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

Date of Decision: 24th December 2019

+ CRL.A. 1428/2019 with CRL. M.As. 43508/19,42948-42949/2019

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ABDUL WAHID SIDDIBAPPA Appellant

Through: Ms. Qausar Khan, Advocate.

versus

NATIONAL INVESTIGATING AGENCY Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

Crl M.A. No. 43508/2019 (For Restoration of appeal)

The present application has been filed by the appellant for restoration of Criminal appeal and setting aside of order dated 18.12.2019 whereby the appeal was dismissed for non prosecution.

For the reasons stated in the application, the order dated 18.12.2019, dismissing the appeal for want of non-prosecution is recalled.

The appeal be restored to its original number.

Application stands allowed.

Crl. M.A. 42949/2019 (for condonation of delay in filing appeal)

The present application has been filed by the appellant seeking condonation of delay of 38 days in filing the present appeal.

For the reasons stated in the application, the delay of 38 days in filing the present appeal is condoned.

Application stands allowed.

Crl M.A. 42948/2019 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

Crl. A. 1428/2019

1. The present appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 assailing the order dated 16.08.2019 (hereinafter referred to as '**Impugned Order**') whereby the bail application of the appellant was dismissed by the Learned Additional Sessions Judge-03/Special Court, New Delhi District, Patiala House Court, New Delhi in RC No. 06/2012/NIA/NEW DELHI for the offences punishable under Sections 121A & 123 IPC and 17, 18, 18A, 18B, 20 UA(P) Act.
2. While assailing the impugned order, Ms. Qausar Khan, Advocate appearing for the appellant contended that the impugned order passed by the learned Sessions Judge is based on conjunctures and surmises and deserves to be set aside; that the name of the appellant was not mentioned in the initial FIR and the name of the accused has been added as A-30 in the third supplementary chargesheet filed by the respondent; that the NIA has admitted in its reply dated 07.09.2018 filed before the Trial Court that there is no evidence of any nature

reflecting connectivity/communication between the accused A-30 and rest of the accused; that neither the accused has been charged for the offence of destruction of evidence nor there is anything on record to prove destruction of electronic evidence on the part of the accused; that there is no evidence on record to connect the appellant with any financial transaction through Western Union Money Transfer/other means with the other accused persons; that the accusation that appellant is the person being referred as “Khan” in the chat between A-6 and A-10 is without any force; that there is no evidence on record to prove the transaction of money or any communication between the appellant and the other co-accused; that the learned Trial Court has wrongly held that there is ‘*prima facie case*’ against the appellant and hence, the order dated 18.12.2008 deserves to be set aside.

3. We have heard learned counsel for the appellant and perused the material available on record.
4. At the outset, we deem it appropriate to refer to Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 which reads as follows:

(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.”

5. The expression, '*prima facie true*' means that the court shall undertake an exercise to determine as to whether the accusations made against the accused, are inherently improbable and/or wholly unbelievable. Ordinarily, while considering a complaint made against an accused, the court assumes the contents of the complaint to be true and correct and, then proceeds to decide as to whether the allegations made in the complaint make out a case of commission of offence by the accused or not. No exercise is required to be undertaken by the court to determine the truthfulness or veracity of the accusations. However, when the word, '*prima facie*' is coupled with the word '*true*', it implies that the court has to undertake an exercise of cross-checking the truthfulness of the allegations made in the complaint on the basis of the materials on record. If the court finds, on such analysis, that the accusations made are inherently improbable, or wholly unbelievable it may be difficult to say that a case which is *prima facie true*, has been made out.
6. In short, on a bare reading of the materials, as may have been collected during investigation, if the Special Court finds that the materials so collected are sufficient to form, when assumed to be true, an opinion that there are reasonable grounds to believe that the accusations made against the accused are *prima facie true*, the Special Court will be disempowered from releasing the accused on bail.

7. At the stage of bail, no minute scrutiny or microscopic dissection of the materials collected during investigation, shall be undertaken by the Special Court. Credibility or otherwise of the materials collected would not be the subject-matter of scrutiny. What at best, the Special Court can do, and shall do, is to examine if the accusations made on the basis of the materials collected, are wholly improbable. When the materials are, on examination by the Special Court, found to be not wholly improbable and the Special Court finds, on assuming such materials to be true, that the accusations made against an accused, as regards commission of an offence under Chapter IV and/or Chapter VI of the UA(P) Act, are prima facie true, such materials would be enough to attract the bar imposed by the proviso to Section 43D(5).
8. To put it a little differently, the Special Court is required to examine the materials, collected during investigation, assuming the same to be true and if such materials on such examination and consideration, are found to make out a case against the accused, the Special Court has to determine if there is any such thing in the materials so collected, which would make the case, which has been made out against the accused, as a wholly improbable case. If the Special Court on undertaking such an exercise finds reasonable grounds to infer that the case which has been made out against the accused is not wholly improbable the case would be treated as a case, which is sufficient for the Special Court to form an opinion that there are reasonable grounds to believe that the accusations, made against the accused, are prima facie true.

9. From the perusal of the record we find that the case of the Investigation Agency is that Abdul Wahid Siddibapa/appellant was strongly radicalized and was of a Jihadi mindset and used to support subversive activities carried out by Indian Mujahideen operatives at different places in India. It is also on record that the appellant used to propagate the idea of violent Jihad and was involved in raising anti-government sentiment due to his Jihadi mindset. The role of the appellant surfaced during the disclosure statement of accused Yasin Bhatkal, an Indian Mujahideen operative who was facilitating channelizing of funds received from Pakistan via Dubai. Further, the record reflects that the appellant was the main link for transfer of funds between the other controllers of the Indian Mujahideen network.
10. The appellant was arrested on 20.05.2016 after being deported by the UAE Government and has been named in the third supplementary chargesheet in RC No. 06/2012/NIA/NEW DELHI as an accused. The disclosure statement of accused Yasin Bhatkal as well as PW-362 Javed Ahmad, PW-363 Abdul Mateen, PW-364 Abdul Basith and PW-365 Mohd. Ubaid Kola reveals that he was radicalized and was of a Jihadi mindset and was involved in illegal money transaction for funding the Indian Mujahideen terrorist activities in India as well abroad. It is also apparent on record that apart from the statements of the accused persons as well as other witnesses, there are other incriminating evidences against the appellant including the encrypted data of digital items recovered from the accused Yasin Bhatkal.

11. In view of the above we find no infirmity in the order passed by the Learned Additional Sessions Judge/Special Court. Accordingly, the appeal being devoid of merits, stands dismissed.
12. Needless to say, that any observation made in this order is only for the purpose of deciding the grounds urged before us today and would not be treated as an expression on the merits of the matter before the trial court.

SANGITA DHINGRA SEHGAL, J

MANMOHAN, J

DECEMBER 24, 2019 / gr

