

12.08.2021

Item no.4

Ct.30

PA

C.R.A. No.298 of 2020

(Via Video Conference)

In Re:- An appeal under Section 21(4) of the National Investigation Agency Act,2008, in connection with NIA Case No. 03 of 2018 of Learned Judge Special Court at Calcutta, under NIA Act, corresponding to S.T. No. 04(04) of 2019 and RC- 25/2018/NIA-DLI dated 16.08.2018, arising out of Farakka Police Station Case No. 297 of 2018 dated 31.07.2018, under Sections 489B/489C/120B/34 of the Indian Penal Code.

In re: **Ketabul Sk. @Kitabul Sk.**

... appellant/petitioner.

Mr. Sourav Chatterjee, Adv.

Mr. Avik Ghatak, Adv.

Mr. Amit Ranjan Pati, Adv.

Md. Wasim Akram, Adv.

...For the appellant/petitioner.

Mr. Y.J. Dastoor, Ld. A.S.G.

Mr. Debashish Tandon, Ld. P.P.

.... For the N.I.A.

This criminal appeal under Section 21(4) of the National Investigation Agency Act, 2008, is directed against the order dated 11.12.2020, passed by the learned Judge, Special Court, Calcutta, under N.I.A. Act, in N.I.A. Case No. 03 of 2018, by which the appellant's prayer for bail, was rejected.

Admittedly, the name of the appellant is transpired in the supplementary charge-sheet.

According to Mr. Chatterjee, learned advocate for the appellant, on the basis of purported statement of co-accused, appellant/petitioner has been languishing in custody since

29.05.2018, even without any actual recovery of FICN from his possession.

That no evidence was collected by the investigating agency during the course of further investigation, and thus the N.I.A. had failed to come up against the appellant with convincing materials, other than the purported statement of co-accused. That appellant having been roped in this case at a belated stage, there left serious doubt regarding his involvement in the present case. The leading statement of co-accused, according to appellant, should not have been used to discover the whereabouts of the co-accused person, like the instant appellant.

Upon advancing such submissions, Mr. Chatterjee, learned advocate for the appellant, tried to impress upon us that since there had been sufficient delay caused in the progress of the trial, appellant/petitioner should be extended with the privilege of bail.

Reliance was placed by Mr. Chatterjee, on a decision reported in **2014 SCC OnLine Cal 18497**, delivered in the case of **Sarvesh Pathak @ Kallu & Anr. Vs. State of West Bengal**, wherein it was held that without any recovery of fake currency notes, there cannot be any prosecution under Section 489(C) I.P.C., and in order to make out an offence punishable under Section 489(B), there must be some materials to show that those fake notes were actually used, or trafficked, meaning thereby that there was a transaction involving those forged notes, and referring such decision Mr. Chatterjee contended that without proof of previous transaction involving the FICN, it was very hard to believe

that appellant had any active role, in the alleged trafficking of forged Indian currency notes.

Reliance was further placed on another decision reported in **2020 SCC OnLine Cal 1501**, rendered in the case of **Ajoy Das & Ors. Vs. State of West Bengal**, and deriving capital from such decision Mr. Chatterjee submitted that the seized mobile phone, not being owned by the appellant, mere seizure of multiple SIM cards alone, without proof of ownership of appellant over the seized mobile, would not be sufficient enough to establish the telephonic conversation, allegedly held by appellant with co-accused persons with use of such seized items, and thus the conduct attributable to the alleged trafficking of counterfeited Indian currency notes went unsubstantiated.

Learned Additional Solicitor General raised objection against the prayer for bail submitting that trial of this case is in progress, and in the meantime evidence of four (4) witnesses had already been collected, and at this stage if the appellant is released on bail, there is fair chance of abscondence causing the trial to be seriously impeded.

Drawing our attention to some of the statements including protected witness, as shown in supplementary charge-sheet, learned Additional Solicitor General vehemently opposed the prayer for bail contending that a deep rooted conspiracy had been hatched up in procuring and circulating counterfeited Indian currency notes, to which this appellant made active contribution, and though there had been no actual recovery of FICN from appellant, but in view of the ramification of this case in

Bangladesh, wherefrom the appellant allegedly procured the FICN and supplied the same to Abdul Rahim (co-accused) leading to recovery of FICN with a face value of Rs. 1,92,000/- from Abdul Rahim (co-accused), the involvement of appellant should not be lost sight of, and would definitely attract charge of trafficking against the appellant.

More so, there had been recovery of two SIM cards with three other items connected with mobile phone from the possession of the appellant, and upon verification of tower location, it could be learnt that appellant had held conversation with co-accused persons in the interest of trafficking of forged Indian currency notes.

In reply to the decisions, referred above, learned Additional Solicitor General submitted that both the judgments being distinguishable on facts, the profit of such decisions would not be attracted in the facts and circumstances of this case.

Having considered the submission of both sides in context with the materials placed on record, it appears that prayer for bail has been advanced in this case taking the ground of long incarceration, delay in the progress of trial together with absence of ingredients of charging Sections in the midst of trial, when there has already been examination of four (4) witnesses.

True it is that FICN to the tune of Rs. 1,92,000/- could not be recovered from the possession of appellant. But the role of the appellant, as one of the members to the conspiracy, allegedly performed behind the procurement and circulation of counterfeited Indian notes, even going upto the extent of establishing contact

with Bangladeshi National cannot be ruled out from the materials, so placed.

Actual recovery of FICN in the given facts and circumstances would not matter much, but the materials so far placed, *prima facie*, establish a reasonable nexus of appellant with co-accused in the procurement and circulation of counterfeited Indian currency notes, which has direct impact on Indian economy, and upon sensing its ramification, we are of the considered view that this is not a fit case, where the privilege of bail should be granted.

The judgements referred by appellant are distinguishable on facts, and as such would hardly find any scope for its due application over the facts and circumstances of this case.

The prayer for bail is rejected.

Since, the appellant is in custody, and since the learned advocate for the appellant expressed his annoyance regarding the delay in the progress of trial, we take notice of such issue, and request the learned Trial Judge to show his all promptitude expediting the trial so that logical conclusion of the case may be reached at the earliest.

The criminal appeal, accordingly, stands dismissed.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)