

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

Reserved on: 09.07.2025
Pronounced on: 11.07.2025

CrLA(D) No. 30/2024
CrIM 563/2024

**Union Territory of J & K Through
SHO Police Station Qaimoh, Kulgam**

...Appellant(s)

Through: Ms. Maha Majeed, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG.

Vs.

**Waseem Ahmad Malik
S/O Bashir Ahmad Malik
R/O Bugum Tehsil & District Kulgam**

...Respondent(s)

Through: Mr. Saleem Gul, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjay-Parihar-(J)

1. By this appeal, order dated 10.10.2023, drawn by the Learned Special Judge (designated NIA Court for "Shopian-Kulgam"), HQ Kulgam, is assailed, since in terms thereof, respondent who was arrested in case FIR No. 37/2019 of Police Station Qaimoh under Sections 13, 18, 20, 23, 38, 39 UA(P) Act, 7/25 Arms Act had been bailed out after having been in custody since 1st August 2022. Which order was based on the premise that the disclosure statement of co-accused cannot be read as a whole against respondent and that except screenshots of various WhatsApp groups nothing had been placed on record with certificate under Section 65B of the I.T. Act by way of any digital evidence. So much so, the maker of disclosure had already been bailed out.

2. The trial court was also of the view that on the ground of parity the respondent is entitled to bail, besides he was suffering from tuberculosis and other ailments for which he cannot be properly treated in prison and such disease being contagious was likely to threaten the other inmates.
3. The Trial Court therefore had taken the view that the respondent had been able to make out a *prima facie* case, warranting to keep out his case from the purview of Section 43D of the Act.
4. Said order is assailed on the ground that the court below did not appreciate the facts in right perspective as there was incriminating material directly implicating the respondent in an offence falling in Chapter IV and VI of the ULA(P) Act.
5. The court below failed to apply rigour of Section 43D which imposed embargo on grant of bail in such offences. That out of 14 witnesses only 02 witnesses had been examined, so the trial was at its infancy, thereby before the trial court, the respondent had failed in making out a strong *prima facie* case for his enlargement on bail.
6. Briefly stating, the prosecution case happens to be that FIR No. 13/2020 under Section 307 IPC, 7/27 1 Arms Act, 16 ULA(P) came to be registered by P/S Rajpora on the strength of incident dated 26th March 2020, when a police party while on Naka duty was indiscriminately fired upon by terrorists using automatic weapons, but the alertness of the security forces was able to foil that attack, resultantly, no loss of life was reported.
7. This incident was investigated and found to have been carried out by Zahid Ahmad Bhat and Rafiq @ Rouf designated terrorists who in connivance with Basit Ayub Bhat and Mushtaq Ahmad Baba, had been able to do the said strike.

8. During the investigation, Basit Ahmad Bhat was brought to questioning, who discloses that he along with one Waheed Mustaq Baba of Pulwama, had provided lift to the two terrorists Zahid Nazir Bhat @Zahid Tiger and Rafiq @ Rouf on their respective motorcycle before they went on to strike the security forces.
9. It was further revealed that Shakeel Ahmad Mir, Faisal Muzaffar Ganie and Irfan Abdullah Yattoo (respondent), were acting as over ground workers for the two terrorists. Subsequently both these terrorists are stated to have been eliminated in different encounters, whereas, respondent along with co-accused were formally charge-sheeted for offence under Section 18/39, 13 ULA(P) Act.
10. The record of the trial court would reveal that in terms of Order dated 15.11.2023, *prima facie* respondent is found to have committed offence under Section 13 of ULA(P) Act, whereas the other two have been charged with offences under Section 18, 39 of the Act.
11. Learned Counsel for the appellant argued that the trial court has overlooked the evidence before it and bailed out the petitioner without appreciating the rigour of Section 43D, which is strongly contested by the respondent on the plea that the order of the trial court is in detail and does not suffer from any perversity as it appreciated the whole matter regarding bail of the respondent in its right perspective.
12. He further contended that given the charge against the respondent having been u/s 13 of the Act, the order impugned does not call for any interference.
13. We have heard the counsels as well as gone through the record of the case.

14. Fairly in terms of order dated 15.11.2023, the respondent has been formally charged for offence under Section 13 ULA(P) Act as according to prosecution the respondent was alleged to be running a Whatsapp group with the name “Gazi Waseem” in which there were regular chats so as to facilitate safe hide outs to the terrorists at various places.
15. It is further alleged that there was another Whatsapp group namely “Shariyat-aur-Shadat” of which the respondent was an active member. This aspect is stated to have been divulged to the investigating agency by a co-accused and the respondent came to be arrested on the disclosure of the said accused, whereas that accused stood already bailed out.
16. How far the disclosure made by co-accused can be treated as substantial evidence against the non-maker is an issue to be ultimately examined in trial. The co-accused, who, not only were active members of militant organisation but were also accused of having conspired with them to commit the terrorist activity, who both have been bailed out. Whereas, as against respondent, the allegations did not relate to his active participation in the commission of incident dated 26.03.2020.
17. The trial court has thoroughly considered the case of the respondent and examined it on the touchstone of Section 43D and found that the respondent had been able to carve out a case of not being influenced by the rigour of Section 43D. We see no reason to disagree with the observation of the trial court.
18. Though, at the stage of grant of bail, there were accusations against the respondent of having not only committed offence under Section 13, but also being involved in offence under Section 18, 39 of the ULA(P) Act. However, the trial court had thoroughly considered material laid in this

regard and found that act of running Whatsapp group and the material extracted during investigation did not have any certificate under Section 65 B of the I.T. Act so as to make such evidence admissible against the respondent. Except the allegations of having been part of Whatsapp group, there was no other tangible material to link him with offence under Section 18, 39 of the ULA(P) Act.

19. In that background, we see no reason to interfere with the discretion exercised by the trial court in granting bail to the respondent. Additionally, once the accused against whom there were serious allegations of being involved in offence under Section 18, 39 of the Act had been let on bail, there was no reason to withhold the concession of bail to the respondent, when on facts and material before it, the trial court was of the view that he is involved only in offence under Section 13 of ULA(P) Act.
20. We do not see any illegality in the order impugned which has been rightly drawn after appreciating the matter in its right perspective.
21. Appellants, therefore, have not been able to point out any perversity in the order impugned so the appeal lack merits, is therefore, *dismissed*.
22. Disposed of, as such.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
11.07.2025
“Hilal”

Whether the Judgment is approved for reporting?

No