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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 13th May, 2024*

+ CRL.A. 244/2023

MASASASONG AO

..... Appellant

Through: Mr. M.S. Khan, Mr. Kahorngam
Zimik, Mr. Prashant Prakash, Mr.
Qausar Khan, Mr. Wung Rasem, Mr.
Rahul Sahani and Mr. Clare T.S.,
Advocates

versus

NATIONAL INVESTIGATION AGENCY

..... Respondent

Through: Ms. Shilpa Singh, SPP for NIA with
Mr. Pawan Singh Rana, Consultant,
NIA

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The appellant has taken exception to order dated 12.12.2022 passed by learned Special Judge (NIA), ASJ-03, Patiala House Courts, New Delhi in R.C. No.26/2019/NIA/DLI whereby his bail application has been dismissed.

2. It will be appropriate to first understand the crux of the prosecution case.

3. The offence in question came to fore when on 17.12.2019, one lady passenger, namely, Ms. Alemla Jamir (A-1) was intercepted by CISF

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Security Personnel at Domestic Airport, T-1, New Delhi who was travelling from New Delhi to Dimapur. She was found carrying cash of Rs.72 lakhs and since she could not explain the source of the same, the concerned Income Tax Authorities were informed. Income Tax team recorded her statement under Section 131 (1A) of Income Tax Act, 1961 in which she claimed that said cash belonged to NSCN (IM) and was meant for NSCN (IM) cadres and the money was to be used for carrying out operations of terrorist gang NSCN (IM) and other terrorist activities in India.

4. In view of the aforesaid revelation made by A-1, the case was registered by Special Cell and was eventually taken over by NIA for further investigation.

5. During investigation, A-1 revealed that she had received the aforesaid amount of Rs.72 lakhs from the residence of Mr. Th. Muivah situated at 61, Lodhi Estate, New Delhi with direction to deliver the amount of Rs.70 lakhs to Ms. Muivah and to keep Rs.2 lakhs with herself for her personal expenses. Call detail records (CDR) of mobile of A-1 was also collected and analyzed which corroborated her location in the house of said Mr. Th. Muivah on 16.12.2019.

6. A-1 also disclosed that she was member of said terrorist organization and her husband was its Ex-Army Chief. She also admitted that her husband along with other comrades had gone to China in October, 2019 to talk with Chinese authorities for helping them in the 'Naga cause' in their fight against India.

7. Searches were conducted during the investigation and various incriminating articles were recovered from the house of A-1. The details of such articles have been mentioned in para 16.5 of the charge-sheet which



includes drone, bulletproof jackets, cartridges, flags of Naga Army besides various documents pertaining to the activities of said terrorist gang.

8. The investigation revealed that the terrorist gang NSCN (IM) was having a trained army with sophisticated weaponry and had usurped sovereign legislative functions of the State by enacting its own 'Naga Army Act'. Thus, the aforesaid terrorist organization was found running a parallel government under the nomenclature of 'Government of People's Republic of Nagalim' (GPRN). The objective of GPRN, behind forming full-fledged army, was to threaten unity, integrity, security and sovereignty of India. Such terrorist gang also usurped the sovereign government function of collecting taxes. The investigation indicated that the money used to be collected from civilians and businessmen by creating terror in their minds.

9. Mr. Masasosang Ao (A-2), the appellant herein, is brother-in-law of A-1 and is also alleged to be member of said terrorist gang NSCN (IM) who is actively assisting A-1 in raising terrorist fund/extortion money for the said terrorist gang. He was arrested on 07.02.2020. The investigation revealed that he, in connivance with A-1 and A-3, contrived a sophisticated network of terrorizing businessmen through the instrument of the armed cadres of the Naga Army and thereby created a systematic mechanism of collection of extortion/tax money for the terrorist fund. According to the prosecution, A-1 through a frontal society namely 'Naga Women Society for Employment' extended significant amount of such money as loan on different occasions. However, such loan was 'on paper' only and these paper transactions were carried out through different bank accounts of her associates which included A-2 and one A.J. Agency (owned by wife of A-2 and sister of A-1). The disbursement amount was of approximately 3.20 crores.



10. A-2 was motivated to work for 'Naga cause' and in terms of the criminal conspiracy, he opened savings bank account for dealing with such extortion money and for necessary funding to the terrorist organization. The *modus operandi* of the conspiracy has been elaborated in the charge-sheet and the details of the various bank accounts and details of withdrawals and deposits have also been mentioned in the charge-sheet.

11. Thus, according to the prosecution, A-2 was involved in dealing with extortion money collected by A-1 and A-3 on behalf of said terrorist gang NSCN (IM) and he knowingly made all the possible efforts to hide such terror money which continued even after the arrest of A-1 by withdrawing money from her known accounts and opening new bank accounts to park such money. He also indulged in forged land deals and made attempt to invest the extortion money thereof so as to escape the scrutiny of law enforcement agency.

12. Thus, A-2 made efforts to conceal the terror fund of NSCN (IM) and diverted money in different bank accounts. He also withdrew large amount of cash and handed over the same to the cadres of such terrorist gang. He tried to conceal the terrorist fund by engaging in fake investments in land. The funds for the terrorist organization were raised through illegal means of extortion and then by giving out loans at high rates of interest through said frontal society with the knowledge that such funds were likely to be used by terrorist gang in the commission of a terrorist act.

13. It was in the aforesaid backdrop of the facts and allegations that A-1 and A-2 were charge-sheeted for committing offences under Sections 120-B/201/384/465/467 of Indian Penal Code, 1860 (IPC) and Sections 17/18/20/21 of Unlawful Activities (Prevention) Act, 1967 (UAPA). A-1



was also charge-sheeted for offence under Section 25 of Arms Act, 1959.

14. It is also worthwhile to note here that the learned trial Court has already ascertained the charges vide order dated 15.09.2022 and appellant herein has been directed to be charged for offences under Section 120-B read with Section 384 IPC, Sections 17/18/20/21 of UAPA and also for offences under Sections 201/465/467 IPC. Charges were framed on 07.10.2022 to which he pleaded not guilty and claimed trial. The order of charge would also indicate that the accused were not desirous of contesting the case on merits and had conceded to the charges. Admittedly, he did not plead guilty.

15. Be that as it may, the case is already in the middle of the trial and around 31 witnesses have already been examined.

16. Our attention has been drawn towards the impugned order dated 12.12.2022 whereby the bail application of both the accused A-1 and A-2 was dismissed. As far as A-1 is concerned, she had also filed a similar kind of appeal under Section 21(4) of NIA which was dismissed, being not pressed.

17. Learned Trial Court took note of the allegations against the appellant as well as the defence contentions and keeping in mind the material on record and the bar prescribed under Section 43(D)(5) of UAPA has dismissed the bail application.

18. Learned counsel for the appellant has contended that A-2 has been falsely implicated. He was a government employee working in PWD, Government of Nagaland. It is contended that he is in incarceration since 07.02.2020 and there is nothing which may indicate that he is member of any terrorist gang or assisted in raising or collecting or concealing extortion



money for any terrorist fund or any terrorist activity.

19. It is argued that NSCN (IM) (Issac-Muivah) is not a terrorist organization as its name is not mentioned in the First Schedule of UAPA though one fraction NSCN-K (Khaplang) has been declared to be a terrorist organization. It is thus claimed that there is nothing to show that NSCN (IM) is a terrorist organization much less that the appellant is involved with such gang. It is argued that the appellant was summoned by NIA for questioning and he always co-operated with the investigating agency despite the fact that he has no role to play and has been falsely implicated.

20. It is contended that the alleged bank accounts were being managed by his relative, i.e. A-1, for which he could not be held vicariously liable. It has also been argued that there was a 'Ceasefire Agreement' dated 13.01.2001 and thereafter, Memorandum of Understanding (MoU) was signed including one Framework Agreement dated 03.08.2015 between the Government of India and NSCN as the peace talks were going on and these agreements are sufficient to indicate that NSCN (IM) is neither a 'terrorist organization' nor a 'terrorist gang' but is a local recognized organization permitted by Government of India with certain privileges. A copy of such ceasefire agreement has also been annexed with the appeal.

21. Since the matter is pending adjudication, we would not like to make any comment about the contents of the aforesaid agreement. Fact, however, remains that even if there is such agreement, it does not give any right to any person, much less to A-2, to conceal the funds meant for any terrorist gang. Even in the aforesaid ceasefire agreement, which the appellant herein has strongly relied upon, the Government of India had expressed its concern about the forcible collection of money and it was admitted by NSCN that



such activities would be stopped. Moreover, the agreement was with the NSCN and it seems that now there is a split and the organization in question before us is not NSCN but NSCN (IM).

22. It also really does not matter whether NSCN (IM) has not so far been declared a terrorist organization or a terrorist gang. Such declaration would never be a pre-requisite for a prosecution like this. The allegations are very specific and as per the case of the prosecution, there is a criminal conspiracy amongst all the accused for raising and collecting terror funds for NSCN (IM) and A-2 is clearly acting in furtherance of such conspiracy. He had opened bank accounts for concealing and diverting such money required and making all the efforts to cause disappearance of extortion money and trail of evidence with intention to screen himself.

23. Thus, as per bare allegations, A-2 is concealing the terrorist fund in a fraudulent manner. He cannot be permitted to run away from the clutches of law by making a bald assertion that bank accounts, though were in his names, but being managed and controlled by his co-accused. The appellant, being a government servant, should have been mindful of the severity of the financial transactions happening in such accounts. Being a government employee, he cannot be permitted to go scot free by merely verbally contending that he had no concern with these accounts as these were managed by his co-accused.

24. We have also been taken through statements of various witnesses recorded under Section 161 Cr.P.C. and we have no hesitation in holding that there are clear-cut allegations suggesting his involvement and complicity for committing offence punishable under Chapter IV of UAPA. Therefore, we do not find any merit in the present appeal and the appeal is



accordingly dismissed.

25. We may, before parting, clarify that nothing observed hereinabove would tantamount to final expression about the merits of the case. These observations are tentative and have been made solely for the purpose of deciding the aspect related to consideration of bail.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

MAY 13, 2024/rk