IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1060 OF 2023

Mr. Javed Gulamnabi Shaikh,
Age:37 years, Occ:Business
R/at: A/401, 4th Floor, Jafir Apartment,
Old Station Road, Near Jumma Masjid,
Kalwa West, Dist. Thane. .. Appellant

Versus

1) National Investigating Agency
7th Floor, MTNL Telephone
Exchange Building, Cumballa Hill,
Peddar Road, 400026.
2) The State of Maharashtra .. Respondents

Mr. Sher Ali S. Khan for the Appellant.
Mr. Sandesh D. Patil a/w. Chintan Shah & Shreekant Sonkawade for NIA.
Mr. Shrikant V. Gavand, APP for the Respondent No.2-State.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

DATE : 5th FEBRUARY, 2024.

P.C.:

1) Present Appeal is filed under Section 21 (4) of the National

Investigation Agency Act read with Section 43-D (5) of the Unlawful Activities (Prevention) Act, 1967 (for short "UAPA") seeking to quash and set aside an Order dated 22nd August 2023, passed by the Special Judge, Greater Mumbai in Special Case No.681 of 2020 along with Special case 255 of 2021, whereby the second bail application of the Appellant at Exhibit 137 has been rejected by the said Court.

2) Heard Mr. Sher Ali Khan, learned Advocate for the Appellant, Mr. Patil for Respondent No.1, N.I.A. and Mr. S.V. Gavand, learned APP for the State. Perused the record.

3) The prosecution case is that, acting on a secret information, on 9th February 2020 at about 9.30a.m., at the bus stop near arrival of Terminal II, Chhatrapati Shivaji Maharaj International Airport, Andheri, Mumbai, police of DCB CID Unit VIII, Mumbai, apprehended the Appellant. Then the police took search of the bag carried by the Appellant. Total 1193 Nos. of Counterfeit Indian Currency Notes (for short "FICNs") having denomination of Rs.2000/- were found in the said bag in possession of the Appellant. The said FICNs along with other articles found in possession of the Appellant were seized. Thereafter, C.R. No.43 of 2020 was registered against the Appellant at Sahar Police Station for the offences punishable

under Sections 489B, 489C, 120B read with 34 of the Indian Penal Code. Further investigation was conducted by the DCB CID, Crime Branch, Unit VIII, Mumbai *vide* its Cr. No.37 of 2020. The investigation revealed that, the consignment of FICNs was smuggled from Pakistan to Mumbai. Thus, the offence being grave, as directed the Respondent No.1, N.I.A. took up the investigation. As a result, Case No. RC/03/20/NIA/Mumbai came to be registered for the said offences. During investigation it revealed that, on 6th February 2020, the Appellant had been to Dubai, where he received the FICNs from the absconding accused Sardar and then the Appellant returned to India on 9th February 2020. Further, the mobile phone of the Appellant was recovered at his instance through which he was in contact with other accused persons since before registration of the crime. The investigation revealed that after reaching to India the Appellant was to hand over the FICNs to one Gupta (Accused No.2) and Jayram, to circulate the same in monetary transactions in India to disrupt the nation's monetary system and financial stability. Hence, on completion of the investigation, the charge-sheet came to be filed against the Appellant for offences punishable under Sections 489B, 489C, 120B and 34 of the Indian Penal Code read with Sections 15 (1) (a) (iiia), 16 and 18 of the UAPA Act, 1967.

Thereafter, the accused no.2 - Kishorkumar Agarwal @ Guptaji and accused No.3 - Akbar Hussain @ Raju Batla came to be arrested and supplementary charge-sheet came to be filed against them.

4) First bail application of the Appellant before the trial Court was unsuccessful. He Appealed against the said rejection before this Court but later on withdrew the same. Then, the Appellant filed the second application before the trial Court, however, it also met with the rejection. Hence, present Appeal.

5) Mr.Khan, learned Advocate for the Appellant submitted that, the Appellant was not obstructed or detained by the Airport Security either at Dubai or at Mumbai, for possessing the FICNs. It is impossible to dodge such security at two places. As such, the story of possessing the FICNs by the Appellant is false. The statement of the witnesses recorded by the Investigation Agency are very inconsistent and thus pointing that, the Appellant is innocent. The offence under Section 489B of the IPC is not at all made out against the Appellant and at the most an offence under Section 489C of I.P.C. can be said to have been made out. That, the said currency was already withdrawn from circulation by the Government and therefore, it was not possible for the Appellant to circulate it in the market.

There is no evidence that, the appellant conspired with the other accused persons to smuggle the subject FICNs to India and circulate it into monetary transactions in India. Learned Advocate submitted that, there is no material against the Appellant to attract the offences under Section 15 (1) (a) (iiia) read with Sections 16 and 18 of the UAPA. Lastly, the learned Advocate submitted that, the investigation is completed. Further detention of the appellant in jail will not serve any purpose. The Appellant is behind bars since his arrest *i.e.* for last four years. The trial is not likely to be over in the coming years. The co-accused are granted bail. Therefore, the Appellant may be released on bail. To support this contention, the learned advocate has relied upon the Judgment in *Union of India Vs. K.A.Najeeb : (2021) SCC 713.*

6) Learned Special Public Prosecutor for Respondent No.1 submitted that, there is ample evidence against the Appellant that he purposely went to Dubai and collected the FICNs. Further, the Appellant was to handover the said FICNs to accused No.2 Gupta and Jayram with an intention to use it in monetary transaction in India to damage the economy of the Nation. As such, the offence committed by the appellant is serious and therefore, the Appeal may be dismissed.

7) We have carefully considered the rival submissions in the light of the material placed before us and the relevant provisions of law.

8) In so far as the offences under Section 15 (1) (a) (iiia) read with Sections 16 and 18 of the UAPA are concerned, in this context the embargo of Section 43 (D) (5) (6) of the 1967 Act are required to be kept in mind. Said provisions of Section 43 (D) of the 1967 Act reads thus:

"43D. Modified Application of certain provisions of the Code :

(1) ………..

(2) ………..

(3) ………..

(4) ………..

(5) Notwithstanding anything contained in the code, no person accused of an offence punishable under Chapter 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.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the code or any other law for the time

being in force on granting of bail."

(9) Considering the provisions of said sub-section (5), undoubtedly, it is duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against such person is *prima facie* true or otherwise. The expression "*prima facie* true" covers in its ambit, the material/evidence collected by the investigation officer for the accusation against the concerned accused. On its face, said material must show the complicity of accused and the commission of the alleged offences. It has to be based on reasonable grounds leading to the belief that the accusation against the accused is *prima-facie* true.

10) On perusal of the investigation material produced on record, we found that, on 6th February 2020, the Appellant traveled to Dubai and returned to India on 9th February 2020. Immediately after his arrival to India, the Appellant was found in possession of huge quantity of FICNs. The offence under Section 489B is attracted when one receives such FICNs. The FICNs seized are of high quality counterfeit notes. Considering these circumstances it seems that, on purpose the Appellant collected the FICNs from Dubai with oblique intent *i.e.* to push the same in monetary transactions in India to damage the Nation's economy. As such there is

prima facie case against the Appellant of having committed a serious offence.

11) No doubt, in the cited case of K.A.Najeeb (supra), the Respondent therein was granted bail on the ground that he was in jail for five-and-a-half years without the trial having even started. However, this was not the only reason for bail, because in the earlier trial held against the co-accused persons of the same crime, many of the co-accused were acquitted and although a few of them were convicted, those convicts had been awarded a sentence of not more than eight years. The witnesses to be examined against the said Respondent were large in number.

12) In the case in hand, the alleged offence under Section 489B of the IPC is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. The alleged offence under Section 15 (1) (a) (ii) (a) r/w. Section 16 (b) of the UAPA is punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine. Therefore, the submission that the Appellant has undergone half of the sentence under Section 489C of I.P.C. is incorrect.

13. As observed above, there is *prima* facie case against the Appellant of having committed the alleged offence which is obviously serious in nature and against the economy of the Nation. On considering the material collated during the investigation we are of the opinion that, there are reasonable grounds for believing that the accusation against the Appellant is *prima facie* true.

14) In view thereof, in our opinion at this stage, the Appellant cannot be admitted to bail.

14.1) As a result, the Appeal is liable to be dismissed and is accordingly dismissed.

14.2) However, taking into consideration the fact that, Appellant is behind the bars for about 4 years we direct the trial Court to expedite hearing of the case of Appellant pending before it. Both sides shall co-operate the trial Court for expeditious hearing and disposal of the said case.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**