

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

211

CRA-D No.483 of 2021

Date of Decision: December 19th, 2022

Suhail Ahmed Bhat

...Appellant

Versus

National Investigation Agency, New Delhi

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Navkiran Singh, Advocate
for the appellant.

Mr. Sukhdeep S. Sandhu, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J.

In this appeal, challenge has been posed to the order dated 23.08.2021 passed by the Special Judge, National Investigating Agency (hereinafter referred to as 'NIA'), Punjab, S.A.S. Nagar (Mohali), vide which application filed by the appellant for grant of regular bail under Section 437 Cr.P.C. stands dismissed.

2. It is the contention of learned counsel for the appellant that the appellant has been falsely implicated in this case. He is only a student and was not named in the FIR. His involvement is based upon the disclosure statement of the co-accused, which is inadmissible in evidence. That apart, he asserts that since no recovery has been effected from the appellant in person, the involvement of the appellant cannot be said to be supported by any evidence, especially when there is no other corroborated evidence which supports the case of the prosecution. The evidence which is being sought to be pressed into service against the appellant is inadmissible in law and, therefore, the same cannot be made the basis for proceeding against the appellant. The disclosure

statement, which has been made the basis on the part of the appellant, was by threat and inducement as the same was in the presence of the police officials when his statement was recorded and, therefore, by virtue of Section 24 of The Indian Evidence Act, 1872, such statement would be irrelevant and not admissible in Court of law. In any case, where no discovery has been effected on the basis of the disclosure statement, such type of evidence is a weak type of evidence, which when surrounded by doubtful circumstances, cannot be relied upon by the Court casting a cloud of confusion, which benefit of doubt should be given to the accused. It has been submitted by the counsel for the appellant that speedy trial and disposal of the case is embodied in the Constitution as a fundamental right. Article 21 of the Constitution having been hit, the appellant would be entitled to be released on bail, especially when out of total 69 witnesses, only 36 witnesses have been examined and the appellant is in custody since 11.10.2018, which is more than four years, with the evidence not likely to be concluded in near future and the trial not progressing at good pace, would entitle him to the grant of benefit of bail. In support of this contention, counsel for the appellant has placed reliance upon the judgments of the Hon'ble Supreme Court in *Union of India Versus K.A. Najeeb* 2021 (3) SCC 713, *Jahir Hak Versus State of Rajasthan* 2022 (2) R.C.R. (Crl.) 746, *Angela Harish Sontakke Versus State of Maharashtra* 2021 (3) SCC 723, *Sagar Tatyaram Gorkhe and another Versus State of Maharashtra* 2021 (3) SCC 725, *State of Kerala Versus Raneef* 2011 (1) SCC 784. He on this basis contends that the factum of undue delay in the progress of the trial and the long incarceration of the appellant having been ignored by the Special Judge renders the order impugned unsustainable and thus deserves

to be set aside.

3. On the other hand, learned counsel for the respondent has contended that the trial is proceeding at a reasonable rate. He asserts that in the light of the provisions as contained under Section 43D (5) of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA'), the appellant would not be entitled to the claim, as has been made. He contends that the stringent provisions as contained in the said Section would work against the relief which is being sought by the appellant. Section 43D (5) of the UAPA provides for stringent provisions of bail and when the Court is satisfied that *prima facie* case is made out against an accused, the benefit of bail cannot be granted to the accused. On the basis of the evidence, which has been collected against the appellant, he would not be entitled to the benefit, as has been claimed. As regards the submission of the counsel for the appellant with regard to the violation of Article 21 of the Constitution of India, which guarantees a speedy trial to an accused, counsel for the Investigating Agency has submitted that the benefit of Article 21 is not an absolute one but the same is qualified. It is only when justifiable reasons are made out that such a relief can be granted, especially when it can be said on facts that the trial is not proceeding. It is an admitted position that more than half of the witnesses have already been examined. It has been pointed out by learned counsel for the respondent that the crucial witnesses, who are protectees, are yet to be examined and in case the appellant is released on bail, with the witnesses being residents of the same State, to which the appellant belongs, the likelihood of his interference in evidence and influencing the course of trial by threatening the witnesses is quite possible. Counsel for the respondent has placed reliance upon the

judgment of the Hon'ble Supreme Court in *Mamta and another Versus State (NCT of Delhi) and another 2022 (3) R.C.R. (Criminal) 139, Narcotic Control Bureau Versus Mohit Aggarwal 2022 (3) R.C.R. (Crl.) 985, State through C.B.I. Versus Amaramani Tripathi 2005 (8) SCC 21*. He on this basis has supported the order passed by the trial Court rejecting the bail application of the appellant.

4. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned order dated 23.08.2021 passed by the Special Judge, NIA, as also the pleadings and the evidence which has been placed on record and produced in Court.

5. Briefly the facts are that an input was received from reliable sources on 10.10.2018 that three students namely Zahid Gulzar son of Shri Gulzar Ahmed Rather, Yasir Rafiq Bhat son of Mohammad Rafiq Bhat and Mohammad Idriss Shah son of Abdul Qayoom Shah, all residents of District Pulwama, Jammu and Kashmir, and are located at Room No.94, Hostel of CT Institution at Shahpur Campus, Jalandhar, were in possession of arms, ammunition and explosives, planning to carry out some unlawful activity to destabilize the law and order situation in the State. They are associated with terrorist gang namely Ansar Ghazwat-Ul-Hind (hereinafter referred to as 'AGH') and had been receiving fund for carrying out unlawful activities including recruiting other students of the college in their terrorist gang. FIR No.166/2018 dated 10.10.2018 under Sections 121, 121-A, 120-B IPC, Section 25 of the Arms Act, 1959, Sections 3, 4 and 5 of the Explosive Substances Act, 1883 and Sections 10, 13, 17, 18-B, 20, 38, 39 and 40 of the UAPA was registered at Police Station Sadar Jalandhar.

During investigation, as per the statements which have been recorded by

NIA, it came to light that the appellant was the person, who had motivated and made Zahid Gulzar (A-1) to join the terrorist gang AGH for carrying out *Jihad* against India to establish Islamic rule. He had facilitated communication between Zahid Gulzar and AGH Chief Zakir Musa (A-8) over Telegram Messenger application by sharing User ID of both these persons. Zakir Musa was also able to give instructions to Zahid Gulzar to first collect explosive consignment from Gurdaspur on 03.08.2018 and thereafter second consignment from Amritsar on 07.10.2018, which was recovered during the raid. Disclosure statements of Zahid Gulzar (A-1) and Suhail Ahmed Bhat (A-4) were recorded in the presence of three independent witnesses, one of whom was the Executive Magistrate. In the presence of these witnesses, they voluntarily gave the detailed account as to how the whole process of induction of Zahid Gulzar in AGH, his communication with Zakir Musa, instructions of Suhail Ahmed Bhat and Zakir Musa, collection of arms and ammunition etc. was being carried out. The corroborative evidence is in the form of recovered arms and ammunition from the places, which were disclosed. Suhail Ahmed Bhat, the appellant, in his statement had given detailed account as to how he along his companion, came to Derabassi and did recce of the area but could not throw the bomb on the Police Station because it was a thickly populated area and they were likely to be arrested and thereafter on instructions from Zakir Musa, head of the AGH, visited ISBT, Sector 17 and 43, Chandigarh, but were unable to throw the bomb. The tower location established that the appellant was at Chandigarh. The pictures and video recovered from the seized laptop of the appellant showed his involvement and inclination towards terrorism. The statement of the prosecution witnesses, who are from

Jammu and Kashmir and has not yet been recorded, although being protectees, are likely to be criminally intimidated in case the appellant is released on bail. His likelihood of fleeing to Pakistan since the crime is sponsored by the said country, with the base of the gang being there, if released on bail, is very much there and it would be impossible to secure his presence for facing trial. All the evidence which has been collected by the prosecution agency clearly establishes the involvement of the appellant in the commission of the offence.

The plea of the counsel for the appellant, with regard to the recovery having been effected from the father of the appellant and not from the appellant himself, suffice it to say that the said recovery has been effected from the house of the appellant in Kashmir and it is so stated that the laptop belongs to him. The downloaded content points a finger to the motive of the appellant and his inclination towards terrorism. The said plea, therefore, of the counsel for the appellant cannot be accepted.

6. As regards the statement recorded under Section 27 of the Indian Evidence Act by the police to be inadmissible, suffice it to say that the said statement has been recorded in the presence of the Executive Magistrate and two other independent witnesses. Therefore, *prima facie*, the said assertion of the counsel for the appellant also cannot be accepted as it would be dependent upon the statement and cross-examination of the Executive Magistrate and the other two independent witnesses. At this stage, nothing more is required to be stated on this count.

7. There is ample evidence which connects the appellant with the offence for which he has been charge-sheeted and keeping in view the strict

provisions as contained under Section 43D (5) of the UAPA, there is reasonable ground for the Court to believe and form an opinion that the accusation against the appellant is *prima facie* true.

8. The aspect with regard to violation of Article 21 of the Constitution of India as he is being denied speedy trial, especially when he is in custody for more than four years, suffice it to say that merely because a person is in custody and that too for quite some time would not in itself be a ground for coming to a conclusion that the trial has been delayed for a long period. The gravity of the offence, the role of the accused, the evidence collected, the severity of punishment in case of conviction need to be taken note of. The reasonable apprehension of the accused tampering with the evidence in the form of influencing, threatening or putting pressure on the witnesses in the given facts and circumstances, has also to be kept in mind. The aspect with regard to the seriousness of the offence for which an accused is charged and in case he is granted bail, indulgence in various activities of similar nature, apprehension thereof also could be other factors which may weigh on the mind of the Court. Obviously balancing the right of the accused vis-à-vis the prosecution has to be carried out.

It may be noted here that at the stage of granting bail, a detailed examination of the evidence, elaborate documentation on merit of the case need not be undertaken and only a *prima facie* opinion has to be formed by the Court for exercising its discretionary powers.

9. When all these factors are taken note of in the present case, where more than half of the witnesses have been examined, there are serious allegations where the safety and security of the country is being sought to be put to peril, with there being *prima facie* evidence indicating involvement of

the appellant, the appeal of the appellant deserves to be rejected. However, keeping in view the custody period of the appellant, a direction is issued to the Special Judge, NIA, S.A.S. Nagar (Mohali) to expedite the trial and conclude the same by giving very short dates.

9. The appeal stands dismissed with above observations/directions.

10. Any observation made hereinabove in this order shall have no bearing on the trial or merits of the main case.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 19th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No