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

Date of Decision: 16th January, 2025

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CRL.A. 1012/2024

UJJAIR AHMAD @ OZAI AHMED

.....Appellant

Through: Mr. Aarif Ali, Mr. Pankaj Tiwari, Mr. Mujahid Ahmad, Mr. Shahid Nadeem, Mr. Naveen & Mohd. Tansheed, Advs.

versus

NATIONAL INVESTIGATION AGENCY,Respondent

Through: Ms. Shilpa Singh, SPP, NIA with Mr. Himanshu Jain, Dy. SP., AIO.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Background

2. The present appeal has been filed by the Appellant under Section 21(4) of the National Investigation Agency, 2008 (*hereinafter 'NIA Act'*) read with Section 528 of the BNSS, 2023 challenging the impugned order dated 19th September, 2024 by which his bail application has been rejected.

3. An FIR, being **RC No.06/2012/NIA/DLI**, was registered by the NIA on 10th September, 2012 at PS NIA, New Delhi for various offences under the Unlawful Activities (Prevention) Act, 1967 (*hereinafter 'UAPA'*) against certain persons which did not include the Appellant herein. Thereafter, chargesheet was filed in the said FIR on 17th March 2013 which only charged five accused persons. However, when the supplementary chargesheet was



filed on 20th February, 2014, further accused persons were added including A-9 – Ujjair Ahmad @ Ozair who is the Appellant herein.

4. The Appellant was arrested on 30th October, 2013. He was charge-sheeted under Sections 17, 18, 19, 38(2), 39(2) and 40(2) of the UAPA. The Appellant had sought regular bail before the Special NIA Court which was, however, rejected in the following terms:

“xxx xxx xxx

8. Till date, in the present matter, six witnesses have been examined. However, nothing has come in the evidence of these witnesses which would render substance to the contention of accused/applicant that he has been able to cross twin tests. Otherwise also, bare reading of section 43 (D) (5), shows that the opinion in respect of reasonable ground to believe that acquisition are not prima facie., true is to be formed from the perusal of case diary or the

report made u/s 173 of the code. Therefore, the statute is silent on the aspect if at the time of considering the plea of bail, evidence recorded during trial is to be considered or not. However, it cannot be said that there is any ambiguity in the language used in section 43 (D) (5) of UA (P) A. Hence, when language in the concerned provision is clear and categorical, the mandate of law is also clear. Said mandate u/s 43 (D) (5) of UA (P) A is as to what material is to be considered at the time of adjudicating of application seeking bail. Thus, when the language is so clear, trial court cannot insert any other dimension to it through interpretation. Further, now the recording of evidence has begun. Bunch dates are fixed in this matter and on each date two witnesses are summoned for examination. These steps are taken as an attempt to speed up the trial.

9. Hence, in view of the above discussion, present application filed on behalf of accused/applicant Ujjair Ahmad seeking bail is hereby dismissed. Application



stands disposed of accordingly. Copy dasti. Copy of order be sent to Jail Superintendent concerned to convey the decision to accused/applicant.”

Submissions

5. The submission of Id. Counsel for the Appellant is that the Appellant deserves to be granted bail on the following grounds:

- i) The long period of incarceration undertaken by the Appellant since 2013 which is more than 11 years;
- ii) That the other co-accused who had pleaded guilty have been either sentenced to the period already undergone or to 10 years which is much lesser than the Appellant's period of incarceration;

6. That the allegations in the chargesheet against the Appellant are primarily two-fold that he was part of the Muslim Student Federation (MSF) which is claimed to be an off-shoot of Students Islamic Movement of India (SIMI) and secondly that he had given some amount to one Mr. Haider Ali which, according to the NIA, was used in the Patna bomb blasts. It is, however, submitted that the Appellant was never made an accused in the Patna bomb blasts.

7. On merits, the Id. Counsel submits that even if going by the most serious allegation, arising from the statement of Manzar Imam (A-8), the Appellant was merely involved in collection of 'zakat'/donations. Moreover, the Appellant had given some money to Haider Ali, only in view of the fact that he was told by A-8 that Mr. Ali was a poor person and he was in dire straits. It is submitted that, as per the statements, given by the said co-accused the Appellant had no knowledge of the antecedents of Mr. Haider Ali. Further, it is submitted that even in the order on charge, the Appellant has merely been



charged under Sections 17 and 18 of the UAPA and not under any of the remaining Sections of the UAPA.

8. The Appellant places reliance upon the decision of the Supreme Court in *Union of India v. K.A. Najeeb, (2021) 3 Supreme Court Cases 713* to argue that the trial may also take a substantial period to conclude and considering the nature of allegations and the long period which he is in custody, he deserves to be released on bail.

9. Ms. Shilpa Singh, Id. Counsel appearing for the NIA, however, submits that the SIMI is a banned organisation since 2001. The persons who were associated with SIMI started an organisation called Indian Mujahideen (*hereinafter 'IM'*) and under IM, various modules were set up for the purpose of training jihadis. The Appellant was part of the Ranchi module of IM. The admission is that the amount was given by the Appellant to Haider Ali who was involved in the Patna blast.

10. She also submits that the Appellant is also encouraging jihad, highlighting atrocities against Muslims and recruiting young Muslim youths for these organisations. Various videos are also being shown and disseminated for the said purposes. She also submits that the amounts are collected under the garb of *zakat* but are used for terror funding.

11. The submission is that the Appellant also poses a flight risk as one of the co-accused has already left the country and is settled in Pakistan. The said co-accused also attempted to move his wife and children also to Pakistan.

12. On the question of delay in the framing of charge, the Id. Counsel submits that there has been a change in seven Presiding Officers during the course of the proceedings before the Special Court and the prosecution cannot be blamed for the delay.



Analysis

13. The Court has considered the matter. A perusal of the order on charge dated 31st March 2023 would show that in the said order, the Trial Court has clearly observed that the main allegation against the Appellant is that he had paid a sum of Rs.30,000/- to one Mr. Haider Ali. The second allegation is that the Appellant used to incite participants to violent jihad. The relevant portions of the order on charge are set out below:

“xxx xxx xxx

180. Argument that there is no evidence if such funds were actually used for terrorist act or not. Such argument at the stage of charge does not sustain, firstly because there can hardly be any evidence to directly establish that funds were actually used for purchase of bomb, explosives etc. As discussed above giving of funds to one who is known to be a terrorist, in itself attract the provision of Section 17 of UA(P) Act. Moreover section 17 itself provides that it is not necessary to give evidence that whether such funds were actually used or not in commission of terrorist act. Documents D-138 to D-143, statements of certain witnesses recorded u/s 164 Cr.P.C. including D-149 to D- 152 and D-160 establish withdrawing of Rs.30,000/- by A-9 from Zakat fund as well as giving the same to A-20.

181. If there is evidence to show that financial help has been given to one with the knowledge that whom the funds have been given is terrorist or to terrorist gang or organization. In this case it is proved that around July 2013 till October 2013 terrorist act as defined u/s 15 of the Act actually took place in which A-20 was involved being principal accused. These facts to my mind are prima facie sufficient for framing of charge u/s 17 as against A-9. It is therefore held that A-9 is liable for charge u/s 17 of UA(P) Act.

182. Now coming to the question of charge u/s 18 of



UA(P) Act. There are statement of different witnesses who stated that 'darsh' program used to be organized by Manzar Imam (A-8) or by Ujjair Ahmad (A-9) in which participants used to raise the issue of alleged atrocities on Muslims. Among the participants A-20 Haider Ali being one of the most aggressive used to incite participants for violent Jihad in the name of religion. Admittedly A-9 used to be participant of such programs and as per those statements of witnesses, A-9 never objected for such incitement by A-20. That fact coupled with the fact that A-9 financially helped A-20 as A-9 has already been charged for offence u/s 17 of the Act. This court is of the view that these facts taken cumulatively go to show that A-9 was part of conspiracy, advocacy, abetting or supporting for terrorist activity or any act of preparation for terrorist activity and therefore is liable to be charged for offence u/s 18 of UA(P) Act as well.

183. Accused no.9 has also been charge sheeted for offence u/s 19 of UA(P) Act. This court already discussed the necessary ingredients of Section 19 above which requires harbouring, concealing any person with the knowledge that such person is terrorist. However in the facts of the present case it is find that prosecution has failed to establish direct evidence to show that A-9 in any manner harbored, concealed or gave A-20 any hideout for escaping from the judicial process, knowing that he was involved in any terrorist activity. Even as per the statement of different witnesses all 'darsh' programs were organized prior to July 2013 and not thereafter. Therefore, mere association of A-9 with A-20, may raise inferences but are not sufficient for framing of charge u/s 19 of the Act. Consequently A-9 stands discharged for offence u/s 19 of UA(P) Act.

184. Accused no.9 Ujjair Ahmad has also been charge sheeted for offence u/s 38(2) and 39(2) of UA(P) Act. As discussed above offences u/s 38(2) and 39(2) are relating to membership, association or support to any



terrorist organization. Meaningful reading of these provisions, show that there must be specific knowledge attributable to accused that he knowingly associates himself or profess to be associated with a terrorist organization and knowingly support a terrorist organization. In facts of the present case even if the statements of all the witnesses as relied upon qua A-9 are taken on the face of it, none of the witnesses have stated that A-9 being aware about Indian Mujahideen. Though these witnesses might have stated about support given by A-9 to A-20 in his individual capacity but none of the witness stated anything regarding knowledge of A-9 about Indian Mujahideen, being a terrorist/ banned organization. No doubt it is matter of fact that A-8 Manzar Imam and A-20 Haider Ali were earlier associated with SIMI which was also a banned organization, however prosecution in this case is with regard to association with banned organization Indian Mujahideen. Since none of the witness attribute against A-9 of his knowledge about Indian Mujahideen, in my view there is not sufficient evidence for framing of charge u/s 38(2) and 39(2) of UA(P) Act against A-9, as such he stands discharged for those offences.”

14. A perusal of the above would show that insofar as membership or association with the IM is concerned, the Appellant has been discharged for the offences under Sections 38(2) and 39(2) of the UAPA as per paragraph 184 of the order on charge. In addition, the allegation as to the organisation of the DARS programs in respect of harbouring or other activities are concerned, the same has not been believed by the Trial Court and he has been discharged under Section 19.

15. Thus, the only two allegations for which the Appellant is facing trial are in respect of (i) alleged speeches encouraging violent jihad and (ii) the amount paid to the said Haider Ali of sum of Rs.30,000/-. In respect thereof,



the statement of PW-187, namely, Mozammil Shadab, even if taken at face value would show that he only stated that Haider Ali was in dire straits and therefore needed money. The said statement is set out below:

“xxx xxxx xxx

In the year 2009-10 Ujair and his group has formed the Zakat committee in

*the name of “Jamiyat, Ah-le-Hadis” at Doranda in Ranchi. The objective of the formation is to raise the fund by collecting subscription from Muslim community which cater out from their earnings in form of “Zakat” with purpose to help the poor and deprive among the Muslim community as part of welfare and noble cause. The elected body of President Ujair Ahmed, secretary Sami-ur-rehman with members has to entertain the application for request of money from poor Muslim section and to dealt in the manner as they thinks fit towards disbursement of money from the fund. The committee has bank account in Union Bank, Doranda branch at Ranchi. The authentication of President and secretary are prescribed mandatory for withdrawals of money from the bank account. Ujair was the founder president of the committee. I was appointed in Governing committee in the year 2013 as member to look after the welfare of poor and deprived in Muslim community and fulfill their requirement by paying through “Zakat” committee. **During the same period one fine day Shahbaz told me to collect money for Haider who happened to met in bus with Shahbaz and the condition of Haider was in dire state.** Then, I collected Rs 10,000/- subscription from Aaquib (Rs 1000), Tarique (Rs 2,000/-), Ujjair (Rs 3,000/-), Pappu (2,000) and Nadeem (Rs 2,000) and I gave the money to Haider on the day when Manzar was arrested by the NIA. Haider called me on the phone and asked me to come to Indira Palace, Hinoo where I handed over money to Haider. **After one month around he again called me on the phone number 8797776048 and asked***



me to come at Macon gate and I went with Shahbaj to meet with him. On being asked he told me that he is staying outside Ranchi but he did not reveal his exact location of hiding. He used to regular contact with me over mobile but I asked him to relinquish. contact with me. One last time he called me over phone and told me that convey Ujair to arrange money for him. When I asked him as to what pretext he require money then he told me that he has to spent money to release the Jail inmates. I conveyed the message to Ujair and he arranged, Rs 30,000/- money within 15 days from Zakat fund during ramzaan, After 10 days waiting Haider called me and asked near Eyclax cinema hall and I went there and handed over the money to Haider. He took the money and went by city bus. After that he never made any contact with me. I continue as the member of Zakat committee.”

16. The Court has also considered the other submission on behalf of the Appellant, that similarly placed accused, who pleaded guilty, have been sentenced to a maximum imprisonment of ten years. The said chart is set out below:

| Name of accused with No. | Offences for which charge framed | Date of sentences | Description Sentences |
|-------------------------------|----------------------------------|-------------------|--|
| A-1 Md. Danish Ansari @ Abdul | U/s 18, 38(2), 39(2) UA(P) Act | 12.07.2023 | 10 years maximum imprisonment with fine. |



| | | | |
|--|--------------------------------|------------|--|
| Wahab @ Saleem @Abdullah | | | |
| A-2 Mohd. Aftab Alam @ Farooq @ Shaikhchilli @ Hafij Ji | U/s 19, 38(2), 39(2) UA(P) Act | 12.07.2023 | Imprisonment as already undergone with fine. |
| A-3 Imran Khan @ Zakaria @ Saleem @ Fazal @ Tabrez @ Raj @ Patel | U/s 38(2), 39(2) UA(P) Act | 12.07.2023 | 10 years maximum imprisonment with fine. |
| A-4 Syed Maqbool @ Zuber | U/s 38(2), 39(2) UA(P) Act | 26.10.2023 | 10 years maximum imprisonment with fine. |
| A-5 Obaid Ur Rehman | U/s 38(2), 39(2) UA(P) Act | 12.07.2023 | 10 years maximum imprisonment with fine. |

17. Going by the provisions of Section 43(D)(5) of UAPA, even if the case of the prosecution is taken at its highest, the Appellant has already served 11 years and the trial is also likely to take a considerable period of time to conclude. Even with the trimmed list of witnesses of the prosecution, which now is stated to be about 165-170 people, is considered, only ten witnesses have been examined till date and more than 150 witnesses are yet to be examined.

18. The Supreme Court in a catena of judgements have upheld the essential need to preserve the right to life and liberty of individuals promised under Article 21 of the Constitution of India, especially in cases of bail to under-trial prisoners who have been in incarceration for a prolonged period of time.

19. The Appellant has placed reliance on *Union of India v. K.A Najeeb (Supra)*. In the said case a three judge Bench of the Supreme Court while dealing with an appeal against an order rejecting bail of an accused who was



inter alia charged with Sections 16, 18, 18-B, 19 and 20 of the UAPA, emphasised the need to harmonise/balance the statutory considerations of UAPA and the right to life and liberty promised under Article 21. More importantly, it further observed that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail under UAPA and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time. The relevant paragraphs of the judgement are read as under:

“18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court



appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

20. Considering the facts in this case *i.e.*,
- 1) the long period of incarceration served by the Appellant;
 - 2) the co-accused charged under similar provisions of UAPA being already released or being sentenced to ten years of imprisonment;
 - 3) the limited role of the Appellant; and
 - 4) the Appellant having deep roots within the society especially in Jharkhand where his family is residing;

the Court is inclined to release the Appellant on regular bail subject to furnishing a bail bond in the sum of Rs.10,000/- with a surety of the like amount to the satisfaction of the Trial Court and subject to following conditions.

- i) The Appellant is a resident in Ranchi. The residential address shall be provided to the IO, NIA. The Appellant shall intimate the Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- ii) The Appellant shall not leave the country without prior permission of this Court. The passport of the Appellant shall be surrendered before the Trial Court;
- iii) The Appellant shall remain in Ranchi throughout and shall not be permitted to travel to any other city except to Delhi for the purpose of appearing before the Trial Court;



- iv) The Appellant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- v) The Appellant shall appear before the concerned SHO PS Doranda, Ranchi on 1st Monday of every month at 11:00 AM and the concerned officer is directed to release him by 12:00 noon after recording his presence and completion of all the necessary formalities;
- vi) The Appellant shall appear before the learned Special Court, as and when, the matter is going to be taken up for hearing;
- vii) The Appellant shall not, directly, or indirectly, tamper with evidence or try to influence the witnesses in any manner. In case, it is established that the Appellant tried to tamper with the evidence, the Respondent/NIA will be at liberty to apply for cancellation of bail;
- viii) If the Appellant indulges in any unlawful conduct including inciting violence through speeches or organising terror funding or any such incident comes to light, the NIA is free to seek cancellation of this bail.

21. Needless to state that all the observations made in this judgment are only for considering if a *prima facie* case for bail is made out or not *qua* the present Appellant only. Nothing mentioned hereinabove shall be construed as an opinion on the merits of the case of the Appellant or other Accused and the observations made herein are for the purpose of present appeal.

22. The appeal is allowed in the above terms and disposed of accordingly. Applications (if any) are also disposed of.

23. Copy of the order be communicated to the concerned Jail



2025:DHC:215-DB



Superintendent for necessary information and compliance.

24. Order be uploaded on the website of this Court *forthwith*.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 16, 2025

Rahul/am