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

+ **CRL. A. 81/2017**

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Date of Judgment: 08th May, 2017

MUFTI ABDUS SAMI QASMI

..... Appellant

Through : Mr. Jawahar Raja, Advocate with
Mr. Rajat Kumar, Advocate.

versus

NATIONAL INVESTIGATION AGENCY

..... Respondent

Through : Mr. Amit Sharma, Special Public
Prosecutor for NIA with Mr. Neel Kamal,
Public Prosecutor for NIA, Mr. Som
Prakash, Advocate and Mr. Sunil Kumar,
Inspector, NIA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 14.12.2016 by which an application filed by the appellant herein, seeking a direction to supply the copy/inspection of documents submitted by the prosecution in sealed covers, was dismissed. The appellant had sought copies of the report filed by the Public Prosecutor under Section 43D (2) (b) of the Unlawful Activities (Prevention) Act, 1967. The prayer made by the appellant was rejected by the District & Sessions Judge, Special Court (NIA) by the impugned order.
2. Counsel for the appellant submits that the aforesaid document is a vital document to enable him to prepare his defence and even otherwise there is no law which can deny the appellant copies of the aforesaid report filed by the Public Prosecutor.

3. Mr. Sharma, learned Special Public Prosecutor, submits that the present appeal is not maintainable under Section 21 of the National Investigation Agency Act, 2008 (in short '*NIA Act*') as no appeal lies against an interim/interlocutory order. Additionally, it is contended that in this case having regard to the nature of the matter and the investigation required, the charge-sheet could not be filed within the statutory period of 90 days, which could be extended for a period of 180 days. Learned counsel while relying upon Section 43D of the Act submits that the requirement as per this section was that the Public Prosecutor is to place a report before the court detailing reasons for the delay in seeking extension from 90 days to 180 days in filing the charge-sheet. Mr. Sharma, submits that after the application was filed the Special Judge by an order dated 29.04.2016 granted the extension to which there was no opposition. Neither a copy of the report was sought nor the report is a part of the relied upon documents.
4. Learned counsel also submits that the copy of this report was not objected to and at this stage, the appeal has become infructuous as the charge sheet has already been filed and the charge sheet would contain the relied upon material which shall be relied upon by the prosecutor and no material in addition thereto would be relied upon and thus no prejudice would be caused to the appellant in case the copy of the report is not supplied to him. Another reason, which is urged by the learned counsel is that the aforesaid report contains the details of the investigation sought to be carried out not only against this appellant and also against four other persons and the investigations are still under progress with regard to the other persons. He submits that having regard to the sensitivity of the matter, the copy of the report was declined.
5. We have heard the learned counsel for the parties.

6. We may note that as per the counter affidavit in compliance of order No. 11034/111/2015-IS-IV dated 09.12.2015 issued under Section 6(5) of NIA Act by the Ministry of Home Affairs, Government of India, the respondent had registered a case [FIR No.RC-14/2015/NIA/DLI] under Section 125 of the Indian Penal Code, 1860 and Sections 18, 18B, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 against unknown and unidentified persons involved in the activities of Islamic State (IS) in India and Asian Powers in peace with India, aimed at establishing a Caliphate by indulging in terrorist activities across different countries in the world including India. The respondent after conducting investigation filed a chargesheet against one accused person on 03.06.2016 and subsequently, a supplementary chargesheet against sixteen accused persons on 19.06.2016; in the instant case, on which the Special Court has already taken cognizance. The instant case is related to the larger conspiracy by an active terrorist organization known as 'ISIS' and further investigation is continuing under the provision of Section 173(8) of Code of Criminal Procedure, 1973.
7. It is further stated that during the course of investigation, credible intelligence inputs were received that a module for ISIS is active in different parts of the country and is engaged in recruiting Muslim youth for ISIS, a proscribed terrorist organization. The said input was developed and search and raids were conducted in different cities at different locations. Eighteen accused persons were arrested in the instant case and incriminating literature, material to fabricate IEDs, electronic devices and money received through *hawala* channels were seized from the possession of the accused.
8. It is further stated in the counter affidavit that the present appellant in the guise of a religious preacher was inciting, motivating and abetting Muslim

youths, who sought his guidance in waging violent *jihad* and supporting and joining the Islamic State of Syria and Iraq. After assessing the role of the present appellant and involvement in the instant case present appellant was arrested on 05.02.2016. One Dell laptop and 03 mobile phones were seized from the accused at the time of his arrest. During the course of investigation, the voice sample of present appellant was obtained and sent to the DFS Gandhinagar, Gujarat for comparison with speeches made by him for expert opinion, which has been obtained and is a part of the chargesheet.

9. Since the chargesheet has already been filed in this case and having regard to the fact that at appropriate time the appellant had not sought the copy of the report, which was relied upon before the court; the appeal was filed subsequently and even in the appeal, as informed by Mr.Sharma, no ground was taken that the copy of the report was not supplied, we find no ground to entertain this appeal. The same is dismissed. However, the question of law raised by the appellant is kept open.

G. S. SISTANI, J.

VINOD GOEL, J.

MAY 08, 2017

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