

07.03.2022.
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Ct.No.28
as
(Allowed)

C.R.A. 227 of 2021

In the matter of : Monotosh Dey @ Mona Da.
... Appellant/Petitioner.

Mr. Debasis Kar.
...for the Appellant/Petitioner.

Mr. Sanjoy Bardhan,
Mr. Bhaskar Prasad Banerjee,
Mr. Debasis Tandon.
...for the NIA.

Heard the learned Advocates appearing for the parties.

It is submitted that the appellant is in custody for about four and half years. It is further submitted he is an Indian National and has no connection with any terrorist group. Co-accuseds have pleaded guilty and have been awarded maximum sentence of seven years. Appellant has already suffered more than half of the aforesaid term. There is little possibility of the trial being completed in the near future.

Mr. Bardhan with Mr. Banerjee and Mr. Tandon, learned Advocates appearing for NIA submit that the appellant had entered into a conspiracy with other accused persons including two Bangladeshi nationals who were active members of Ansarullah Bangla Team (ABT), a

proscribed terrorist organisation and sponsored therein illegal terrorist activities by entering into agreement to supply arms and ammunitions to them. Co-accused Samsad Mia @ Tushar Biswas @ Tanvir @ Saiful, Riajul Islam @ Suman @ Riaz, Shahadat Hossain @ Babu and Umar Farooque @ Mahi @ Ali @ Md. Aftab Khan have pleaded guilty to the charges levelled against them and were sentenced to rigorous imprisonment for seven years each. Trial is in progress and the prayer for bail of the appellant may be declined.

Prosecution case alleged against the appellant and other accused persons is to the effect on 21.11.2017 around 14/15 hours, a team of STF attached to Kolkata Police under leadership of Sri Aniruddha Chatterjee, Inspector apprehended the appellant along with two Bangladeshi nationals viz., Samsad Mia @ Tushar Biswas @ Tanvir @ Saiful and Riajul Islam @ Suman @ Riaz who are members of Ansarullah Bangla Team, a proscribed terrorist organisation in Bangladesh; the aforesaid foreign nationals had illegally came into the country to negotiate purchase of arms and ammunitions. From the statement of Samsad Mia, complicity of another co-accused viz., Shahadat Hossain @ Babu transpired and he was arrested on 23.11.2017. Similarly Umar Farooque @ Mahi was arrested on 28.11.2017. The said accused persons were also Bangladeshi nationals and had assisted the aforesaid

two suspected terrorists to enter the country under false identity by using forged Aadhaar and PAN cards. Investigation into the electronic devices of the aforesaid suspected terrorists revealed incriminating articles and/or literature. Custodial interrogation of Umar Farooque @ Mahi revealed that the team had gone to various places in India for collecting chemicals for preparation of bombs and explosives and the name of the organisation has been altered to Ansar Ali Aslam which is a sister concern of Al Qaeda. With regard to the appellant, it was alleged that he had stocked huge quantity of arms and ammunitions and suspected chemicals which was meant for the sale to the member of Ansarullah Bangla Team. On the showing of the appellant, a large volume of arms and ammunitions including a bottle of chloroform was recovered. Hence, he was the part of the conspiracy to wage war against Government of India. Charges were against Samsad Mia, Riajul Islam and Umar Farooque under Section 120B/121A/125/466/468/471 of the Indian Penal Code and under Sections 18/38 of the UAPA and under Section 14 of the Foreigners Act. Charge framed against Shahadat Hossain @ Babu under Section 120B/121A/125 of the Indian Penal Code and under Sections 18/38 of the UAPA and under Section 14 of the Foreigners Act. Against the appellant, charges were framed under Section 120B of the Indian Penal Code and Section 18 of the UAPA and under

Sections 25(1A)/25(1B)(a)/29 of the Arms Act. Other accused persons pleaded guilty had been sentenced to various terms of imprisonment maximum of which was of a term of seven years. Appellant assailed the charges levelled against him before this Court. A learned Single Judge of this Court in CRR 3804 of 2019 by order dated 04.02.2020 was pleased to dismiss such challenge. However, this Court directed the trial Judge to conclude the trial as expeditiously as possible preferably within one year. Thereafter, the trial commenced and we are informed one witness has been partly examined as yet. At this stage, the prayer for bail of the appellant was turned down by the learned trial Judge, inter alia, considering the gravity of the offence alleged against him.

Mr. Kar, learned Advocate appearing for the appellant submits that there is no material to show that the appellant was a member of the terrorist organisation viz., Ansarullah Bangla Team(ABT). Admission of guilt by a co-accused would not affect the defence of the appellant. Mere presence of the appellant with two suspected terrorists does not establish the ingredients of the alleged offences. Weapons were not seized from the possession of the appellant and there is nothing to show they were used for terrorist activities.

In rebuttal, Mr. Bardhan with Mr. Tandon argue appellant had close association with suspected terrorists

and upon his arrest large volume of weapons and ammunitions were recovered clearly disclosing his active role in the offences. Hence, his prayer for bail may be turned down.

We have considered the materials on record. Appellant was apprehended with co-accuseds who are said to be members of a terrorist organisation. Pursuant to his leading statement large volume of arms and ammunitions were recovered. Report of the expert shows the arms and ammunitions have foreign markings and are in working condition. Prima facie involvement of the appellant in the crime is, therefore, established. However, we note the appellant has already suffered incarceration for more than four years. While dismissing his prayer to quash the charges levelled against him, this Court in CRR 3804 of 2019 had directed the trial Court to dispose of the trial as expeditiously as possible preferably within one year. However, till date one witness has been examined in part. Progress in the trial is, therefore, tardy. It is contended failure to proceed with the trial was due to pandemic conditions prevailing in 2021 and not due to fault.

We are conscious of the statutory restriction engrafted under Section 43D(5) of the UAPA in the matter of grant of bail. However, while considering bail, a constitutional Court is required to be alive of the fundamental right to speedy trial of an accused enshrined

under Article 21 of the Constitution. Infraction of fundamental right due to inordinate delay in trial resulting protracted under trial detention is in the nature of constitutional wrong and in appropriate cases an accused may be released on bail. Reference in this regard may be made to ***Union of India Vs. K. A. Najeeb***¹ wherein the Supreme Court after considering the impact of Section 43D(5) of UAPA, held that the aforesaid restriction will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. It held as follows;

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

In the aforesaid case, the Court took into consideration another relevant fact viz., the quantum of

¹ (2021)3 SCC 713

sentence imposed upon a co-accused who had pleaded guilty vis-a-vis the period of under trial detention suffered by the applicant. Similarly, in the present case, the appellant is in custody for four years and five months, while maximum sentence imposed upon the principal co-accuseds who are the foreign terrorists was for a maximum period for seven years. Even with regard to offences under the Arms Act, the appellant has suffered almost half of the maximum sentence prescribed under the said law. The appellant is an Indian national is not the principal accused. He has already undergone a substantial portion of the maximum sentence which has been awarded to the foreign terrorists. Prosecution proposes to examine 93 witnesses (as per charge sheet), though during arguments learned Advocate for NIA submitted that there may be some dove-tailing of witnesses to conclude the trial at an early date. However, at the present rate when only one witness has been examined in part, one may reasonably infer there is little possibility of the trial concluding within a reasonable time. It is the duty of the Court to examine not only the gravity of the offence but also extent of complicity of an accused while considering the prayer for bail. As indicated earlier, appellant is not the principal offender and has already undergone almost four and half years of detention. In spite of an earlier direction in CRR 3804 of 2019, the progress in trial even discounting

inconvenience caused due to pandemic conditions does not appear to be appreciable. A balance must be struck between the gravity of the offence and the necessity of under trial detention in the interest of administration of justice on the one hand and the fundamental right to speedy trial of an under trial on the other hand. Balancing the two compelling aspects, we hold further detention of the appellant in the factual backdrop of the case would infract under Article 21 of the Constitution. Hence, we hold the appellant is entitled to bail subject to strict conditions as follows:-.

Appellant Monotosh Dey @ Mona Da shall be released on bail upon furnishing a bond of Rs.50,000/- with two sureties of like amount each to the satisfaction of the learned Kolkata Metropolitan Magistrate on condition that he shall appear before the trial court on every date of hearing without fail. While on bail he shall remain within the City of Kolkata and provide the address where he shall presently reside to the investigating agency as well as the court below. He shall deposit passport, if any, before the court below prior to his release. He shall report to the Investigating Officer once in a week until further orders and he shall not leave the jurisdiction of municipal limits of the city of Kolkata except for the purpose of giving attendance to the Investigating Officer. Appellant shall not

intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the appellant violates any of the aforesaid conditions, the trial court shall be at liberty to cancel his bail in accordance with law.

Appeal being CRA 227 of 2021 is disposed of.

Photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Bivas Pattanayak,J.)

(Joymalya Bagchi, J.)