HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1124 of 2017

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) The present appeal came to be filed under Section 21(4) of the National Investigation Agency (NIA) Act, challenging the order passed by the Metropolitan Sessions Judge-cum-Special Court for National Investigation Agency cases at Vijayawada, rejecting the bail application filed by the petitioner viz., Crl.M.P.No.837 of 2017 in Rc.No.02/12/NIA/HYD of National Investigation Agency, Hyderabad.

2) The facts of the case are as under:-

On receipt of specific intelligence, the Officers of DRI, Visakhapatnam Regional Unit seized Fake Indian Currency Notes (FICN) of face value of Rs.5,01,500/- from the possession of one Saddam Hossain (A-1), resident of Manikpur village, Barpet, Assam State at Platform No.4 of Visakhapatnam railway station, while he was travelling to Bangalore by Train No.12510 Guwahati-Bengaluru superfast express. On interrogation A-1 admitted that the said FICN, were smuggled into India from Bangladesh and that he was carrying it to Bangalore to be delivered there. An inventory of the same was made to believe that the same was illicitly smuggled into India from Bangladesh in contravention of the provisions of the

Customs Act, 1962. The first accused was remanded to judicial custody and thereafter the seized notes were sent to CFSL. CFSL opined that all the suspected currency notes of Rs.500 and Rs.1,000 denominations are high quality fake/counterfeit Indian currency notes. Pursuant to the said information being forwarded by the Additional Director General, DRI, Hyderabad, the Ministry of Home affairs, Government of India, in exercise of power conferred under Section 6(5) and Section 8 of the National Investigation Agency Act, 2008 directed the NIA to take up the investigation of the above mentioned case. The NIA, Hyderabad branch registered a case on 23.12.2015 under Section 489-B & 489-C IPC and Section 15 of Unlawful Activities (Prevention) Act, 1967. The averments in the charge-sheet would reveal that A-1 is an accomplice, in a larger conspiracy, hatched to threaten the monetary stability of the country. He has been instructed by A-3 to go to Malda and receive the FICN and bring it to Bangalore where he would be paid an amount of Rs.10,000/- + expenses. The FICN was arranged by A-3 from across the border through A-4, for the current transaction and through A-2 on two earlier occasions. The investigation further discloses that on 19.09.2015, A-1 travelled to Malda from Bangalore, on the instructions of A-3 to collect FICN from A-2. Further on one occasion A-1 was also instructed by A-3 to deposit Rs.1,50,000/- genuine currency in the savings account number provided by A-4. During the investigation the sample handwritings and signatures of A-

1 were obtained under the court order and were sent to GEQD, CFSL Hyderabad for matching them with the handwritings obtained in the Register seized from the hotel where he stayed at Malda/Farakka, as well as on bank deposit slip where he had deposited Rs.1,50,000/- in the HAL branch, Punjab National Bank, Bangalore, in the account of Hakim's wife Nasima Bibi. Based on the leads available from the interrogation of A-1, A-3 was arrested by NIA in Bangalore on 13.02.2016. A-1 and A-3 are alleged to have taken a house on rent in Bangalore for trafficking and circulating the FICNs from July 2015 to 21.09.2015.

2.1) The charge-sheet discloses the following modus of operandi for procurement trafficking and circulation of high quality FICN, by terrorist gang comprising of A-1, A-2, A-3 and A-4:-

a) For procurement of FICN, Amirul Hoque used to place the requirement of FICN through mobile phone to A-2 or A-4, who in turn, would message him the account number in which money is to be deposited for the same. A-3 would then deposit the amount according to quantity of FICN to be purchased. As per the admission of the accused, to obtain FICN of Rs.1,00,000/- face value, an amount of Rs.47,000/- genuine currency has to be paid to A-2 and A-4.

b) After depositing money and getting confirmation from A-2 or A-4 over mobile phone, A-3 would then send (A-1) Saddam Hossain, to collect money from Malda or Farrakka, as instructed by (A-2) or (A-4).

c) In the instant investigation, it is revealed that (A-1) Saddam Hossain had collected FICN on two occasions from absconding accused (A-2) Roustam and on one occasion from absconding accused (A-4) Hakim in West Bengal, and A-3 had deposited money in bank accounts as intimated by (A-2) and (A-4) as shown in Table A.

d) As per investigation, Saddam Hossain (A-1) at least on three previous occasions went to Malda and Farakka, to collect FICN as per the instructions (A-3). They both further sold the FICN to local contacts but they could not be located. They also circulated the FICN locally in Bangalore, for purchasing daily needs, groceries and medicines.

e) The link chart in Table B brings out the linkages of all the accused persons with each other.

3) Earlier the Sessions Court released the petitioner on bail, which was challenged in appeal by the State agency vide Crl.A.Nos.791 and 792 of 2016. Since the trial court failed to discuss the mandatory requirement envisaged under proviso to sub-section 5 of Section 43-D of the Unlawful Activities (Prevention) Act, 1967, the matter was remanded to trial court to consider the bail application afresh. Pursuant thereto, the trial court considered the matter again and after hearing all concerned, rejected the request. Challenging the same, the present appeal came to be filed.

4) Learned counsel for the appellant mainly submits that the entire case is based on the confession of the co-accused and there is absolutely no material to show that the petitioner is responsible for destabilizing the economic front of the country. He further submits that pursuant to a raid conducted at the house of A-3, only two fake currency notes were seized from the house in Bangalore apart from some documents which by itself do not establish that he is involved in fake currency racket as alleged by the prosecution. Having regard to the fact that the petitioner was already granted bail once by the trial court, which was later set-aside by the High Court and since the entire investigation is over and the petitioner is in Jail from 14.02.2016, he seeks release of the petitioner on bail.

5) The same is opposed by Special Public Prosecutor (NIA) contending that the accused is an habitual offender, who had been arrested in an earlier case. He would further submit that though only two notes were recovered from the house of the petitioner but those two notes are high quality fake notes which were similar to the notes received by Security Printing and Minting Corporation of India Limited (SPMCIL) in various other cases. He would further submit that the statements of the witnesses recorded by the prosecution during the course of investigation reveal amounts obtained through circulation of fake currency notes came to be deposited in the account of the petitioner, which remain unexplained by the accused.

It is said that the petitioner has recruited A-1 for trafficking and circulation of FICN, which was smuggled from Bangladesh so as to destabilize the Indian economy. It is further stated that the money so obtained is being used for terrorist activity in the State. Relying upon Section 15 read with Section 16 of the Act and taking into consideration Section 43(D)(5) of Unlawful Activities (Prevention) Act, 1967, he would submit that the petitioner is not entitled for any bail, as *prima facie* case is made out against him.

6) In order to appreciate the rival contentions, it would also be useful to extract Section 43(D)(5) of the U.A.(P) Act which reads as under:-

> "**Section 43D(5)** in The Unlawful Activities (Prevention) Act, 1967.
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

7) Sub-section 5 of Section 43(D) of the Act postulates that notwithstanding anything contained in the Code of Criminal Procedure, no person accused of an offence punishable under Chapters-IV and VI of the 1967 Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given

an opportunity of being heard on the application for such release. The proviso to the said provision, which is relevant for the purpose of this case, reads as under:-

> "Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima faice* true."

8) The above provision is said to be mandatory in nature. It takes away the discretion of the court to grant bail whenever it is of the opinion that there are reasonable grounds for believing that the accusation against the accused is prima facie true. It is to be noted here that this is a special enactment which overrides the provisions of the Code of Criminal Procedure, whenever the provisions are in conflict with each other.

9) In view of the above, the question is "Whether a prima facie case is made out against the accused?"

10) It is to be noted here that the entire investigation is over and charge-sheet is also filed. But, that does not mean that the petitioner has to be released as a matter of right. Since the charge-sheet came to be filed within the period stipulated, the counsel did not press for default bail. It is well established that filing of a charge-sheet does not by itself give any right to the accused for release on bail one has to see the case on merits.

11) A perusal of the averments in the charge sheet show that A-1 herein is said to have made a confession, when he was apprehended in Visakhapatnam railway station, wherein he was found in possession of fake currency notes. Pursuant to the confession made, the N.I.A. raided the house of the petitioner in Bangalore and recovered two Fake Indian Currency Notes. In the normal course, recovery of two fake currency notes may not be of a great significance, but in the instant case, the two fake currency notes, which were recovered are high quality fake notes, which when sent to SPMCIL showed that these notes were similar to the notes which were seized in other States, in various other crimes. During the course of investigation, the prosecution examined number of witnesses. The statement of one of the witnesses showed that when the house of the petitioner was raided in the Bangalore, the accused pointed out and took one yellow colour poly bag from the almyrah and handedover the same to the agency stating that the bag contains his personal documents and other things. The accused also disclosed that after circulating fake currency notes collected from A-1, only two fake currency notes left with him. The house was then locked and sealed in the presence of the witnesses. From the statement of the said witness, it is clear that after circulating the fake currency notes received from A-1, only two notes were left in his house.

12) One other witness was examined to prove that the petitioner used fake currency notes for purchase of articles, to be used for his daily purpose. The statement of the said witness shows deposit of the amount by the accused in the Bank, which remain unexplained. A perusal of the factual aspects collected by the investigating agency during the course of investigation would reveal that A-3 used to place the requirement of FICN through mobile phone to A-2 or A-4, who in turn send the messages of account number, in which money has to be deposited. A-3 would then deposit the amount according to quantity of FICN. As per the admissions of the accused to obtain FICN of Rs.1,00,000/- face value, an amount of Rs.47,000/- genuine currency has to be paid to A-2 or A-4. After depositing the money and getting confirmation from A-2 and A-4 over mobile phone, A-3 would then send A-1 to collect the money from Malda/Farakka. The evidence of witnesses and material collected during the course of investigation showed deposit of money by the accused in the account, in exchange of fake currency notes through A-1.

13) As there is enough material on record to show that the petitioner is prima facie connected with large scale operation of distributing fake currency notes in the country, thereby destabilizing the economy, we see no grounds to grant bail to the petitioner and accordingly the same is dismissed.

14) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:22.12.2017
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