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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 94/2022**

SHARJEEL IMAM

..... Appellant

Through: Mr. Talib Kustafa, Ms. Ayesha Zaidi
and Mr. Ahmad Ibrahim, Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutt, SPP with ACP
Ramesh Chander Lamba and Insp.
Pankaj Malik, ISC, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

30.01.2024

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1. Mr. Tanvir Ahmed, learned counsel for the appellant submits that in compliance of order dated 06.05.2022, the relevant documents have been filed on 13.05.2022 vide Diary No.88058/2022.

2. Learned counsel appearing on behalf of the appellant submits that in present case, total 43 witnesses have been cited, out of which 22 witnesses have already been examined by the prosecution. Some material witnesses are yet to be examined. These are concerned with charge framed u/S 124-A IPC and these are not to be examined till the decision of Hon'ble Supreme Court. He draws our attention to para 7, 8, 9 of our order dated 31.10.2022 which reads as under:

7. *Learned counsel for the appellant and the learned Special P.P. for the State jointly state that PW-2, PW-3, PW-12 to PW-26 and PW-33 have already been examined and PW-1, PW-4 to PW-11, PW-27 to PW-37 (except PW-33) besides Mr.L.K.Gautam, Deputy Secretary, Home are yet to be examined. Both the learned counsels state that in*



view of the decision of the Hon'ble Supreme Court, witnesses being PW-1, PW-36, PW-37 and Mr.L.K.Gautam, Deputy Secretary, Home cannot be examined at this stage. The only dispute relates to whether cross examination of Mr.Dharmender Kumar whose examination-in-chief has been recorded should proceed or not. Examination-in-chief of Mr.Dharmender Kumar, Deputy Secretary, Ministry of Home Affairs who stepped into the witness box as PW-19 to prove the sanction order in respect of offence punishable under Section 13 of UAPA has already been recorded. Though learned counsel for the appellant prays that the cross-examination of Mr.Dharmender Kumar be deferred in view of the 'definition' of Section 13 UAPA which overlaps with Section 124-A IPC, to the extent, disaffection to the Government is an ingredient of unlawful activity, we are of the considered view that the cross examination of Mr.Dharmender Kumar be also conducted, however, subject to the liberty to the appellant to further cross-examine him in case trial for the offence punishable under Section 124-A IPC is to proceed pursuant to the decision of the Hon'ble Supreme Court. Further, the witnesses namely Inspector Satish Malik, Inspector Vijay Kumar Samaria, ACP Sandeep Lamba, Mr.L.K.Gautam, Deputy Secretary, Home and ACP Umesh Barthwal be not examined by the learned Special Court till the decision of the Hon'ble Supreme Court.

8. *With these observations, Crl.A. No. 347/2022 is disposed of.*

9. *Vide Crl.A. 348/2022, the appellant has challenged the order dated 23rd July 2022 whereby his application seeking interim bail has been declined which interim bail was sought in view of the orders of the Hon'ble Supreme Court in W.P.(C) 682/2021, staying the trials for offence punishable under Section 124-A IPC. As noted above, both the parties have agreed that some of the witnesses, as noted in the preceding paragraph(s) can be examined and the next date for examination of the said witnesses is stated to be 29th November 2022. We request the learned Special Judge to examine the above-noted witnesses on which there is no dispute between the parties with an endeavour to conclude the examination of the said witnesses on the next date or on any other short date(s) as convenient to the learned Special Court."*

3. Learned counsel for the appellant further submits that the appellant has already undergone incarceration of around four years out of the maximum sentence of seven years and, therefore, the appellant has undergone more than half of the possible maximum sentence. He states that the appellant has already moved an application under Section 436-A Cr.P.C. The same was heard and even reserved for order on 11.09.2023. However, thereafter, the then Presiding Officer could not pronounce the order as he stood transferred and such said application is now fixed for 07.02.2024 for arguments.

4. Keeping in view the fact that the application under Section 436-A



Cr.P.C was earlier reserved for order on 11.09.2023 and since the then Presiding Officer got transferred, the order could not be pronounced and a new Presiding Officer has taken over the charge, we hereby direct the learned Trial Court to hear the said application and decide the said application within ten days of hearing.

5. Needless to say, if appellant is aggrieved by the decision of the Trial Court, he may take legal recourse as per law. In such eventuality, he would be also permitted to raise grounds taken in the present appeal as well.

6. Accordingly, the appeal is disposed of in aforesaid terms. We clarify that we have not made any comment or observation about the grounds taken in the present appeal.

SURESH KUMAR KAIT, J

MANOJ JAIN, J

**JANUARY 30, 2024/
kct**