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

% ***Date of decision: 10th May, 2024***

+ **CRL.A. 417/2024**

ABDUL SUBHAN QURESHI

..... Appellant

Through: **Mr. Prashant Prakash with Ms. Qausar Khan, Advocates.**

versus

STATE (NCT OF DELHI)

..... Respondent

Through: **Ms. Manjeet Arya, APP with ACP Ved Prakash, SI Sumit, Special Cell/SR.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CRL.M.A. 12815/2024(exemption)

Exemption allowed, subject to all just exceptions.

CRL.A. 417/2024

1. The present appeal seeking the following prayer:-

“1) Set aside the impugned order dated 22.12.2023 passed by the Id. Additional Sessions Judge-02/Judge, Special Court, Patiala House Court, New Delhi. In case FIR No. 532/2001

2) Grant bail to the appellant-accused, considering the facts of the case and the provisions of Section 436-A of the Criminal Procedure Code. In Case FIR No. 532/2001.”

2. The learned APP for the State has opposed the present appeal by claiming that appellant had earlier been declared Proclaimed Offender (PO) and he came to be arrested in the present case only when he had been



apprehended in another case. It is also claimed that there are four other matters in which he continues to be in judicial custody and, therefore, the learned Trial Court had rightly dismissed his application seeking bail under Section 436 A Cr.P.C.

3. Admittedly, in the present case charges have already been ascertained and the accused has been charged for offences under Sections 120B, 153A, 153B IPC and under Sections 10 and 13 of Unlawful Activities (Prevention) Act (UAPA). It is also admitted by learned APP that Section 43D(5) of UAPA does not stand attracted as he has not been charged with any offences punishable under Chapter IV or Chapter VI of UAPA.

4. Ms. Arya, learned APP also very fairly admits that the maximum sentence for the grave-most offence with which he has been charged with, would be of 07 years and his incarceration period in the present case is almost touching 05 years.

5. Undoubtedly, the bail cannot be claimed as a matter of right under Section 436-A Cr.P.C. Fact remains that the said provision was introduced with a particular purpose and recognises the right of any Under Trial Prisoners (UTP) to be released on bail in case his incarceration has extended up to half of the maximum period of the imprisonment specified. Of course, as per the proviso attached to Section 436-A Cr.P.C., the detention can be continued even for a longer period, for the reasons to be recorded in writing.

6. Merely, because the allegations against the appellant are serious in nature, cannot be taken as sole ground for declining such relief provided under Section 436-A Cr.P.C.

7. We are also conscious of the fact that his all co-accused in the present case are already on bail and the case is at the stage of recording of prosecution



evidence and the prosecution has already examined 08 witnesses. There are 53 cited prosecution witnesses and therefore, it cannot be said that trial is likely to be concluded in near future.

41. Keeping in mind the overall facts and circumstances of the case and also keeping in mind the incarceration period, we hereby allow the appeal and direct that the appellant be released on bail on the terms and conditions to be imposed by learned Trial Court. In case there is any violation of any condition imposed by the learned Trial Court or appellant attempts to threaten or influence any witness, directly or indirectly, or attempts to delay the trial, it would be open to prosecution to seek cancellation of bail, without any reference to this Court.

8. Copy of order be immediately transmitted to the learned Trial Court for due compliance

9. Appeal stands disposed of accordingly.

(SURESH KUMAR KAIT)

JUDGE

(MANOJ JAIN)

JUDGE

MAY 10, 2024/sw