

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Pronounced on 28.11.2024

CrI(A)(D) No. 64/2023

CrIM No. 251/2024

Faizan Lateef Para

...Appellant (s)

Through: Mr. Hussain Rashid, Adv.

VERSUS

**Union Territory through Police Station Sopore
(Home Department) (UAPA Act) (NIA)**

Through: Mr. Faheem Nisar Shah, GA
with Ms. Maha Majeed, Assisting Counsel

...Respondent(s)

CrI(A)(D) No. 10/2024

Ajaz Ahmad Mir

...Appellant(s)

Through: Mr. Hussain Rashid, Adv.

VERSUS

Union Territory through Police Station Sopore

Through: Mr. Faheem Nisar Shah, GA
with Ms. Maha Majeed, Assisting Counsel

...Respondent(s)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE.

JUDGMENT

Per Puneet Gupta, J

1. The afore-captioned appeals are taken up together for final disposal as orders impugned in both the appeals arise out of

same challan and the allegations against the appellants/accused are more or less similar in nature though the impugned orders in the appeals are of different dates.

2. The appeals have been preferred against the order dated 18.11.2023 and order dated 19.01.2024, passed by the learned court of Additional Sessions Judge Baramulla, Designated as Special Court under ULA(P) Act, whereby the applications filed for bail by the appellants/accused have been dismissed. The objections to the appeal are filed by the respondent.
3. Learned counsel for the appellants has submitted that the trial court has not appreciated the material which was on record in its right perspective while dismissing the applications filed for grant of bail by the appellants herein. It is submitted by counsel that except for accusation that some posters were found with the accused urging the people to close fruit market and also restraining the traffic movement and refraining the Government employees from attending their duties etc. no other substantial allegation is stated against the accused. The accused could not be denied the bail as the accused are in custody for last more than five years and the trial is still to take time before it is concluded. Learned counsel for the appellants

has taken the Court through the evidence that has come on record so far to plead for the bail.

4. Mr. Faheem Nisar, learned GA, has argued that the learned trial court has not gone wrong in refusing the bail applications of the appellants. The charges against the appellants are serious in nature and not confined to possessing of posters as argued by the other side. The appellants have also participated in the meeting organized by the co-accused and which further led to terrorist acts.
5. The accused are facing trial for commission of offence under Section 13, 20, 39 of ULA(P) Act, 1967 (hereinafter referred to as the Act) and 120 B and 506 of RPC in FIR No. 220/2019 registered with Police Station Sopore. FIR No. 220/2019 came to be registered with the Police Station, Sopore as the information was received that some posters had been pasted on the main gate of the Fruit Mandi, Sopore on behalf of Lashker-I-Toiba and Jaish Mohammad Militant Organizations which are banned by the Government. The fruit growers and businessmen were asked to close their business and support the movement of these terrorist organizations. The posters were seized by the police during the course of investigation. It was disclosed by the accused Imtiyaz Ahmad Najar that one LeT

Commander Sajad Ahmad Mir along with his associated militants had called meeting wherein the appellants/accused along with co-accused had attended the meeting and were instructed to do the acts, which as per the prosecution, found mention in the posters seized from the appellants. The abrogation of Article 370 also figures in the posters. The number of violent incidents took place in Sopore area thereafter is also a case of the prosecution. It is suffice to mention here that during the course of investigation five posters are stated to have been recovered from the house of the appellant Faizan Latief and three posters from the house of the appellant Aijaz Ahmad Mir as consequence to the disclosure made by the said appellants.

6. The provisions of the Act are undoubtedly stringent and the accused cannot seek bail under the said Act on platter. At the same time, provision of the Act though stringent yet it does not mean that the accused cannot be held entitled to bail even if the case is made out for the same. The severity of the offence and the right to liberty of individual are required to be balanced as and when the bail is sought by the accused who are booked under the Act. The Apex Court and the High Courts have interpreted Section 43(D) of the Act and particularly the words

'prima facie true' occurring in the said section. The constitutional courts are not powerless to grant bail under the Act is also mandated by the Apex court.

7. The two accusations which come to fore against the appellants/accused are that they attended the meeting as disclosed by the co-accused Imtiyaz Ahmad and, secondly, posters were recovered on the disclosure made by the appellants/accused. The disclosure and consequently the alleged recovery of the posters from the appellants/accused are in accordance with the provision of section 27 of Evidence Act is a matter which is required to be finally thrashed by the trial court. As per section 27, the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. The information which is distinctly connected to the discovery is only admissible against the accused and not the rest of the information. It is prima facie made out that the lengthy so called disclosure by the accused during investigation cannot be read against the accused and further that portion of the statement along with alleged recovery of the posters if satisfies the contours of section 27 is also doubtful when the information given and the recoveries affected are analyzed. It may also be mentioned that

appellants/accused herein were not apprehended while pasting the posters in Sopore area. The other accusation pertains to the attending of the meeting by the accused in which Sajad Ahmad Mir, later eliminated during encounter, and others participated which later on led to certain terrorist activities. The terrorist acts which supposedly followed the meeting are not specified in the challan and are more or less vague in nature. What sort of decision was taken in the meeting organized by Sajad Ahmad Mir and if the posters were pasted in pursuance to the said decision taken in the meeting by the accused are again the questions which are required to be proved by the prosecution during the trial.

8. The conspiracy angle projected in the charge sheet is again dependent upon the basic allegations which are leveled against the appellants and required to be proved during trial as observed above by the Court. The Court is of the view that the aforesaid allegations should not come in the way of this Court to grant bail to the accused persons.
9. The learned trial court while dismissing the applications of the appellants for bail has observed that once the allegations are found prima facie true, the period of detention becomes

immaterial and that no leniency can be shown to the appellants.

10. The presentation of charge sheet or the framing of the charge against the accused in serious offences will not by itself result into dismissal of the bail application. The court has to decide the application independently of the presentation of the charges against the accused persons. Section 43(D) is not to result into dismissal of the bail application only for the reason that some of the offences under the Act contain stringent punishment in case the same stand proved against the accused person.
11. The Hon'ble Supreme Court in case titled Vernon Vs. State of Maharashtra 2023 Live Law SC 573 discussed the earlier judgments of the Court under the Act and keeping in view the observations made in those judgments granted bail to the appellant. The Court also held that the restrictions on the Court while examining the question of bail under the Act is less stringent in comparison to the provisions as contained in Section 37 of the NDPS Act, 1985.
12. In Gurwinder Singh Vs. State of Punjab and anr 2024 Live Law SC 100, the Hon'ble Apex Court defined the meaning of the words 'prima facie' as obtaining in Section 43(D) of the Act

and held that the bail must be rejected as a rule if the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true.

13. In Ashim @ Asim Kumar Haranath Vs. National Investigation (NIA) Criminal Appeal No.s 1525 of 2021, decided on 01st December, 2021 and Yedala Subba Rao and anr. Vs. Union of India reported as (2023) 6 SCC 65, the Apex Court granted bail to the accused persons keeping in view the long period of incarceration of the accused and also interpreted meaning of words “prima facie true” as obtaining in section 43D of the Act.
14. The court is of the considered view that the case against the appellants does not fall within the zone of aforesaid words “prima facie true”. These words cannot be stretched to the extent of absurdity so as to dismiss the genuine case of the accused.
15. Keeping in view the aforesaid discussion and that the accused are in custody for last more than five years and it will take some time for the prosecution to conclude its evidence in support of the charges made against the accused, the Court is of the view that both the appeals are required to be allowed. The order of the trial court in both the bail applications are set

aside. The appellants/accused are granted bail subject to following conditions:

- i) The appellants shall furnish surety bond and bail bond to the tune of Rs. 1,00,000/ each to the satisfaction of the learned trial court/Incharge jail.
- ii) The appellants shall not leave the limits of the Union Territory of Jammu and Kashmir without prior permission of the trial court.
- iii) The appellants shall appear before the trial court regularly except when exempted.
- iv) The appellants shall not tamper with the prosecution evidence.
- v) The appellants shall surrender their passports in the trial court if possessed by them.
- vi) The appellants shall appear before the Police Station concerned once in a month without fail and provide permanent address and phone number for contact purposes.

16. The trial court shall be at liberty to cancel the bail of the appellants in case they violate the bail conditions.

17. The Court makes it clear that any observation made in the order passed by this court shall have no bearing whatsoever on the merits of the trial. Copy of the judgement be placed on both appeal files.

18. Disposed of.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Chief Justice

Srinagar
28.11.2024
Aasif

Whether the judgment is speaking Yes/No

Whether the judgment is reportable Yes/No