2025:DHC:94-DB

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

Reserved on: 20.11.2024
Pronounced on: 13.01.2025

\+ CRL.A. 606/2024
ALEMLA JAMIR .....Appellant

Through: Mr. Tanveer Ahmad Mir, Mr. Kartik Venu, Md. Imran Ahmad, Mr. Jude Rohit and Mr. Paras Nath Mishra, Advs

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Ms. Shilpa Singh, Spl. PP, NIA with Ms. Priyam Agarwal, Mr. Mr. Vanshaj Tyagi, Advs., and Mr. Sanjay Kumar, Inspector and Mr. Pawan Singh Rana.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The present appeal under Section 21(4) of the National Investigation Agency (NIA) Act, 2008 has been preferred against the Order dated 31.05.2024, whereby the second bail application of the appellant was dismissed by the learned Additional Sessions Judge - 03 (ASJ), Special Courts (NIA)- New Delhi, Patiala House Courts, Delhi in NIA Case No. 1/2020 titled ***"National Investigation Agency vs. Alemla Jamir & Anr."***.

BRIEF FACTS

2. The investigation in this case was launched, when on 17.12.2019, the appellant Alemla Jamir (A-1) while travelling from Delhi to Dimapur, Nagaland was intercepted by the Central Industrial Security Force (CISF) Security Personnel at the Terminal-1 of the Indira Gandhi International Airport (IGI), New Delhi upon discovery of her carrying Rs. 72 Lakhs in cash, without providing any explanation as to its source. This information was forwarded to the Air Intelligence Unit (AIU) of the Income Tax Department and the appellant was taken in for interrogation, along with her belongings which included the said cash recovered from her.

3. Subsequent thereto, the appellant was questioned by the Assistant Commissioner of Income Tax (Investigation) and her statement was duly recorded, wherein she stated that the said cash of Rs. 72 lakhs belongs to Nationalist Socialist Council of Nagaland (Isaac-Muivah) [NSCN(IM)] and was handed over to her on the directions of Mr. Muivah, General Secretary of NSCN(IM) to be taken to Dimapur, Nagaland.

4. The appellant was then taken for interrogation by the Special Cell on 17.12.2019. Since, it was found that the large amount of money recovered from her was to be used for carrying out operations of an alleged terrorist gang, that is, NSCN(IM) and other terrorist activities in India, a complaint was lodged by the Sub-Inspector Gautam Mallick, on the basis of which an FIR bearing no. 228/2019 was registered on the same day by the Special Cell against the appellant for the offences under Sections 10, 13, 17, 18, 20 & 21 of

the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act]. Upon which, the appellant was arrested on 18.12.2019 by the Special Cell. The investigation of the case, *vide* the Ministry of Home Affairs (MHA) order no. 11011/63/2019/NIA dated 20.12.2019, was handed over to the NIA and the FIR was re-registered as RC No. 26/2019/NIA/DLI.

5. During the course of investigation, the appellant gave a disclosure statement of having collected the cash amount of Rs. 72 lakhs on the directions of Mr. Muivah from his residence at Lodhi Estate, New Delhi, out of which she had to deliver Rs. 70 lakhs to Mrs. Muivah at Dimapur and the rest Rs. 2 lakhs were to be kept by her for personal expenses. The Call Data Records ('CDR') of the appellant's mobile phone, analyzed by the investigating agency, corroborated her location in the house of Mr. Muivah on 16.12.2019.

6. The appellant also disclosed that she was the member of NSCN(IM) and her husband, namely Phungting Shimrang @ P H Shimrang @ Jamis Jamir, was its ex-Army Chief. She also admitted that her husband, along with other individuals, had gone to China in October, 2019 to take assistance from the Chinese Authorities for helping them in 'Naga Cause' in their fight against India. The NIA also found that the NSCN(IM) was a terrorist gang with a trained army and sophisticated weaponry, claiming to have enacted its own 'Naga Army Act'. The NSCN(IM) was accused of running a parallel government under the nomenclature of Government of People's Republic of Nagalim (GPRN). The objective of GPRN, behind forming a full-fledged Army, was to threaten the unity, integrity,

security and sovereignty of India. The organization had also usurped the sovereign Government function of collecting taxes and used to collect various taxes such as Employee Tax, Ration Tax, Vehicle Tax, Royalty, Import and Export / Gate pass Tax etc.

7. The investigation further revealed that the appellant, in connivance with Masasasong AO (A-2), her brother-in-law, and with assistance from the other co-accused persons, was actively raising terrorist funds/extortion money through a sophisticated network by terrorizing businessmen through the Naga Army and had created a systematic mechanism of collection of extortion/tax money for the terrorist fund.

8. It was revealed that the A.J. Agency, run by the appellant, was a part of the *modus operandi* adopted by her for extortion of money from Eastern Motors, Imphal, for allowing a safe passage to their vehicles and route from Dimapur to Imphal, especially to cross Mao Gate, which was controlled by the Naga Army of the NSCN(IM). The transactions were carried out in such a manner which ensured that there would be no financial trail linking this extortion of money to the appellant. Later on, the extortion money from Eastern Motors, Imphal was directly transferred to the bank account of A.J. Agency. During the house search of the appellant, a small cash receipt book, exhibit marked as ‘Doc 47’, containing various receipts along with their carbon copies were seized and had the words ‘GPRN’ printed on them. The armed cadets of NSCN (IM) deployed at Mao Gate allowed the vehicles to pass over to Manipur only upon production of such slips by the drivers.

9. The investigation further revealed that the appellant through a frontal society, namely 'Naga Women Society for Employment', extended a significant amount of extorted money as loan on different occasions. In fact, all the transactions were done using different bank accounts of the appellant, A-2, A.J. Agency and others. The Chargesheet provides the details of the amounts received and returned by the appellant, A-2 and their associates. The investigation further indicated that the money used to be collected from civilians and businessmen by creating terror in their mind. It was also revealed that the appellant used to lend funds at a very high rate of interest in furtherance of raising terror funds.

10. Further, searches were conducted during the investigation and various incriminating articles and documents were recovered from the house of the appellant, which included live ammunition, bullet proof jackets, satellite phones, a drone, extortion slips and documents relating to huge financial transactions. Besides this, incriminating data from her computer was also recovered during the said house search.

11. It was further found in the investigation that the appellant's husband, a member of the Steering Committee of the NSCN(IM), was the Commander-In-Chief of NSCN(IM). Additionally, the appellant, her husband, A2, and other members of NSCN(IM) have links with different suspicious foreign organizations. Moreover, it was uncovered that the accused persons were in the process of collecting the know-how in relation to fabricating IEDs/bombs.

12. The investigation revealed that the appellant also fraudulently used numerous documents to create false identities in the name of

Mary Shimrang and Atula Tonger, apart from her identity as Alemla Jamir, and was fully aware of the said identification documents being forged and yet, continued to use them as genuine. She had used those documents to obtain multiple bank accounts, PAN cards and Passports. During the investigation, it was found that the appellant had instructed A-2 to urgently invest the extorted funds to purchase some land before the security agencies trace the said money.

13. Upon the NIA concluding the investigation, a Chargesheet was filed on 11.06.2020 arraying the appellant as the accused no. A1 under Section 120B, 384, 471 of the Indian Penal Code, 1860 (IPC) read with Section 17, 18, 20 and 21 of UA (P) Act and Section 25(1A) of the Arms Act, 1959, alleging that she has entered into a criminal conspiracy with the co-accused persons and having directly raised and collected terror funds for NSCN(IM) through illegal means of extortion, and by giving out loans at high rates of interest with knowledge that such funds are likely to be used in full or in part by the said terrorist gang.

14. The Chargesheet also arrayed the appellant's brother-in-law, Masasasong Ao, as accused no. A2, alleging that he is also a member of the said terrorist gang, who was arrested on 07.02.2020. He is charged of the offences under Section 120B, 201, 384, 465 & 467 IPC and 17, 18, 20 & 21 of UA(P) Act, 1967.

15. The appellant's husband is alleged to be a senior member of the said terrorist gang, and is also stated to be involved in the alleged conspiracy of terror funding. He has been arrayed as accused no. A3, however, has not been chargesheeted and remains absconding, having

fled to China.

16. Thereafter, a supplementary Chargesheet was filed on 03.08.2022.

17. *Vide* order dated 15.09.2022 of the learned ASJ, Charges were ordered to be framed under Section 120B, 384, 471 IPC as well as Section 17, 18, 20 & 21 of UA(P) Act and Section 25 of the Arms Act against the appellant and were, accordingly, framed on 07.10.2022. The appellant has challenged the said orders by an appeal bearing no. Crl. A. 679/2022 before this Court. Notice was issued by this Court on 23.12.2022 in the said appeal and the same is currently pending adjudication.

18. During the course of the proceedings before the learned ASJ, the appellant moved her first bail application, which came to be dismissed *vide* order dated 12.12.2022, against which the appellant preferred an appeal bearing no. Crl.A. 513/2023 before this Court, which was, *vide* order dated 14.12.2023, dismissed as withdrawn while granting liberty to the appellant to file a fresh application before the learned ASJ. Availing of the said liberty, the appellant moved a second bail application before the learned ASJ, which came to be dismissed again *vide* the Impugned Order dated 31.05.2024, which is being challenged in the present appeal.

SUBMISSIONS OF THE APPELLANT:

19. Mr. Tanveer Ahmad Mir, the learned counsel for the appellant submitted that the appellant is aged about 51 years and is a permanent resident of Nagaland, having inherited ancestral property and running

a transport business in the name of AJ Agency in Dimapur, Nagaland and is also involved in the business of poultry farming. She has been falsely implicated and wrongly incarcerated in the present case since 17.12.2019, for allegedly carrying Rs. 72 lakhs while travelling from Delhi to Dimapur, Nagaland. He submitted that the learned ASJ did not appreciate or take judicial notice of the history of political negotiations between the Government of India and the NSCN(IM), which has reached various extension agreements and Memorandums of Understanding with the Cease-fire Agreement of 1997.

20. Learned counsel submitted that rather, the prosecution's case is based on a completely false premise that the NSCN(IM) is a terrorist gang, which it is not, as the Government of India itself has signed and honored a Cease-Fire Agreement, 1997 and a Framework Agreement as of 2015, thereby, establishing that the said organization is a legitimate stakeholder in the Indo-Naga political dispute and not a terrorist gang, as claimed by the prosecution. Even otherwise, there is no material to infer or suggest that the NSCN(IM) is a terrorist group nor it has been notified as an 'unlawful organization' or 'terrorist organization' in terms of the UA(P) Act, 1967, which requires a notification by the Central Government in terms of the scheme of the said Act. Moreover, Section 15 of the UA(P) Act requires the use of violence and force, which crucial requirement is silent in the present case, therefore, the Charges under Section 17, 18, 20 and 21 of the UA(P) Act cannot be sustained.

21. He further contended that the appellant is sought to be prosecuted in terms of Section 18 of the UA(P) Act as being a member

of the terrorist gang, however, the said organization is not indicted at all. This approach of the prosecution by not prosecuting the said organization as well as its key members, already known to the NIA, amounts to selective and 'pick and choose' prosecution against the appellant and forms an additional ground for grant of bail. Moreover, the Government of India has provided the Secretary and other higher office bearers of the NSCN(IM) accommodation and security round the clock by the CRPF and the BSF.

22. He submitted that there is no documentary material on record to establish that the appellant is a Cabinet Minister or *Kilonser* (as colloquially called in her native place) in the alleged terrorist gang and moreover, no 'official act' of the appellant as being the Cabinet Minister has been brought on record by the prosecution. There is no substantive evidence to show that the appellant's business in the name of AJ Agency, which was a legitimate business providing transport, car security, garage services, was a facade in order to secure money for the NSCN(IM). Further, the prosecution has failed to bring any evidence on record that suggests that the supplementary activity of money lending done by the appellant was done with an intention to further the alleged terrorist activities by the said organization.

23. The learned counsel submitted that the NIA has failed to place any evidence on record pointing out the role of the appellant in the so called terrorist gang, except alleging that her husband was involved in the said organization.

24. He contended that there is no money trail leading to any of the channels operated by the NSCN(IM), and the allegations being

completely false, fabricated and unsupported by any material evidence.

25. He further submitted that the NIA has failed to show that there are any reasonable grounds for the accusations against the appellant to indicate them as being *prima facie* true, except that she was carrying a cash amount of Rs. 72 lakhs on 17.12.2019, and is married to Phungthing Shimrang, who is only a member of Steering Committee for Indo-Naga peace talks and is not a part of the conspiracy of terror funding, as alleged by the prosecution. He further contended that the prosecution is basing its case on recovery of money which may, at least, tantamount to possession of unaccounted cash and at best, to extortion, but it cannot be construed to be a terrorist activity.

26. He also submitted that this Court is governed by the Constitutional principles and in a case like the present, where the prosecution has miserably failed to conclude the trial of the case, this Court, without resorting to the merits of the case, may grant bail to the appellant so as to protect her Fundamental Right to Personal Liberty. In such case, the prosecution should not oppose bail, even on the ground that the offence is grievous as it has failed in its duty to provide a speedy trial to the appellant.

27. The appellant, the learned counsel vehemently submitted, has been languishing for almost 4 and a half years in jail, without prosecution presenting evidence against her and that the case is at the early stages of prosecution evidence, wherein more than 170 witnesses have been cited by the prosecution across 2 Chargesheets, and the majority of the witnesses are from Nagaland and Manipur and only 33

witnesses have been examined and approximately 100 witnesses are yet to be examined. He further submitted that the prosecution itself is not in a position to specify the time limit within which it would conclude its case and in such a state of uncertainty, the appellant cannot be made to sacrifice her liberty and precious years of her life by remaining in jail. Moreover, the appellant has no criminal antecedents and has been falsely implicated in the case. The learned counsel, thus, submitted that it is a fit case where the appellant should be enlarged on bail as bail is the rule, whereas jail is the exception, and she is ready to abide by any conditions to be imposed on her by this Court.

28. The learned counsel further submitted that Section 43-D(5) of the UA (P) Act does not oust the applicability of Code of Criminal Procedure (CrPC). The *proviso* to Section 437 is also applicable even in cases involving offences under the Special Acts. In the present case, the appellant is a woman and otherwise, has no prior antecedents, therefore, she is entitled to bail in the special circumstances by virtue of *proviso* to Section 437 of CrPC. Reliance for which was placed on the decisions in ***Devki Nandan Garg vs. ED*** (Bail Appln. 540/2022 decided on 26.09.2022), ***Kewal Krishan Kumar vs. ED*** (Bail Appln. 3575/2022 decided on 17.03.2022) and ***Komal Chadha vs. SFIO*** (Bail Appln. 1740/2022 dated 21.12.2022)

29. To sum up, the learned counsel urged that in exercise of its powers under the Constitutional jurisdiction, this Court has to consider (i) the long period of incarceration of the appellant and, (ii) the right under Article 21 of the Constitution, which cannot be permitted to be

infringed, denying the right of a speedy trial to the appellant specifically, when the prosecution is clueless about the time period, when the trial would conclude, (iii) the prosecution fails to place on record sufficient evidence to support the alleged serious accusations, (iv) the prosecution is yet to establish that NSCN(IM) is a terrorist gang/organization.

30. Learned counsel, to strengthen his pleas, placed reliance on the following decisions:

1. ***Shoma Kanti Sen vs State of Maharashtra*** *(2024) 6 SCC 591*
2. ***Vernan vs State of Maharashtra*** *(2023) SCC OnLine SC 885*
3. ***Javed Gulam Nabi Sheikh vs State of Maharashtra*** *Crl. A. 2787/2024 dated 03.07.2024*
4. ***Sheikh Javed Iqbal vs State of Uttar Pradesh*** *Crl. A. 3173/2024 on 13.08.2024*
5. ***Himansh @ Himanshu Verma vs Enforcement Directorate*** *SLP (Crl) No. 2438/2024 dated 08.07.2024*
6. ***State of M.P. vs Sheetla Sahai &Ors.*** *(2009) 8 SC 617*
7. ***Sanjay Jain vs Enforcement Directorate*** *(Bail application 3807/2022 dated 07.03.2024)*
8. ***Dr. Bindu Rana vs. SFIO*** *[Bail Appln. 3643 / 2022 decided on 20.01.2023]*
9. ***Ashish Mittal vs. SFIO*** *[Bail Appln. 251 / 2023 decided on 03.05.2023]*
10. ***Ramesh Manglani vs. ED vs. CBI*** *[Bail Application No. 3611/2022 decided on 30.05.2023]*
11. ***Union of India vs. KA Najeeb*** *[2021 3 SCC 713]*
12. ***Ashim vs. NIA*** *[2022 1 SCC 695]*
13. ***Satender Kumar Antil vs. CBI*** *[2022 10 SCC 51]*.
14. ***Ashim vs. National Investigation Agency*** *[2022 1 SCC 695]*
15. ***Sagar Tatyaram Gorkhe vs. State of Maharashtra*** *[2021 3 SCC 725]*
16. ***Shaheen Welfare Association vs. Union of India*** *[1996 2 SCC 616]*
17. ***Mohd. Hakim vs. NIA*** *[Crl. A. 90 / 2021 decided on 06.10.2021]*
18. ***R. Vasudevan vs. CBI*** *[Bail Application No.2381/2009 decided on 14.01.2010]*
19. ***Moti Lal Basak vs. State of NCT of Delhi*** *[Bail Application No. 3909/2021 decided on 17.02.2023]*
20. ***CP Khandelwal vs. ED*** *[Bail Appln. 2470 / 30 2022 decided on 23.02.2023]*
21. ***People's Union For Civil Liberties and Anr. Vs. Union of India*** (2004 9

SCC 580)

22. ***A.K.Roy vs. Union of India and Ors.*** (1982 1 SCC 271)
23. ***Maneka Gandhi vs. Union of India*** (1978) 1 SCC 248.
24. ***Angela Harish Sontakke vs. State of Maharashtra*** *[2021 3 SCC 723]*

SUBMISSIONS OF THE RESPONDENT:

31. *Per contra*, Ms. Shilpa Singh, learned Special Public Prosecutor on behalf of the respondent, while placing reliance on the investigations carried out by the NIA, submitted that a huge quantity of ammunition and other incriminating evidence have been recovered at the behest of the appellant. She submitted that the appellant has failed to assign any reasons for having opened 20 bank accounts with her real name i.e. Alemla Jamir as well as her false identities such as Mary Shimrang & Atula Tonger, with the intention of funneling and layering the extortion money of NSCN(IM).

32. Ms. Singh submitted that the accused persons, including the appellant, had connived and established a sophisticated network of terrorizing businessmen through the armed cadets of the 'Naga Army', thereby creating a systematic mechanism of collection of extortion/tax money for terrorist funding. The business of the appellant in the name of A.J. Agency is part of the *modus operandi* adopted by her to extort money from Eastern Motors, Imphal. Moreover, there is no whisper of the business of poultry farming in which the appellant is claimed to be involved.

33. She submitted that, there is sufficient material collected by the NIA to show the direct involvement of the appellant in commission of the offences of which she is accused of, relying upon which the

learned ASJ had framed the Charges against the appellant on finding *prima facie* evidence on record.

34. She submitted that the appellant failed to satisfy the '*triple test*' for grant of bail. First, the appellant is facing Charges for serious offences which are punishable upto life imprisonment. Secondly, the appellant is a flight risk as her husband, Phungthing Shimrang, is an absconding accused in the present case and has fled to China. In these circumstances, if the appellant is released on bail, there is a higher likelihood that she may escape from Justice Delivery System and will further partake in facilitating the terrorist activities. Thirdly, the appellant is a highly influential person who holds the high rank of a *Kilonser* (Cabinet Minister) in the terrorist gang NSCN(IM) and there is every possibility that she will tamper with the evidence and intimidate the witnesses in the present case who are mainly natives of Nagaland, so much so that one of the prosecution's witnesses, that is PW-14, has already turned hostile to the prosecution case.

35. She further submitted that another faction of NSCN that is NSCN-K has already been declared an unlawful association and a terrorist organization under the UA(P) Act, 1967.

36. Insofar as the submission of the appellant that there is a delay in conclusion of the trial is concerned, learned Special Public Prosecutor submitted that the trial is proceeding speedily and that the prosecution is earnestly trying for the conclusion of its evidence at the earliest. Further, the learned ASJ has already assigned three days in a week to record the evidence so as to ensure a speedy disposal of the case. She submitted that out of total cited 183 prosecution witnesses in the

Chargesheet, after pruning the list, now out of remaining 109 witnesses, 35 witnesses have been examined by the prosecution. Moreover, many of the witnesses are formal witnesses and their evidence should be concluded in a short span of time. To further cut down the list of remaining witnesses, the learned Special Public Prosecutor submitted, the NIA has filed an application in the Special NIA Court, seeking admission and denial of relevant and relied upon documents by the prosecution. In case, the appellant admits to the documents, the list of witnesses will be further cut down. Therefore, the prosecution is aware that under no circumstances, the Fundamental Right of the appellant to speedy trial is to be compromised, however, keeping in view the allegations as well as the incriminating evidence collected against the appellant, it is imperative that the right of the prosecution to establish its case should also not be curtailed.

37. Further opposing the appeal, she vehemently submitted that the Criminal Appeal filed by the Co-accused No. 2, Masasasong Ao, appellant's brother-in-law, who has lesser role than that of the appellant before this Court, which raised identical grounds of Appeal on dismissal of his Bail application by the learned ASJ, Special Courts, NIA, as in the present appeal, has already been decided and dismissed by the Coordinate Bench of this Court *vide* its detailed Judgment dated 13.05.2024, therefore, the present appeal is also liable to be dismissed.

38. Learned Special Public Prosecutor also submitted that the NIA is entrusted to investigate the matters which are allotted to them by the MHA, in accordance with the provisions of the NIA Act, therefore, in

such cases, initially an FIR is lodged and after the case is allotted and investigation is taken over by the NIA, the case is re-registered as Registered Case (RC) number. Thus, the plea of the appellant that the NIA is making an endeavour to undertake selective prosecution by not prosecuting the head of the said terrorist gang is baseless. Moreover, she submitted, the NIA is also prosecuting other members of the NSCN(IM) in similar cases before different Courts.

39. She further submitted that the predecessor of the James Jamir, Anthony Ningkhan Shimray, the then Army Chief of NSCN(IM), who was, while the prosecution evidence was going on in another NIA case, released on bail. However, to no surprise he jumped bail, and was consequently declared a proclaimed offender. Thereafter, the appellant's husband became the Army Chief and is also absconding.

40. It was submitted that the reliance placed by the appellant on various judgments cited on her behalf are misplaced as most of the decisions are distinguishable on their facts. Even the reference made to the case of ***KA Najeeb*** (supra) is misplaced, as in the said case the trial had not commenced, the list of witnesses was over 250 and the appellant therein had been in jail for over 8 years. She submitted that the present case stands on a different factual footing. In the present case, she submitted, the appellant was apprehended in December, 2019. Thereafter in early 2020, the Covid Pandemic ensued and the Chargesheet was filed in June, 2020 and even the trial had duly commenced and the Charges were framed in September, 2022.

41. She further submitted that also the reliance by the appellant on the case of ***Moti Lal Basak*** (supra), is misplaced as it is also

distinguishable on facts as the main accused persons were neither arrested nor chargesheeted, unlike the scenario in the present case.

42. Moreover, she submitted, the witnesses in the case like the present are hard to summon and they fear to depose given the immense influence and atmosphere of terror, thus, these conditions are adverse to the prosecution and to the Court. Further, these witnesses hail from Dimapur, Nagaland, therefore, it is an impediment for the witnesses to travel all the way to Delhi to depose in a trial and go back and live a happy life in Nagaland.

43. In support of her pleas, the learned Special Public Prosecutor placed reliance on the following decisions:

- ***Gurwinder Singh vs. State of Punjab,*** *(2024) 5 SCC 403, decided on 07.02.2024*
- ***National Investigation Agency vs Zahoor Ahmad Watali,*** *(2019) 5 SCC 1*
- ***Buredi Narayana vs State of Jharkhand*** *(2022) 0 Supreme (Jhk) 1220.*
- ***Jai Kishan Sharma vs NIA & Anr. CRAPL 3/2020*** *(2022) 0 Supreme (Gau) 1120*

44. In rebuttal, as far as the respondent's submission is that since the Charges have been framed, the trial will be further expedited and therefore, the attempt to secure bail should be rejected, learned counsel for the appellant reiterated that there are 187 witnesses, out of which 33 have been examined and not even a single witness provided any testimony to the prejudice or detriment of the appellant. He placed reliance on the decision of ***Rup Bahadur Magar vs State of West Bengal,*** SLP (CRL) 11589/2024 dated 02.09.2024 and submitted that bail cannot be denied solely on the ground of trial being expedited.

45. He further contended that only for the reason that the co-accused is absconding, therefore, the bail be denied to the appellant, is erroneous, as it is the authorities who do not have the wherewithal to take the absconding accused into custody. Reliance was placed on ***Sebil Elanjimpally vs State of Orissa,*** SLP (Crl.) 3518/2023 dated 18.05.2023.

46. He submitted that it cannot be trite in law that on account of denial of bail to the co-accused, as a matter of natural corollary, the bail to the appellant be also denied, who is languishing in jail for nearly 5 years.

47. Learned counsel submitted that strong emphasis has been placed on the decision in ***Gurwinder Singh*** (supra) whereas, the said judgement has already been dealt with and analyzed in the subsequent decision in ***Sheikh Javed Iqbal*** (supra), also on which the appellant has placed reliance on. Moreover, the decision in ***Gurwinder Singh*** (supra) was subjected to a review on the ground that it is in conflict with the decision in ***KA Najeeb*** (supra). The Supreme Court in review held that the same has been decided on its own facts and therefore, he contended that the constitutional ethos flow from ***KA Najeeb*** (supra).

48. Learned counsel submitted that the respondent attempted to contend that the witnesses are in fear, however, this argument cannot be sustained as it has never been brought to the notice of the Special Court that any of the witnesses are in fear. Moreover, the identities of the witnesses are concealed and only certain portions of their statements under Section 161 of the CrPC are provided. Nonetheless, there is a Witness Protection Scheme in place and it is the job of the

investigating authority to provide protection to the said witnesses, if at all they are in fear or threat.

49. He submitted that the argument canvassed by the respondent does not hold water that the NSCN-K finds mention in the Schedule of UA(P) Act with the expression 'all formations', therefore by extension, the NSCN(IM) is also a terrorist organization under the said Schedule. He submitted that these are two distinct organizations and inclusion of one will not automatically include the other as well, therefore, the reliance placed on the said Schedule is misplaced and erroneous.

50. Further placing reliance on the decision of ***Javed Gulam Nabi Sheikh*** (supra), the learned counsel submitted in that case, the accused was in custody for 4 years and only 80 witnesses were to testify, while in the present case, appellant has been in jail for about 5 years and 180 witnesses in total are to testify and there is no likelihood of conclusion of trial in near future, therefore, the appeal be allowed and the appellant be granted regular bail.

ANALYSIS AND FINDINGS

51. We have considered the submissions on behalf of the parties and perused the record.

52. The prosecution's case stems from the recovery of cash amounting to Rs. 72 Lakhs from the appellant, which was allegedly handed over to her on the directions of Mr. Muivah, General Secretary of the NSCN(IM) to be taken to Dimapur, Nagaland to further the terrorist operations by the alleged terrorist gang NSCN(IM). The case

was originally registered as an FIR bearing no. 228/2019 registered by the Special Cell, Delhi Police, and the appellant was arrested on 18.12.2019. Thereafter, the investigation was taken over by the NIA in compliance of the order of MHA, and the case was re-registered as RC No. 26/2019/NIA/DLI. The Chargesheet was filed by the NIA on 11.06.2020 arraying the appellant as A1, her brother-in-law as A2, and her husband as A3, and subsequently, the learned ASJ *vide* Order dated 07.10.2022 framed the Charges in the present case against the appellant under Sections 120B, 384, 471 IPC and Sections 17, 18, 20 and 21 of UA(P) Act as well as Section 25 of the Arms Act.

53. To appreciate the submissions made on behalf of the parties, to begin with, it will be apposite to refer to the findings of the learned ASJ *vide* Impugned Order dated 31.05.2024, while deciding the second bail application of the appellant, the relevant extracts whereof read as under:-

> *"10. In the case of Gurwinder Singh (Supra), Hon'ble Supreme Court of India has, inter alia, held that "As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore, in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as. a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted." The clear unequivocal pronouncement by Hon'ble Supreme Court of India settles the law on the issue that court should reject the arguments of accused*

for being admitted in bail on account of time taken in trial. Therefore, this argument on behalf of accused can also not be accepted.
11. Further, there is no change in circumstance since dismissal of first application on behalf of accused and hence, there is no occasion to re-visit the said decision.
12. A principle of law laid down by Hon'ble Supreme Court of India in the case of Gurwinder Singh (Supra) on the issue of bail under UA(P) Act is that bail in cases under UA(P) Act should be rejected as rule. Above discussion shows that accused while seeking bail could not point material on record or applicability of decision in another case in present matter as well and falls short to cross the bridge of twin conditions stipulated u/s 43(d)(5) ofUA(P) Act.
13 Hence, in view of the above discussion, present bail application of accused/applicant Alemla Jamir @ Mary Shimrang @ Atula Ronger is dismissed. Order dasti."

54. From the Impugned Order, what emerges is that the learned ASJ primarily dismissed the second bail application of the appellant on the ground that, as the Charges in the present case were framed against the appellant, making it evident that there is sufficient material on record, the ground of delay in view of the grave accusations against the appellant could not be considered. During the course of the arguments, it was brought to our notice by the learned counsel for the appellant that an appeal against the Orders dated 15.09.2022 and 07.10.2022 relating to framing of Charges has been preferred and therefore, he submitted that the learned ASJ has erroneously observed that the Order on Charge has attained finality, and on basis of such finding, rejected the bail application. In addition, the learned ASJ did not find any change in circumstance warranting for grant of bail in favour of the appellant since the first bail application was rejected by

it.

55. At this stage, it may be noted that the NIA Act is a Special Legislation, catering to investigation and prosecution of offences affecting the sovereignty, security and integrity of India, amongst other things outlined in the said piece of Legislation. NIA is a special agency and the Central Government is empowered to direct the NIA to investigate a given case where the offence committed pertains to one of the scheduled offences under the NIA Act. Moreover, Special Courts have been constituted under the said Act to adjudicate such matters and it also mandates that the Special Court be held on a day to day basis, and to have precedence of matters under the NIA over the trials of other cases and if necessary, the latter cases be kept in abeyance.

56. In this background, it would now be apposite to reproduce the Section 43D of the UA(P) Act to set the stage for adjudication of the present appeal, relevant provisions thereof read as under:

> *"**43D. Modified application of certain provisions of the Code***
> *(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*
>
> *Provided that such accused person shall **not** be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.*
>
> *(6) The restrictions on granting of bail specified in*

> *subsection (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*
> *(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."*
>
> ***(Emphasis Supplied)***

57. The aforesaid provision has been examined in various decisions of the Supreme Court as well as Coordinate Benches of this Court. In a recent decision in the case titled ***Sheikh Javed Iqbal*** (supra), the Apex Court observed that an undertrial has a fundamental right to a speedy trial, which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. While referring to its decision in the case titled ***Javed Gulam Nabi Sheikh*** (supra), ***Shaheen Welfare Association*** (supra), and ***Angela Harish Sontakke*** (supra), the Supreme Court observed as under:

> *"42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part."*

58. The Apex Court further held:

> *"**In the given facts of a particular case, a constitutional court may decline to grant bail.** But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb[1] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."*
>
> ***(Emphasis supplied)***

59. The Supreme Court in the case of ***Zahoor Ahmad Shah Watali*** (supra) has laid down the parameters on which the grant of bail is to be tested under UA(P) Act, the relevant extract whereof, are as under:

> *"21. Before the rival submissions, it is apposite to state the settled legal position about matters to be considered for deciding an application for bail, to with:*
>
> ***i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence,***
> ***ii. the nature of gravity of the charge,***
> ***iii. the severity of the punishment in event of conviction,***
> ***iv. the danger of accused absconding, or fleeing if released on bail***
> ***v. Character, behaviour, means, position and standing of accused***
> ***vi. likelihood of offence being repeated***
> ***vii. reasonable apprehension of witness being tampered with and***
> ***viii. danger of course of justice being tweeted by grant of bail***
>
> *x*
> *x*
>
> *25. A priori, the exercise to be undertaken by the Court at this stage - of giving reasons for grant or non-grant of bail - is markedly different from discussing merits or demerits of evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."*

60. Relevantly, the Supreme Court in ***Gurwinder Singh*** (supra) observed as under:-

> *"18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released-suggests the intention of the Legislature to make bail, the exception and jail, the rule.*
>
> *19. The Courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the Courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ahmad Watali has noticed this difference, where it said:*
>
> > *"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."*
>
> *20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would*

proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Subsection (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail Court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')? On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2 Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'."

Test for Rejection of Bail : Guidelines as laid down by Supreme Court in Watali's Case

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w

Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- ***Meaning of 'Prima facie true'*** *[para 23] : On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.*
- ***Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges Compared*** *[para 23] : Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.*
- ***Reasoning, necessary but no detailed evaluation of evidence*** *[para 24] : The exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of*

the evidence is not required to be done at this stage.

• ***Record a finding on broad probabilities, not based on proof beyond doubt*** *[para 24]:"The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."*

• ***Duration of the limitation under Section 43D(5) [para 26]*** *: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.*

• ***Material on record must be analysed as a 'whole'; no piecemeal analysis*** *[para 27] : The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.*

•***Contents of documents to be presumed as true*** *[para 27] : The Court must look at the contents of the document and take such document into account as it is.*

• ***Admissibility of documents relied upon by Prosecution cannot be questioned*** *[para 27]. The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence…….In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."*

61. We must herein itself note that by an Order dated 16.07.2024, the Supreme Court disposed of the Review petition filed against the above judgment, observing that the decision in the said case was based on the facts and circumstances unfolded and held as under:-

"*1) This Review Petition has been filed seeking to review Judgment dated 07.02.2024 both on facts*

and law. As facts have been duly taken note of, we do not find any reason to interfere with the Judgment passed. On the question of law, reliance has been placed on the decisions of this Court in KA Najeeb v. Union of India, (2021) 3 SCC 713 and Vernon v. State of Maharashtra, (2023) SCC OnLine SC 885 and ***our decision is based on the facts and circumstances unfolded****.*

2) Accordingly, the Review Petition stands dismissed."

(emphasis supplied)

62. Recently, this Court in the case of ***Jagtar Singh Johal vs. National Investigation Agency*** (2024) SCC OnLine Del 6504, considered Section 43-D(5) of the UA(P) Act. The relevant observations of this Court are reproduced hereinbelow:

"79. From the record, at this stage, there are reasonable grounds to believe that the Appellant was not an innocent person, but was prima facie associated with the KLF. He had knowledge of the KLF and its activities and the charges have, in fact, been framed against him under Section 302 read with 1208 of IPC and Sections 16, 17, 18, 18A and 20 of the Act. The framing of charges shows that the Petitioner has a higher threshold to cross. In Gurwinder Singh (Supra) the framing of charges is held to create a strong suspicion/presumptive opinion as to the existence of the factual ingredients constituting the offences alleged against the accused. The observations of the Supreme Court in Gurwinder Singh (Supra) are set out herein below:

> ***"Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post- Charges Compared*** *[para 23]****: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge****. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge- sheet (report*

> *under Section 173 CrPC), do not make out reasonable grounds for belleving that the accusation against him is prima facle true. Similar opinion is required to be formed by the Court whilst considering the prayer for ball, made after filing of the first report made under Section 173 of the Code, as in the present case."*
>
> *At this stage, there are grounds to believe that the allegations against the Appellant are prima facie true. At the time when the Punjab and Haryana High Court had granted interim ball to the Appellant i.e., 15th March 2022, which was not interfered with by the Supreme Court, the charges were not yet framed. The charges were framed in RC. No. 25/2017 on 3rd August 2022 and in RC. No. 27/2017 on 15th October 2022 respectively. As held in Gurwinder Singh (supra) the framing of charges changes the considerations of bail in such cases, as a very strong suspicion exists."*

63. Thus, what emerges from the aforesaid decisions is that the Right to life and personal liberty under Article 21 of the Constitution is paramount. If the Court finds that the rights of the accused have been infringed under Article 21 of the Constitution, it is not deprived of the power to grant Bail. However, in the given facts of a particular case, a Constitutional Court may decline to grant Bail. Moreso, the position of law is also well settled that the accused shall not be released on bail if the allegations are *prima facie* true. The onus being stricter on the appellant when the Charges have already been framed in a given case. The Supreme Court has also laid down the '*twin-prong test*' wherein the first test pertains to whether the test for rejection for bail are sufficient and whether the test for rejection was satisfied. Thereafter, the other prong requires to apply the '*tripod test'* considering the parameters of *flight risk, influencing of witnesses and*

tampering of evidence.

64. The Apex Court in ***Gurwinder*** (supra) has elaborated the test for rejection of bail as laid down by it in ***Zahoor Ahmad Shah Watali*** (supra) which have been noted hereinabove. Relevantly, the Court has to examine the documents/materials which are a part of the Chargesheet to adjudicate whether there are reasonable grounds to believe that the allegations against the appellant are *prima facie* true.

65. We may also note that in ***Sheikh Javed Iqbal*** (supra), the Supreme Court had enquired from the parties as to the total number of witnesses as well as those examined and had observed as under:

> *"18. As per the impugned order, evidence of only two witnesses have been recorded. In the course of hearing, the Bench had queried learned counsel for the parties as to the stage of the trial; how many witnesses the prosecution seeks to examine and evidence of the number of witnesses recorded so far. Unfortunately, counsel for either side could not apprise the Court about the aforesaid. On the contrary, the learned state counsel sought for time to obtain instructions."*

66. The Supreme Court in the aforesaid case, while granting bail, had distinguished ***Gurwinder Singh*** (supra) by observing as under:

> *"...but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail."*

67. The present appeal, therefore, ought to be considered in the light of the aforementioned binding precedents and guidelines with the facts and circumstances of the present case, as emerging from the

record. We may now proceed to apply the aforesaid tests to the facts of the present case. In this background, we may note the role of the appellant, as mentioned in the Chargesheet, which reads as under:

> *"Role in Crime:*
> *A-1 is occupying the post of Kilonser (Cabinet Minister) in the terrorist gang NSCN (IM) which is running a parallel government in Nagaland under the nomenclature of Government of People's Republic of Nagalim (GPRN) with various ministries and departments and with a full - fledged Naga Army having sophisticated weaponry and detailed organizational structure and chain of command. She along with A-2, A-3 and others had set up a systematic mechanism of terrorising common citizens and businessmen with the instrument of the Naga Army and thereby collecting extortion money and thereby raising the terrorist fund. A-1 along with A-2 and A-3 and others were also involved in growing the terrorist fund through various means such as purportedly giving out loans at exorbitant rates of interest. During investigation, evidence collected during the house search of A-1 and other evidences collected clearly establish that A-1 ,A-2, A-3 in furtherance of conspiracy raised and collect terrorist funds with the intention of committing terrorist acts. Evidences collected during investigation reveal that A-1, and A-3 along with others were in the process of collecting technical know- how to fabricate IEDs/bombs."*

68. The investigation carried out by the NIA unraveled that the NSCN(IM) is a terrorist gang with sophisticated weaponry and also that it runs a parallel government. The appellant is accused of being a member of the said terrorist gang by being its *Kilonser* (Cabinet Minister) and her call records and searches from her matrimonial residence in Dimapur, Nagaland revealed that numerous (more than 20) phones, satellite and cellular, storage devices such as Hard Disks,

pendrives, etc, live ammunitions, bullet proof jackets etc. and other such incriminating evidence were unearthed and it was opined by the Forensic experts that the same contained information regarding fabrication of IEDs/Bombs. The Laboratory analysis further revealed that there are multiple incriminating documents of the terrorist gang NSCN(IM) such as images of sophisticated arms and ammunition, Hebron Camp and the Civil Headquarter of Government of People's Republic of Nagalim (GPRN)/NSCN(IM) etc.

69. The appellant's brother-in-law (A2) and her husband (A3) have both been named accused in the Chargesheet filed by the NIA, though A3 has not been chargesheeted. The investigation revealed that A2 is a member of the NSCN(IM) and he withdrew money from the accounts of the appellant even post her arrest. A3 is stated to be the Commander-in-Chief of the said organization and is absconding, having fled to China. The investigation further revealed that the appellant had created fraudulent identities in the name of Mary Shimrang and Atula Tonger, apart from Alemla Jamir, further, she possessed passports in these names, as is evident from the Chargesheet. The foregoing investigation revelations and the fact that the appellant has means to procure passports using fake identities go to establish that she is a ***flight risk.***

70. The appellant, has been alleged to be a highly influential person, holding a high position of the NSCN(IM) and with the assistance of her associates, is in a position to ***influence the witnesses and tamper with the evidence***, the likelihood of the same cannot be ruled out given the gravity of offences she is charged with.

Specifically, when it has been brought to our notice by the learned Special Public Prosecutor that PW14 has turned hostile.

71. Most importantly, this Court *vide* Order dated 13.05.2024 in CRL.A. 244/2023 titled ***Masasasong Ao vs. National Investigation Agency*** had declined to grant bail to the A2 namely Masasasong Ao, who has been a part of the same conspiracy as alleged against the appellant. The identical argument that the NSCN(IM) has not so far been declared a terrorist organization or a terrorist gang and that in view of Ceasefire Agreement, Framework Agreement and various MOUs, the NSCN(IM) is not a terrorist gang/organization, did not find favour with the Coordinate Bench while dismissing the appeal of Masasasong Ao, A2. The relevant extracts are set out hereinbelow:-

> *"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."*

72. Pertinently, the Order dated 13.05.2024 was challenged in the Special Leave Petition bearing no. 10268/2024 titled ***Masasosang Ao vs. National Investigation Agency*** and the Supreme Court while dismissing the petition as withdrawn noted as below:

> *"1. After arguing the matter for sometime and on our expressing reservation in entertaining the present petition, the learned senior counsel for the petitioner seeks permission to withdraw the present petition.*
> *2. Permission to withdraw, as sought for, is granted.*
> *3. The special leave petition is dismissed as withdrawn."*

73. We find that the allegations against the appellant are specific of her being involved in a criminal conspiracy along with A2 and A3 for raising and collecting lots of funds from businessmen in Dimapur by creating a systematic mechanism for collecting extortion money for the NSCN(IM), for which she had opened, as many as 20 bank

accounts, some in fictitious names also. The appellant, along with other accused persons, was acting in a surreptitious manner with an endeavour to leave no trail of evidence behind in relation to extortion of money in order to carry out operations of the alleged terrorist gang NSCN(IM). Further, incriminating evidences in form of electronic devices as well as arms & ammunitions were also recovered from her residence. We have also gone through the statements of various witnesses recorded by the NIA under Section 161 of the CrPC and according to the learned Special Public Prosecutor, out of the 35 examined witnesses, 18 witnesses have testified and supported the case of the prosecution against the appellant and some of the witnesses have been classified as 'protected witnesses'. At this stage, we also cannot ignore the alleged recoveries made from the residence of the appellant pointing towards her involvement in the offences she has been charged under.

74. The decisions of ***Devki Nandan Garg*** (supra) and ***Kewal Krishan Kumar*** (supra) are distinguishable on facts inasmuch as they pertain to offences charged under the Prevention of Corruption Act, 1988 and Prevention of Money Laundering Act, 2002, for which punishment are lesser when juxtaposed with UA(P) Act. Moreover, in ***Kewal Krishan Kumar*** (supra), the Chargesheet qua the applicant therein had not been filed and earlier, he was also granted an interim bail, which was not misused by him. These decisions were particularly based on applicants being *'sick'* or *'infirm'*, in view of the welfare provision provided for in the aforesaid Special Statute for grant of bail.

75. In ***Komal Chadha*** (supra), the matter pertained to offences punishable under Companies Act, 2013 and moreover, the Charges were yet to be framed in the said case. Notably, the analogous *proviso* to Section 437 CrPC [*Now, 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*] is also provided in the *proviso* to Section 45(1) of the Companies Act. However, no such *proviso* is provided for under the UA(P) Act. The reliance placed on the judgment in ***Satender Kumar Antil*** (supra), it may be noted that in the said case, the Apex Court with regard to the Section 437 of CrPC had observed that the application of this welfare provision may not be considered favourably in all cases as the application thereof will depend on the facts and circumstances of a given case and what is required, is the consideration of this *proviso* amongst other factors. Moreover, the severity of the Charges in the present case being grave and severe in nature, as against the ones applicants were charged with in the aforesaid cases, the decisions relied upon by the appellant are not applicable to the facts of the present case.

76. We have also gone through the other decisions relied upon by the learned counsel for the appellant and find that they do not come to his aid as in most of the cases, the Charges were not framed and the trial was also in the nascent stages as well as they turn on their own peculiar facts and circumstances of the case thereby not being applicable to the facts of the present case.

77. Notably, the trial in the present case is being fast tracked thereby reducing the delay. The learned Special Judge is also making an endeavour to increase the pace of the trial as is evident from the

dates of hearing being given. Moreso, the list of witnesses has also been pruned down by the prosecution, making an attempt to conclude the trial as early as possible. It is also to be noted that Justice hurried is Justice buried. We also cannot lose sight of the element that quality of evidence that is to be adduced before the trial cannot be compromised.

78. In light of the aforesaid and considering the nature of the allegations against the appellant and the evidence brought on record, coupled with the facts that the husband of the appellant is absconding and the bail of the co-accused Masasosang AO was also rejected by the Coordinate Bench of this Court and was unsuccessfully challenged before the Supreme Court, we do not find any merit in the present appeal.

79. Accordingly, the present appeal is dismissed. However, we make it clear that nothing observed hereinabove would tantamount to be an expression on merits of the allegations against the appellant. These observations are tentative and have been made for the purpose of consideration of bail alone.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JANUARY 13, 2025
KM