but the Special Court has lost sight of it. The conclusion against accused are drawn without discussion and hence



the appeals are to be allowed and appellants/accused are to be released on bail.

12. Sri P.Prasanna Kumar's argument was that accused 5 and 11 to 13 have not been able to make out a changed circumstance. It is false that the State police did not collect any material against these accused. All these accused were members of conspiracy. The earlier order of refusing bail was not challenged. If according to these accused, the witnesses did not implicate them when the witnesses were examined by the State police, their previous statements can be made use of during trial, but for deciding bail application, only charge sheet materials must be considered. Section 43(D)(5) has a stringent application in such a way that if materials collected during investigation indicate that they are prima facie true, bail cannot be granted at all. Therefore appeals are to be dismissed.



13. Sri Mohammed Tahir has mainly relied on a judgment of the Supreme Court in ***National Investigation Agency vs Zahoor Ahmad Shah Watali [(2019) AIR (SCW) 1734]*** where, discussing the scope of the expression 'prima facie' true, it has been held as below :

"17. By virtue of the proviso to subsection (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence.



There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of accused "not guilty" of such offence as required under the other special enactments. In any case, the



degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. Nevertheless, we may take guidance from the exposition in the case of Ranjitsing Brahmajeetsing Sharma (supra), wherein a three Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail....."

14. The other two judgments cited by Sri Mohammed Tahir are ***P.Chidambaram vs Directorate of Enforcement (Criminal Appeal No. 1831/2019)*** and ***Javed Gulam Nabi Shaikh vs State of Maharashtra and Another [Criminal Appeal No. 2787/2024]***. In ***P.Chidambaram*** what is held is that basic jurisprudence relating to bail remains the same in all types of cases, and grant of bail is a rule and denial is an exception. But while applying these principles, the courts have to keep in mind



the gravity of the offences which has to be gathered from facts and circumstances of each case. Ultimate conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail, and consideration will have to be on case to case basis. The case of **Javed Gulam Nabi Shaikh** traces many decided cases and decisions to grant bail was taken in the set of circumstances mentioned in para 7 of the judgment.

15. Sri. P.Prasanna Kumar has placed reliance on **Pankaj Bansal Vs. Union of India and Others [2023 SCC Online SC 1244]**, but this judgment is not relevant for deciding these appeals.

16. Now the case of accused No.5 Peer Pasha may be examined. In para 2 of the impugned order, the Special Court judge has stated that accused Nos.5 and 6 had filed an application for bail and they withdrew it on 01.04.2021. The reasons for withdrawing the application are not forthcoming. Anyway the ground urged is that



statements of witnesses before two investigative agencies differ and in this view it cannot be said that there are no materials to satisfy the requirement of 'prima facie true' in order that bail can be denied. To put it in other words, the imputations against accused Nos.5 and 6 found in the statements of witnesses recorded by the NIA are not there in the statements recorded by the State police. To examine this ground the Special Court has referred to the statements of the witnesses namely Narayana L, Chinnaswamy N, Sandeepa, Chandsab Pinjar, Mudaseer Ahamed, Noor Khan and arrived at an opinion that all of them have implicated accused Nos.5 and 6.

17. In addition the Special Court has referred to an order passed by this court in Criminal Appeal 567/2021 and connected cases where the submissions of Mohammed Tahir have been extracted to observe that all the contentions of accused Nos.5 and 6 are matters of trial. Reconsideration of these materials actually do not arise, or even if the materials are reassessed we have to concur



with findings of the Special Court. Therefore we find it difficult to take a different view and consequently Criminal Appeal 828/2024 should fail.

18. To reject the bail application of accused Nos.11 to 13, the Special Court did not find a change in circumstance. It is not in dispute that bail was denied to accused 11 to 13. It has been observed in para 11 of the order impugned in Criminal Appeal 827/2024 that accused Nos.11 to 13 filed application for bail on 05.06.2021 and it was dismissed on 27.08.2021. The Special Court has in fact made an endeavour to find out change in circumstance keeping in mind the contention of accused 11 to 13 that in the order on former bail application, the effect of statements of some witnesses recorded by the State police had not been discussed. In this regard a specific finding by the Special Court, as has been observed in paras 13 and 14 of its order, is that in **Ateeq Ahmed and Others vs NIA (Criminal Appeal No.814/2022 c/w Criminal Appeal 788/2022)**, similar submissions



made by Sri. Mohammed Tahir were rejected and therefore the grounds that have been taken in the present application cannot be considered a change in circumstance.

19. It is to be noted here that in the memorandum of appeal the finding of the Special Court in para 14 of its order is not specifically challenged, but there is a tangential reference to it in para No.19 of the memorandum of appeal stating that the observation of the Special Court is factually incorrect in as much as in none of the appeals, the contradiction in regard to burning of bikes was never raised and answered.

20. Sri. Mohammed Tahir has produced the text of the judgment in **Ateeq Ahmed (supra)**. Perusal of the same shows that he had taken up same grounds, and though there is no discussion on them the appeals were ultimately dismissed confirming rejection of bail to the appellants therein who are also facing trial in connection with the same incident. That means the co-ordinate bench



of this court did not accept the stand of some of the other accused persons.

21. Moreover the Special Court has observed that if there are contradictions in the two sets of statements of the witnesses, the same may be made use of by the defence during trial. This is the correct position of law. If any observation is made by this court in regard to variations in the statements, it amounts to usurping the jurisdiction of the trial court which has to appreciate the evidence. We too have compared the statements of witnesses given before the State police and the NIA. The statements before the State police constitute former statements which can be used by the defence and if they are confronted the witnesses have the liberty to give explanations based on which the court conducting trial has to appreciate evidence. At this stage the contentions taken by accused 11 to 13 cannot be considered. The decision as to existence of case which appears to be prima facie true, has to be taken on the charge sheet upon which



trial is going to be held. Therefore we do not find merit in this appeal also.

Resultantly both appeals are dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(J.M.KHAZI)
JUDGE

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List No.: 19 Sl No.: 2