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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1827/2015

MUZAFFAR AHMAD DAR Petitioner
Through: Mr.Sarim Naved, Advocate.

versus

UNION OF INDIA & ANR Respondents
Through: Ms.Prabhsahay Kaur, Advocate
for the respondent No.1.
Ms.Shilpa Singh, Advocate for
the respondent No.2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

% **ORDER**
13.10.2015

The petitioner has challenged the order dated 27.05.2015 passed by the Ministry of Home Affairs, Government of India (Internal Security-1 Division) which has been passed under Section 268 of the Code of Criminal Procedure read with sub Section (3) of Section 43D of the Unlawful Activities (Prevention) Act, 1967. By the aforesaid order, the petitioner has been restrained from being taken out of the jurisdiction of the National Capital Territory of Delhi for a further period of six months or till the completion of trial under the NIA Act.

The Government on receiving credible information that the petitioner was in touch with the members of Hizb-ul-Mujahiddin, a

terror organisation funded by ISI, Pakistan, passed an order on 7.09.2011 under Section 6(5) and 8 of the National Investigation Agency Act, 2008 for initiation of investigation by the NIA against the petitioner. Pursuant to the aforesaid order, FIR was registered against the petitioner for offences under Sections 120B read with Section 121A of IPC and Sections 17, 18, 18A, 18B, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967.

Because of the requirement of the petitioner to remain in Delhi for the trial of the aforesaid offence, an order under Section 268 of the Code of Criminal Procedure, 1973 was passed initially on 04.06.2014 confining the petitioner to Delhi till the completion of investigation. After the passage of six months and on account of non completion of trial, a fresh order under Section 268 of the Code was passed directing the petitioner to be kept in jail for six months or till the completion of trial.

The petitioner, in the meanwhile, preferred a petition under Section 406 of the Code of Criminal Procedure before the Supreme Court of India seeking transfer of his case to Special NIA Court, Srinagar in the State of Jammu & Kashmir. The ground for seeking transfer was that most of the witnesses in the NIA case which is being tried in Delhi are from the State of Jammu & Kashmir and, therefore, it would be easier for the prosecution to conduct the trial in Jammu & Kashmir.

The aforesaid petition of transfer was permitted to be withdrawn by the Supreme Court with a liberty to the petitioner to prefer a fresh application after the framing of charges and examination of 23

protected witnesses, in case the charges were framed against him. In the meanwhile, a fresh order was passed by the Government on 27.05.2015 seeking to detain the petitioner for another six months or till the completion of trial of the case in Delhi. The aforesaid order is under challenge.

Learned counsel for the petitioner has submitted that the order is completely silent about the reasons for exercising the jurisdiction under Section 268 of the Code of Criminal Procedure.

Section 267 of the Code of Criminal Procedure empowers a Court of law to direct the production of a detenu for answering to the charge of an offence for the purposes of any proceeding against him or if it is necessary for the ends of justice to examine him as a witness. The aforesaid powers of the Court could be curtailed by the Government under certain circumstances. In case where the nature of offence required such curtailment of powers or if there was any likelihood of disturbance in conclusion of trial at a place where an accused is to answer to the charges or for the purposes of public interest generally, a direction could be issued that the detenu may not be transferred from one State/Court to another Court or State.

The order impugned clearly spells out the reasons for exercising its powers under Section 268 of the Code of Criminal Procedure.

The gravity of the offence and the nature of accusation against the petitioner has been taken note of while passing such an order, detaining the petitioner in Tihar Jail in Delhi till conclusion of trial or six months.

Learned counsels appearing for National Investigation Agency and Union of India submit, in unison, that the arguments on charge before the Trial Court is over and charges are shortly to be framed against the petitioner.

No good ground has been made out by the petitioner for quashing or setting aside of the order dated 27.05.2015 passed under Section 268 of the Code of Criminal Procedure. In that view of the matter, the petition is dismissed. Needless to say that the Trial Court shall take up the case on day to day basis and would conclude the trial as expeditiously as possible.

ASHUTOSH KUMAR, J

OCTOBER 13, 2015

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