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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 17th APRIL, 2018

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BAIL APPLN. 923/2017

FASIH MAHMOOD

..... Petitioner

Through : Ms.Nitya Ramakrishnan, Advocate with
Ms.Suhasini Sen, Mr.S. Naved, Ms.Sunaina Pihul &
Ms.Priyanka Rao, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Amit Chadha, APP with Insp.Ravinder
Joshi, Special Cell.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. The petitioner Fasih Mahmood seeks regular bail under Section 439 Cr.P.C. in case FIR No.54/2011 registered under Sections 471/489B/489C/120B IPC; Sections 16/18/19/20 Unlawful Activities (Prevention) Act, 1967, (in short 'UAPA'); Section 25 Arms Act and Sections 3,4,5 Explosive Substances Act at PS Special Cell, Lodhi Colony. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. Petitioner's counsel urged that the petitioner is in custody since 13.05.2012. At present, he is facing trial only for commission of offence punishable under Section 20 'UAPA'. Despite

examination of several witnesses, no credible evidence has emerged to implicate the petitioner in the case. PW-42 (Inspector Pankaj Singh) from Cyber Cell is the sole prosecution witness to depose about the examination of the petitioner's laptop. He categorically stated that the only information that he found therein was two e-mail IDs being "gauhar@rediffmail.com" and gauhar_khoomani@yahoo.nimbus.com. Merely because e-mail IDs of the petitioner's cousin brother were found on his laptop, it cannot be taken as an incriminating circumstance against him. No evidence has surfaced to infer if the petitioner ever attempted to exhort any individual to carry out the activities of Indian Mujahideen in India.

3. Learned counsel urged that the FSL report has since been received after a gap of about four years. PW-42 admitted in the cross-examination that the laptop examined by him on 29.01.2013 was not in a sealed condition. He admitted that he had not made any recording of the date and time of his examination, even for his personal records and he was not aware as to what had happened to the said laptop after his examination. On 17.03.2017, the prosecution filed supplementary charge-sheet with the report from FSL Rohini. The contents of the report do not reveal anything incriminating against the petitioner. It is urged that substantial evidence has already been recorded and no useful purpose will be served to deny bail to the petitioner who has a clean record and no conviction has been recorded so far against him, the petitioner has since been enlarged on bail by the High Court of Karnataka in CR No. 96/2010 of Cubbon Park Police Station, Bengaluru City on 16.10.2017.

4. On perusal of the file it reveals that by a detailed and comprehensive order dated 03.02.2016 in Bail Appln. 1771/2015, this Court declined to grant bail to the petitioner. The said order was challenged by the present petitioner in SLP No.3454/2016. The SLP came to be dismissed by an order dated 06.05.2016. The Trial Court, was requested to expedite the trial.

5. There is no substantial change in circumstances to consider the present bail application of the petitioner somewhat on similar grounds on which the bail was denied to him firstly by this Court and subsequently by dismissal of the SLP by the Hon'ble Supreme Court. Pursuant to the directions given by the Hon'ble Supreme Court, the Trial Court has expedited the trial and has recorded statements of fifty-three witnesses. The Trial Court has given several dates i.e. 12.04.2018, 19.04.2018, 26.04.2018 to record the statements of the remaining prosecution witnesses. It is to be noted that during trial two accused persons facing trial in the present proceedings i.e. Mohd.Shakeel and Abdur Rahman have since been convicted on their plea of guilt by a judgment dated 08.02.2016. They were sentenced to undergo various prison terms by an order dated 08.02.2016. Another accused Basheer Hasan facing trial under Section 18 and 20 UAPA has also pleaded guilty; he has been convicted and sentenced vide orders dated 08.02.2016 and 22.02.2018 respectively.

6. True, the Revision Petition (Crl.) No. 508/2015 against charge filed by the petitioner is pending before this Court and the next date of hearing therein is 22.05.2018. The Trial Court record further

reveals that co-accused Kafeel Akhtar had also filed Revision Petition (Crl.) No.406/2015 and by an order dated 17.11.2017, the said revision petition was dismissed by this Court.

7. Bail on merits was denied to the petitioner by an order dated 03.02.2016 by this Court when FSL report was not before it. It is informed that the FSL report has since been received. Its impact shall be taken into consideration during trial by the Trial Court. Directions to expedite trial have already been given by the Hon'ble Supreme Court and it is expected that the Trial Court shall examine the remaining prosecution witnesses at the earliest.

8. Since the bail has already been declined on merits and there is no substantial change in circumstances, this Court finds no valid reasons to grant bail to the petitioner considering the gravity of the offence and serious allegations against him allegedly being member of an unlawful organization i.e. Indian Majahideen in India charged for commission of offences punishable under Section 20 of the UAPA.

9. The bail application is dismissed.

10. Observation in the order shall have no impact on merits of the case.

11. It is informed that the revision petition is listed for hearing before this Court on 22.05.2018, the Trial Court record has been requisitioned therein.

12. Since the Trial Court has listed three consecutive dates to record the statements of the prosecution witnesses, the Trial Court record received in the said revision petition be sent back immediately

through 'Special Messenger' to enable the Trial Court to record statements of remaining prosecution witnesses and for expeditious trial.

13. Trial Court record be requisitioned only two days before the next date of hearing before this Court in the said revision petition.

(S.P.GARG)
JUDGE

APRIL 17, 2018 / tr

