

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrI(A)(D) 32/2023 CrIM 876/2023

UNION TERRITORY OF J AND K TH.
SHO POLICE STATION KHANYAR SRINAGAR.

...Petitioner/Appellant(s)

Through: Mr. Mohsin Qadri, Sr. AAG.

Vs.

KALEEM ZAFFAR KHAN
S/O. ZAFAR ULLAH KHAN

...Respondent(s)

Through: Ms. Ahra Syed Advocate.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER
07.07.2025

1. The appellant is aggrieved of order dated 15.04.2023 passed by the learned Special Judge, Srinagar. (designated court under NIA) whereby the respondent, facing prosecution in case FIR no. 19/2022 under Section 120-B and 468-IPC, has been released on bail, which order the appellant claims to have been passed without appreciating the incriminating material laid against the respondent. That the respondent conspired with co-accused to commit an act of harbouring terrorists which is punishable under Chapter-IV of the Unlawful Activities (Prevention) Act (hereinafter referred to as Act). So, being involved in a serious offence which affects the peace and security of the state and society in general, the prosecution had reasonable apprehension that in case the respondent is admitted to bail he may jump the bail and abscond. That the trial court landed in error in passing the order impugned as it failed to take into consideration Section 43-D of the Act,

which expressly bars granting of bail to the accused persons when there are reasonable grounds for believing that the accusations against such persons are prima facie true. That the bail has been granted to the respondent on superfluous grounds that are not based on any cogent reasoning.

2. Briefly stating the factual background leading to the filing of the appeal happen to be that on 10th April, 2022, the security forces comprising of Police Personnel of PS Khanyar, CRPF and others received information about the presence of two foreign terrorists in Bishambar Nagar, Khanyar area having taken shelter in the house of one Javid Ahmad Bhat. On finding the security personnel, the two terrorists allegedly opened indiscriminate firing, resulting into an encounter in which both were eliminated. This gave rise to FIR No. 19/2022 under Section 307 IPC 7/27 of Arms Act and Sections 13, 16, 18, 19, 20, 39 ULA(P) Act.

3. It appeared during investigation that the two foreign terrorists were brought to Srinagar by one Mubashir @ Hamza who had infiltrated to Pakistan in the year 2018 and, thereafter, had come back. He, in connivance with Javid Ahmad Bhat and Bilal Ahmad Dagga, transported and accommodated the two foreign terrorists in Srinagar city where they intended to cause a terrorist act which was foiled by active operation of the security forces. It further transpired that Bilal Ahmad Dagga in connivance with respondent prepared forged Aadhar Cards to be provided to the foreign terrorists so as to hide their actual identity. It was on the strength of investigation that Bilal Ahmad Dagga, Javed Ahmad Bhat and Ashiq Bashir Najar were found to have committed the offence under Sections 13, 18, 19, 31 UA(P) Act. Whereas, the respondent Kaleem Zaffar Khan has been accused of offence under Section 120-B 468 IPC, for which they were

charge sheeted before the Trial Court after obtaining sufficient evidence for their prosecution. Whereas, the other accused Mubashir @ Hamza was stated to be hiding in Pakistan against whom proceedings under Section 299 Cr. PC came to be initiated.

4. After filing the charge sheet the respondent laid motion for grant of bail, which in terms of order impugned has been allowed as according to Trial Court the case of the respondent did not come within the legal bar of Section 43-D of ULA(P) Act as admittedly respondent was not booked under the said Act. Against him the allegations were purely of commission of offence under Section 120-B 468 IPC which was prima facie found established and with respect to such offences police had availed sufficient time for his custodial interrogation and that his continuation in custody would not serve the lawful purpose, thus, was enlarged on bail.

5. We have heard both the counsels and gone through the record of the case. Though the appellant's claimed that respondent is involved in unlawful activities falling within the purview of Chapter-IV of the Act, however, the ld. Counsel has not been able to persuade us by showing any material to warrant the implication of respondent under said Act. Whereas, the record bear testimony that on the strength of investigation, only offense for which the respondent has been charged are falling under IPC being offences under Section 120-B 468 IPC. In fact, nowhere in the charge sheet is there any whisper of the respondent having conspired with the co-accused to commit an offense falling under Chapter-IV of the Act. Once that is the case, then reliance on Section 43-D of the Act is totally uncalled for.

6. It was pointed out by the counsel for the respondent that after the respondent was implicated on the basis of the accusations that co-accused

Bilal Ahmad Dagga during investigation had made disclosure that he managed two fake Aadhar Cards from the respondent who runs shop 'Valley Telecom' and for that he sent one Safeena D/O. Ghulam Nabi. Even the respondent in his disclosure dated 13.01.2023 is stated to have disclosed that one lady namely Safeena came to him with the plea that she requires Aadhar Cards of two persons that are urgently needed otherwise she would be thrown out of the service. Thereafter, she gave him the photo copies of two Aadhar Cards on which he prepared two Aadhar Cards on his laptop and gave it to her after charging 70 Rs. per card and thereafter one person came to him and received said Aadhar Cards. Same is reiterated by the said PW Safeena Nabi. So on going through the record, the police investigation had concluded that the respondents had conspired to commit the act of preparing fake Aadhar Cards, however, there is not even whisper in the charge sheet that the respondent was having any prior knowledge of two fake Aadhar Cards to be used by terrorists operating from Pakistan having been brought to Srinagar by the co-accused. The counsel for the appellant when confronted with tried to justify that the accusations are grave, however, all his pleas are contrary to record.

7. It is relevant to state here that on going through the charge sheet though the other co-accused have been alleged to have committed various offences falling under ULA(P) Act, however, none of them have been accused of committing offence under Section 120-B. In that background, whether Section 120-B could have been singularly applied against respondent is for the Trial Court to see. We refrain ourselves from making any comment on that aspect as the same may prejudice the prosecution in its trial against the accused. Be that as it is, we see no reasons to interfere

with the order passed by the learned Special Judge because there being presumption of innocence in favour of the respondent, the material placed before the Trial Court was not of the nature of dissuading the Trial Court from exercising discretion in favour of the respondent. The argument that in the event of respondent being admitted to bail may affect the trial that too is without any factual basis and there appears to be no past history of respondent having indulged in any such activity earlier also.

8. In the background, we see no reasons to interfere with order of the Trial Court, the same does not call for any interference. Hence appeal lacks merit, is therefore dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR

07.07.2025

“Shahid Manzoor”